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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 3

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INDEX

Entry — Page Number

Orders and Judgments

1. Order Denying Plaintiff/Appellant Michael D. Royal's ("Royal") Motion to Reconsider and Amended Motion to Reconsider entered July 18, 2022 13

2. Order Regarding Intervenor/Respondent's The Charleston County School District's ("CCSD") Motion to Exclude and Strike entered July 18, 2022 18

3. Order of Findings of Fact and Conclusions of Law from Trial entered March 31, 2022 26

4. Order Granting Motion of Charleston Chapter No. 4, UDC, and the Confederate Museum to Intervene (Form 4) entered August 10, 2021 52

5. Order Regarding Royal's Privilege Log (Form 4) entered August 10, 2021 55

6. Order Denying Royal's Motions for Clarification and Reconsideration and Setting Hearing on Motion to Intervene entered July 23, 2021 58

7. Order Concerning Various Discovery Motions by CCSD and Royal's Motion for Protective Order entered June 21, 2021 62

8. Order (Form 4) entered June 7, 2021 71

9. Order Appointing Receiver for Free Kindergarten Association of Charleston ("FKAC") entered February 22, 2021 74

10. Order Granting Motion of CCSD to Intervene entered August 22, 2019 78

11. Order Granting the Attorney General of the State of South Carolina's ("AG") Motion to Intervene entered July 10, 2019 93

12. Order Granting CCSD's and the AG's Motions to Intervene (Form 4) entered June 7, 2019 102

13. Order of Reference to Master in Equity entered March 21, 2019 104

Pleadings

14. Summons and Complaint filed December 4, 2018 106

Exhibits to Complaint:

a. Real Estate Purchase and Sale Agreement Dated April 23, 2013 115

b. Appraisal of Subject Property as of December 19, 2012 121

c. First Addendum to the Real Estate Purchase and Sale Agreement 135

d. Royal's April 26, 2018 Email to Patrick F. Stringer and Other Parties 137

e. Second Addendum to the Real Estate Purchase and Sale Agreement 139

f. Patrick F. Stringer's May 11, 2018 Letter to Royal 141

g. Royal's May 14, 2018 Email to Patrick F. Stringer 143

h. Mary Frances Jowers' May 18, 2018 Email to Royal and Other Parties 145

i. FKAC's April 4, 2018 Notice of Sale to the AG with cover letter 150

j. Royal's May 18, 2018 Email to Mary F. Jowers and Other Parties 153

k. Patrick F. Stringer's June 28, 2018 Email to Royal and Other Parties 159

l. Royal's June 28, 2018 Email to Patrick F. Stringer and Other Parties 161

15. FKAC's Answer and Counterclaim filed January 4, 2019 164

Exhibits to FKAC's Answer and Counterclaim:

a. November 23, 2010 Order of the Charleston County Probate Court 168

b. South Carolina Secretary of State's Certification of FKAC's Amendment to Charter dated February 5, 1971 172

16. CCSD's Answer, Counterclaim, Crossclaim and Request for Declaratory Judgment filed June 24, 2019 174

17. FKAC's Reply to CCSD's Crossclaim filed July 1, 2019 187

18. FKAC's Reply to CCSD's Request for Declaratory Judgment filed July 1, 2019 189

19. AG's Answer to Complaint filed July 25, 2019 192

20. AG's Answer/Reply to CCSD's Request for Declaratory Judgment filed July 25, 2019 199

21. Stipulation of Dismissal of Charleston Chapter No. 4, UDC, and the Confederate Museum filed October 28, 2021 205

Transcript of Trial

22. Transcript of December 15, 2021 Non-Jury Trial 207

Witness Testimony:

Michael Robinson

a. Direct Examination by Mary Frances Jowers, Esq. 227

b. Cross-Examination by A. Bright Ariail, Esq. 231

c. Cross-Examination by Jeffrey S. Tibbals, Esq. 234

d. Recross-Examination by Jeffrey S. Tibbals, Esq. 248

e. Recross-Examination by A. Bright Ariail, Esq. 253

Michael D. Royal

a. Direct Examination by Jeffrey S. Tibbals, Esq. 257

b. Cross-Examination by Patrick F. Stringer, Esq. 406

c. Cross-Examination by Kristin Simons, Esq. 424

d. Cross-Examination by A. Bright Ariail, Esq. 429

[Record on Appeal - Volume 2]

e. Redirect Examination by Jeffrey S. Tibbals, Esq. 490

Trial Exhibits

23. Copies of Exhibits from Trial

a. AG's Ex. 1 (Appraisal of the Property as of June 7, 2018) 559

b. Plaintiff's Robinson Ex. 1 (Appraisal of the Property as of December 12, 2019) 573

c. Plaintiff's Ex. 1 (December 3, 2011 Picture of Property) 586

d. Plaintiff's Ex. 2 (December 3, 2011 Picture of Property) 587

e. Plaintiff's Ex. 3 December 3, 2011 Picture of Property 588

f. Plaintiff's Ex. 4 (Royal's December 7, 2011 Email to South Carolina Secretary of State's Office) 589

g. Plaintiff's Ex. 7 (October 18, 1990 News and Courier Article) 590

h. Plaintiff's Ex. 8 (Royal's Calendar Reminder Dated November 4, 2012 (Subject: Meet June Wells at 34 Pitt Street)) 594

i. Plaintiff's Ex. 9 (Michael Robinson's November 12, 2012 Email to Royal) 595

j. Plaintiff's Ex. 10 (Royal's January 14, 2013 letter to June Wells with enclosed proposed PSA (v6)) 596

k. Plaintiff's Ex. 11 (April 23, 2013 Real Estate Purchase and Sale Agreement) 601

l. Plaintiff's Ex. 12 (November 22, 1993 Letter from Lawrence A. Dodds, Jr. to FKAC/ June Wells with Draft Lease) 605

m. Plaintiff's Ex. 13 (1997 S.C. Department of Revenue Withholding Tax Change of Records/Reorder Form addressed to FKAC c/o June Wells) 606

n. Plaintiff's Ex. 14 (FKAC's January 8, 1997 Letter Replying to S.C. Tax Commission's Letter).....607

o. Plaintiff's Ex. 15 (S.C. Department of Revenue's March 19, 1997 Letter to FKAC c/o June Wells) 609

p. Plaintiff's Ex. 16 (FKAC's June 25, 1997 Resolution Designating Bank Depository).....610

q. Plaintiff's Ex. 28 (Nov.12, 2010 Letter from the AG's Office to June Wells).....612

r. Plaintiff's Ex. 29 (Charleston County Probate Court's Nov. 23, 2010 Order) 613

s. Plaintiff's Ex. 29A (November 23, 2010 Affidavit of June Murray Wells).....617

t. Plaintiff's Ex. 31 (April 23, 2013 Memorandum of PSA).....620

u. Plaintiff's Ex. 32 (Royal's May 29, 2013 Letter to Colleen Carducci, City of Charleston).....623

v. Plaintiff's Ex. 38 (October 3, 2013 Quitclaim Deed from the City of Charleston to FKAC).....625

w. Plaintiff's Ex. 46 (Royal's November 10, 2014 Letter to FKAC/June Wells).....629

x. Plaintiff's Ex. 47 (Royal's January 26, 2015 Letter to FKAC/June Wells) 631

y. Plaintiff's Ex. 54 (January 11, 2018 Emails between William Wells and Royal).....633

z. Plaintiff's Ex. 55 (March 29, 2018 Email Correspondence between Royal, FKAC, Tread Josey and Bill Wells).....634

aa. Plaintiff's Ex. 56 (FKAC's April 4, 2018 Notice of Sale and cover letter) 636

bb. Plaintiff's Ex. 58 (FKAC's 1901 Constitution and Charter).....654

cc. Plaintiff's Ex. 59 (FKAC's January 24, 1901 Certificate of Incorporation).....638

dd. Plaintiff's Ex. 60 (FKAC January 14, 1931 Resolution to Amend Charter) 643

ee. Plaintiff's Ex. 61 (FKAC's January 16, 1971 Application to Amend Charter) 647

ff. Plaintiff's Ex. 62 (South Carolina Secretary of State's Certification of FKAC's Amendment to Charter dated February 5, 1971) 648

gg. Plaintiff's Ex. 63 (Certificate of Existence of FKAC executed by the South Carolina Secretary of State August 23, 2013) 649

hh. Plaintiff's Ex. 66 (FKAC's Answers to Royal's First Requests for Admission).....650

ii. Plaintiff's Ex. 67 (Emails between Tread Josey and the AG's Office dated April 17, 2018 – April 19, 2018).....662

jj. Plaintiff's Ex. 69 (Various Emails between Michael Royal, the AG's Office, FKAC, and Tread Josey spanning April 25, 2018 – May 18, 2018).....665

kk. Plaintiff's Ex. 70 (FKAC's May 11, 2018 Letter to Royal).....670

ll. Plaintiff's Ex. 78 (CCSD's Answers to Royal's First Set of Interrogatories).....671

mm. Plaintiff's Ex. 79 (Royal's and FKAC's Stipulation of Fact) 679

nn. Plaintiff's Ex. 80 (AG's Responses to Royal's First Requests for Admission) 681

oo. Plaintiff's Ex. 82 (The AG's Responses to Royal's First Set of Interrogatories) 686

pp. Plaintiff's Ex. 83 (UDC and the Confederate Museum's Answers to Royal's First Requests for Admission).....695

qq. Plaintiff's Ex. 84 (CCSD's Answers to Royal's First Requests for Admission).....699

rr. Plaintiff's Ex. 85 (CCSD's Answers to Royal's Second Set of Interrogatories) 702

ss. Plaintiff's Ex. 86 (CCSD's First Supplemental Answers to Royal's First Set of Interrogatories).....713

tt. Plaintiff's Ex. 87 (CCSD's Second Supplemental Answers to Royal's First Set of Interrogatories).....715

uu. Plaintiff's Ex. 88 (CCSD's Third Supplemental Answers to Royal's Second Set of Interrogatories).....727

vv. Plaintiff's Ex. 91 (CCSD's Fourth Supplemental Answers to Royal's First Set of Interrogatories).....733

ww. Plaintiff's Ex. 92 (CCSD's Answers to Royal's Third Set of Interrogatories) 737

xx. Plaintiff's Ex. 93 (CCSD's Verification of Answers to Royal's Interrogatories).....740

yy. Plaintiff's Ex. 94 (AG's Verification of Responses to Royal's Interrogatories).....742

Other Materials and Documents

24. The AG's Motion to Intervene and Memorandum in Support filed January 28, 2019 743

Exhibits to the AG's Motion to Intervene and Memorandum in Support:

a. FKAC's January 24, 1901 Certificate of Incorporation 748

b. FKAC's January 16, 1971 Application for Amendment of Charter.....749

c. Appraisal Report of the Subject Property as of June 7, 2018 750

d. The AG's Proposed Answer to Complaint 764

25. CCSD's Motion to Intervene filed February 7, 2019 771

26. CCSD's Memorandum in Support of its Motion to Intervene filed May 29, 2019 790

Exhibits to CCSD's Memorandum in Support of its Motion to Intervene:

a. South Carolina Secretary of State's Certification of FKAC's Amendment to Charter dated February 5, 1971 809

b. FKAC's January 16, 1971 Application for Amendment of Charter.....810

27. Royal's Memorandum in Opposition to CCSD's Motion to Intervene filed June 3, 2019.....811

Exhibits to Royal's June 3, 2019 Memorandum in Opposition to CCSD's Motion:

a. FKAC's January 16, 1971 Application for Amendment of Charter.....825

b. South Carolina Secretary of State's Certification of FKAC's Amendment to Charter dated February 5, 1971 827

c. October 18, 1990 News and Courier Article..... 829

d. FKAC's Year End Profit and Loss Statement 834

e. South Carolina Department of Revenue Form 836

f. March 4, 1997 Letter to the South Carolina Tax Commission 838

g. FKAC's Fixed Rate Certificate & Corporate Resolution 840

h. FKAC Checks Signed by June Wells....846

i. Employer's Quarterly Federal Tax Return Form, mailed to FKAC c/o June Wells ..848

j. Check Showing FKAC's Wachovia Bank Account 851

k. February 22, 2008 Order entered in *Stewart v. CCSD* (2006-CP-10-3307, Charleston County Circuit Court)....853

l. FKAC's June 19, 2009 Application to City of Charleston's Board of Architectural Review to repair roof of the building on the property, signed by June Wells....868

m. November 12, 2010 Letter from the AG's Office to June Wells, and June Wells' November 23, 2010 Affidavit 874

n. Appraisal Report of the Subject Property as of December 19, 2012....879

o. Real Estate Purchase and Sale Agreement for the Property, and Memorandum of Real Estate Purchase and Sale Agreement, both dated April 23, 2013 893

p. FKAC's April 4, 2018 Notice of Sale to the AG with cover letter 902

q. FKAC's May 11, 2018 Letter to Royal....905

r. Royal's May 14, 2018 Email to Patrick F. Stringer 907

s. Email from Mary Frances Jowers to Royal and Other Parties dated May 18, 2018....909

t. Appraisal of the Subject Property as of June 7, 2018 914

u. Patrick F. Stringer's June 28, 2018 Email to Royal and Other Parties 929

v. CCSD's Motion to Intervene filed February 7, 2019....931

w. CCSD's Memorandum in Support of its Motion to Intervene filed May 29, 2019 ...936

[Record on Appeal - Volume 3]

28. Royal's Memorandum in Opposition to The AG's Motion to Intervene entered June 3, 2019 958

Exhibits to Royal's June 3, 2019 Memorandum Opposing the AG's Motion to Intervene:

a. FKAC's January 16, 1971 Application for Amendment of Charter....980

b. South Carolina Secretary of State's Certification of FKAC's Charter Amendment Charter dated February 5, 1971....982

c. October 18, 1990 News and Courier Article....984

d. Appraisal Report of the Subject Property as of December 19, 2012....989

e. Real Estate Purchase and Sale Agreement for the Property dated April 23, 2013...1003

f. January 27, 2016 Order entered in *Sisters of Charity Prov. Hosp. v. Wilson* (2016-CP-40-00087, Richland County Circuit Court)....1013

g. FKAC's April 4, 2018 Notice of Sale to the AG with cover letter....1019

h. First Addendum to the PSA....1022

i. Second Addendum to the PSA....1024

j. Royal's April 26, 2018 Email to Patrick F. Stringer and Other Parties....1026

k. FKAC's May 11, 2018 Letter to Royal....1028

l. Royal's May 14, 2018 Email to Patrick F. Stringer....1030

m. May 14, 2018 Invoice to Royal for Legal Services Rendered....1032

n. Mary Frances Jowers' May 18, 2018 Email to Royal and Other Parties....1034

o. Appraisal of the Subject Property as of June 7, 2018....1039

p. Patrick F. Stringer's June 28, 2018 Email to Royal and Other Parties....1054

q. Royal's June 28, 2018 Email to Patrick F. Stringer and Other Parties....1056

r. The AG's January 25, 2019 Motion to Intervene and Memorandum in Support....1058

29. Transcript of the June 4, 2019 Hearing on the AG's and CCSD's Motions to Intervene....1085

30. FKAC's Motion to Appoint a Receiver filed January 20, 2021....1119

31. Motion to Intervene of Charleston Chapter No. 4, UDC and the Confederate Museum filed June 17, 2021....1121

Attachment/Exhibit to June 17, 2021 Motion to Intervene:

a. Affidavit of Jill Hunter Powell....1125

32. CCSD's Motion to Modify Royal's Notice of Rule 30(b)(6) Deposition of CCSD and to Quash Portions Thereof and Motion for Protective Order filed November 11, 2021....1129

Exhibits to CCSD's Motion to Modify and Quash:

a. Royal's Notice of Rule 30(b)(6) Dep. of CCSD served November 3, 2021.....1137

33. Royal's Memorandum in Opposition to CCSD's Motion to Limit 30(b)(6) Deposition filed November 18, 2021 1144

Exhibits A-B to Royal's November 18, 2021 Memorandum in Opposition:

a. October 6, 2021 Email to CCSD's Counsel Enclosing Plaintiff's Proposed Notice of Rule 30(b)(6) SCRCP, Deposition of CCSD 1153

b. Royal's Notice of Rule 30(b)(6) Dep. of CCSD served November 3, 2021.....1162

34. The AG's Pre-Trial Brief filed December 8, 2021 1169

35. Royal's Pre-Trial Brief filed December 8, 2021 1173

Exhibits to Royal's Pre-Trial Brief:

a. Ex. 1: Excerpts of and Exs. to Vol. I of the Transcript of Royal's Deposition 1197

b. Ex. 2: Excerpts of and Exs. to Vol. II of the Transcript of Royal's Deposition.....1216

c. Ex. 3: Excerpts of and Exs. to Vol. III of the Transcript of Royal's Deposition.....1242

d. Ex. 4: Excerpts of and Exhibits to the Transcript of the Deposition of FKAC's Rule 30(b)(6), SCRCP, Designee, June Wells 1260

e. Ex. 5: Excerpts of and Exhibits to the Transcript of Deposition of William Wells .1263

f. Ex. 6: Letter from Royal to FKAC dated January 26, 2015 1272

g. Ex. 7: January 11, 2018 Email from Royal to Williams Wells 1275

h. Ex. 8: April 11 and May 23, 2018 Emails from the AG's Office to FKAC's Counsel.....1277

i. Ex. 9: Emails between the AG's Office, CCSD, and FKAC, dated between May 22, 2018 and June 28, 2018.....1283

j. Ex. 10: June 22, 2018 Email from the AG's Office to FKAC and CCSD, forwarded by FKAC's counsel to Royal on June 28, 2018 1286

k. Ex. 11: Excerpts of and Exhibits to the Transcript of the Rule 30(b)(6), SCRCP, Deposition of CCSD 1302

l. Ex. 12: October 2013 Emails between Royal and City of Charleston Assistant Corporation Counsel, Janie E. Borden 1341

m. Ex. 13: Quitclaim Deed for the Property from the City of Charleston to FKAC,

executed October 31, 2013 Recorded December 12, 2013.....1344

n. Ex. 14: Declaration of Trust Executed by FKAC July 19, 1963, Recorded in the Charleston County R.M.C. Office in Book V77, at Page 169 1349

o. Ex. 15: November 4, 2015 Emails between Royal and Charleston County Assessor 1354

p. Ex. 16: Certificate of Existence of FKAC, Executed by the South Carolina Secretary of State on August 23, 2013 1357

q. Ex. 17: CCSD's Responses to Plaintiff's First Set of Requests for Admission 1359

r. Ex. 18: FKAC's Answers to Plaintiff's First Set of Requests for Admission.....1363

s. Ex. 19: The AG's Responses to Plaintiff's First Set of Requests for Admission 1368

t. Ex. 20: January 14, 2013 letter from Royal to June Wells.....1372

u. Ex. 21: The AG's Responses to Plaintiff's First Set of Interrogatories 1374

v. Ex. 22: CCSD's Answers to Plaintiff's Third Set of Interrogatories 1382

w. Ex. 23: Excerpts of the Transcript of the June 4, 2019 Hearing on the AG's and CCSD's Motions to Intervene.....1386

[Record on Appeal - Volume 4]

36. The AG's Memorandum of Law filed December 8, 2021 1389

Exhibits A-B, D-G to the AG's December 8, 2021 Memorandum of Law:

a. January 27, 2016 Order entered in *Sisters of Charity Prov. Hosp. v. Wilson* (2016-CP-40-00087, Richland County Circuit Court) 1339

b. June 10, 2011 Order entered in *S.C. Dep't of Mental Health v. Wilson* (2011-CP-40-0875, Richland County Circuit Court).....1403

d. Complaint filed October 14, 2020 in *Sloan Brothers, LLC v. Resurrected Treasure Ministries, Inc.* (2020-CP-23-04725, Greenville County Circuit Court).....1412

e. January 25, 2021 Order entered in *Calhoun Cty. Museum & Cultural Ctr. v. St. Matthew's Parish* (2010-ES-09-00029, Calhoun County Probate Court) 1421

f. April 1, 2014 Order entered in *Baptist Found. of S.C., as Trustee v. Baptist Found. of S.C.* (2013-ES-26-0279, 2014-GC-26-0022, Horry County Probate Court) 1427

g. September 30, 2019 Order entered in *Baptist Found. of S.C., as Trustee v. Baptist Found. of S.C.* (2014-GC-26-0022, Horry County Probate Court) 1443

37. CCSD's Pre-Trial Brief filed December 13, 2021, with Amended Exhibit List filed December 14, 2021 1454

38. The AG's Pre-Trial Brief Supplement filed December 14, 2021 1464

39. Royal's Memorandum in Opposition to CCSD's Motion in Limine filed December 14, 2021 1466

Exhibit I to Royal's Memorandum in Opposition to CCSD's Motion in Limine:

i. Excerpts of CCSD's Rule 30(b)(6) Deposition 1476

40. Letter from Royal's Counsel to Julie J. Armstrong, Clerk of Charleston County Court of Common Pleas filed March 30, 2022 1480

41. Royal's Motion to Reconsider filed April 8, 2022 1485

42. CCSD's Motion to Exclude and Strike filed April 8, 2022 1507

Exhibits to CCSD's Motion to Exclude and Strike

a. Table of Objections to Proposed Exhibits 1509

b. Excerpt of the Trial Transcript 1525

43. Royal's Amended Motion to Reconsider filed April 10, 2022 1528

44. Royal's April 21, 2022 Memorandum Opposing CCSD's Motion to Exclude and Strike ..1552

Exhibits B-C to Royal's April 21, 2022 Memorandum in Opposition:

b. December 2021 Emails between Counsel Regarding Plaintiff's Trial Exhibits 1561

c. Plaintiff's Trial Exhibit List Circulated December 23, 2021 1564

45. CCSD's Reply to Royal's Memorandum in Opposition to CCSD's Motion to Exclude and Strike filed May 20, 2022 1567

Exhibits to CCSD's Reply to Plaintiff's Memorandum in Opposition:

a. Letter from Royal's Counsel to Julie J. Armstrong, Clerk of Charleston County Court of Common Pleas filed March 30, 2022 1588

b. Court Reporter's Index of Trial Exhibits 1593

c. December 23, 2021 Email from Royal's Counsel to Attorneys of Record with Royal's Trial Exhibit List 1596

d. Email from CCSD's Counsel dated December 29, 2021 1600

e. Royal's Pre-Trial Brief.....1602

f. Royal's List of Potential Trial Exhibits dated December 13, 2021.....1625

g. Excerpts of Transcript of November 29, 2021 Hearing.....1628

46. CCSD's Memorandum Opposing Royal's Motion to Reconsider filed May 20, 2022 1630

Exhibits to CCSD's Memorandum Opposing Royal's Motion to Reconsider:

a. Letter from Royal's Counsel to Julie J. Armstrong, Clerk of Charleston County Court of Common Pleas filed March 30, 2022. 1651

47. Transcript of May 20, 2022 Hearing on Royal's Motion and Amended Motion to Reconsider, and CCSD's Motion to Exclude and Strike.....1656

48. Notice of Appeal filed August 17, 2022, with Appendix of Attached Orders 1699

Exhibits to the Notice of Appeal:[1]

a. March 31, 2022 Order [R. p. 26]

b. July 18, 2022 Order Denying Plaintiff's Motion to Reconsider [R. p. 13]

c. July 18, 2022 Order Regarding Motion to Exclude and Strike [R. p. 18]

d. August 10, 2021 Form 4 Order [R. p. 55]

e. July 23, 2021 Order Denying Plaintiff's Motions for Clarification and Reconsideration and Setting Hearing on Motion to Intervene [R. p. 58]

f. June 21, 2021 Order Concerning Various Discovery Motions Made by Charleston County School District and Plaintiff Royal's Motion for Protective Order [R. p. 62]

g. June 7, 2021 Form 4 Order [R. p. 71]

h. February 22, 2021 Order Appointing Receiver for Defendant FKAC [R. p. 74]

i. August 22, 2019 Order Granting CCSD's Motion to Intervene [R. p. 78]

j. July 10, 2019 Order Granting the AG's Motion to Intervene [R. p. 93]

k. June 7, 2019 Form 4 Order [R. p. 102]

49. Rule 210(g) Certificate and Proof of Service 1704

[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 COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston, Defendant.	Case No. 2018-CP-10-5739 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE ATTORNEY GENERAL OF SOUTH CAROLINA'S MOTION TO INTERVENE**

FILED
2019 JUN -3 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff Michael D. Royal ("Plaintiff") submits this Memorandum in Opposition to the Attorney General of South Carolina's Motion to Intervene, made pursuant to Rule 24, SCRCP, S.C. Code Ann. §§ 1-7-130, 33-31-1202, and 62-7-405, the *parens patriae* doctrine, and common law. The Attorney General has not satisfied the requirements of Rule 24 and has no other authority to intervene in this matter based on statute or common law; therefore, Plaintiff respectfully requests that this Court deny the Attorney General's Motion to Intervene.

FACTUAL BACKGROUND

Defendant Free Kindergarten Association of Charleston (the "Association") was formed as a non-profit corporation (originally called the South Carolina Kindergarten Association) on or about January 24, 1901 to provide free kindergarten services in Charleston, South Carolina to the children of poor families. By the early 1960s, the Association had moved into a one-story brick building at the property which is the subject of Plaintiff's action, 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 land and improvements hereinafter, the "Property"). The Association was operating at that time under the name "Marion Hanckel Kindergarten" for Marian

Stuart Hanckel whose Marion Stuart Hanckel Trust had begun funding the Association's activities in 1958.

According to a News and Courier article, 1958 was also the year June Wells (hereinafter, "Wells") began working at the Association where her mother, Mrs. Wade L. Murray, was a director and held the office of president. Titled "Part-time job at Hanckel Kindergarten grows on director," the article details Wells' working relationship with the Association (which has now lasted approximately 61 years). *See* **Exhibit 1990-10-18**. (Note: Exhibits are presented chronologically and titled in YYYY-MM-DD format.)

On November 3, 1970, the members of the Association adopted by majority vote a resolution to include a dissolution clause in the Association's corporate charter and on January 16, 1971 made application to the Secretary of State of South Carolina to effect such amendment to the charter. *See* **Exhibit 1971-01-16**. On February 5, 1971, the Secretary of State certified that the Association members had successfully amended their corporate charter by adding the following language to it:

> 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.

See **Exhibit 1971-02-05**.

Strictly speaking, after June 30, 1968, there was no body politic called "Charleston School District #20." July 1 of that year was the effective date of South Carolina Act 340, also known as the Act of Consolidation of 1967, which vested certain powers, primarily fiscal and administrative, previously held by Charleston School District #20 and seven other school districts into the new Charleston County School District. *United States v. Charleston County School Dist.*, 738 F. Supp. 1513, 1516 (D.S.C. 1990). "[T]he eight former school districts were denominated as 'Constituent

Districts' and retained their authority over faculty employment, student assignment and student discipline." *Id.* The Constituent Districts had boundaries that were identical to the old school districts, which the U.S. District Court for the District of South Carolina has called their "predecessors." *Id.* at 1543.

Charleston School District #20, which occupied the peninsula of Charleston, became "Constituent School District Number 20." Plaintiff submits that when the Association wrote "Charleston School District #20" in the 1970 resolution, it clearly meant "Constituent School District Number 20" (which at that time, shortly after the Act had gone into effect, may well still have been referred to by many in Charleston by its prior name). This interpretation of the resolution is the only reasonable way to protect the presumed intention of the Association members; otherwise, they named a nonexistent beneficiary. Thus, in the remainder of this memorandum, Plaintiff shall refer to the designated beneficiary of the Association's residual assets as "Constituent School District Number 20."

Wells became a director of the Association in August 1990 after the death of her mother, according to the above-cited News and Courier article. *See* **Exhibit 1990-10-18**. Upon Plaintiff's information and understanding, in the 1990s, Wells also became the acting head of the Association and was responsible for financial, property, operating, and all other affairs of the organization. Upon Plaintiff's information and understanding, at some point after 1990 and before 2012, almost all of the corporate records of the Association were burned in a house fire at the home of a former treasurer of the Association.

At some time prior to 2010, income from the Marion Stuart Hanckel Trust diminished to the point that the Trust could no longer support the operation of the Association's kindergarten activities, and without another source of income at that time, the Association ceased to use the

Property to operate the kindergarten and no longer employed personnel. Upon Plaintiff's information and understanding, it was also during the period from 2000 to 2010 that Wells found herself as the sole surviving director and member of the Association.

At some time in late 2011 or in 2012, Plaintiff, who had been away from Charleston for approximately 17 years, was planning to move back to Charleston and began looking for a property to purchase where he could live and work. He eventually discovered the subject Property while driving on Pitt Street, and seeing that it was in disrepair but otherwise ideal for his purposes, immediately began to pursue its acquisition. He spoke with the Office of Real Estate Management of the City of Charleston to determine who owned and controlled the property because the chain of title was unclear and at that time, indicating falsely that the City of Charleston was the owner. The director of the Office of Real Estate Management referred Plaintiff to the Association, and upon eventually finding Wells, Plaintiff stated his interest in buying the Property and pursued the acquisition until the parties entered into a Real Estate Purchase and Sale Agreement (the "Sale Agreement," attached as **Exhibit 2013-04-23**) on April 23, 2013 (the "Effective Date"), for a price of $315,200.00, which matched the fair market value of the Property as stated in an Appraisal Report by Michael Robinson of Charleston Appraisal Service, Inc., dated December 19, 2012, attached as **Exhibit 2012-12-19**.

Plaintiff's pursuit of the acquisition involved multiple contacts with Wells over a period of months in which Wells provided encouragement to Plaintiff that the Association would eventually sell the Property, since the Property was at that time no longer being used to provide kindergarten services, but she would not commit to a sale. According to Wells' statements to Plaintiff in 2013, the reason she would not commit to a sale is that she felt she needed plenty of time to process all of the items housed at the Property so that she could ensure that each item reached its proper

recipient, whether it be a desk, a book, an Association record, or a museum artifact (the Property was for a time in the 1990s used as a museum). Wells strongly resisted the possibility of putting herself in a position in which she could be pressured to leave the Property in order to meet a closing deadline. Plaintiff was close to giving up on the acquisition but determined to try one last time and propose an unusual (perhaps unheard of) provision in which Wells could choose her own closing date at any time within about five years of the effective date of the Sale Agreement. This provision did not allow her to escalate the price over time, but simply gave her the option to delay the closing. Because Plaintiff was unsure of when the closing might occur and unsure of his future financial position, he required that if the Association failed to close within a normal time period, by May 31, 2013, 38 days after the effective date, he would then have the option to terminate the contract so long as he forfeited to the Association his $5,000 deposit. Wells responded positively to that arrangement, and the parties entered into the Sale Agreement.

Importantly, Plaintiff was ready, willing, and able to close by May 31, 2013, and was also absolutely bound to tender payment for the purchase by that date should the Association have called for a closing by then. The Plaintiff, who was by then renting a home in Charleston, was eager to take possession of the Property as quickly as possible and agreed to the unusual provision allowing the Association the option to delay the closing only to accommodate the Association's demands and stated needs, and he found that it was the only possible way he could get the Property under contract.

Throughout the period from the Effective Date until the beginning of 2018, Plaintiff politely but persistently sought a closing, offering on multiple occasions to provide assistance to the Association in moving objects out of Property, but was unable to succeed in obtaining a closing. He met Wells at the Property on multiple occasions and at one point, with approval, hired a

contractor to close a hole in one of the walls and remove an air conditioner that was threatening to fall on cars in an adjacent parking lot. None of Plaintiff's efforts over the years worked to speed up the closing.

As the parties finally approached the April 9, 2018 deadline for closing, the Association's attorney, Rick Stringer ("Stringer") informed Plaintiff in February 2018 that he (Stringer) would represent the Association in the closing. On April 4, 2018, to satisfy the Association's obligation under S.C. Code Ann. § 33-31-1202 (f), the Association provided the South Carolina Office of the Attorney General notice that it was "selling all assets." *See* **Exhibit 2018-04-04**. In the cover letter, Stringer informed the Attorney General, "We will dissolve the entity after the sale."

On or around April 5, 2018, Stringer requested that Plaintiff allow for an amendment to the Agreement, extending the closing to April 26, 2018. Plaintiff agreed, and on April 11, 2018 the parties signed an addendum to the Agreement to effect that change. *See* **Exhibit 2018-04-11**. By April 26, 2018, the Association was not yet ready to close and had asked Plaintiff for an additional closing extension. Plaintiff was willing to extend the closing further but had not yet received a signed addendum to the Agreement, and thus sent Stringer an email that day stating ". . . 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." *See* **Exhibit 2018-04-26 111800**. On April 27, 2018, Plaintiff received a copy of the fully executed second addendum to the Agreement, signed April 24, 2018, extending the closing to May 25, 2018. *See* **Exhibit 2018-04-24**.

On May 11, 2018, the Association sent a letter to Plaintiff refusing to close the Sale Agreement under its terms "without approval of the Attorney General" *See* **Exhibit 2018-05-11**. Approval of the Attorney General was not an explicit or implicit condition of closing under the

language of the Agreement itself. On May 14, 2018, the day Plaintiff received the May 11, 2018 letter from the Association, Plaintiff sent an email to Stringer stating that the Association's letter amounted to anticipatory breach of the Agreement and that Plaintiff would take legal action to enforce the Agreement. *See* **Exhibit 2018-05-14**. By that time, Plaintiff had incurred $3,450.00 of legal expenses with Buist Byars & Taylor LLC (see **Exhibit 2018-05-14** 162100) in his efforts to reach a closing with the Association (which, incidentally, included informing the Association that it was required under state law to inform the Attorney General about the pending sale).

On May 18, 2018, Assistant Deputy Attorney General Mary Frances Jowers ("Jowers") sent Plaintiff an email stating, "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." *See* **Exhibit 2018-05-18 120255**. Plaintiff replied by email to Jowers the same day, copying the Association, stating in part:

> 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? . . . .
>
> 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.

Exhibit 2018-05-18 132600.

Subsequent phone conversations between the Plaintiff and the Office of the Attorney General did not satisfy Plaintiff of the Attorney General's interpretation of S.C. Code Ann. § 33-31-1202.

On June 28, 2018, the Association informed Plaintiff that the Attorney General had obtained a new appraisal of fair market value of the Property and sent the same to Plaintiff. *See* **Exhibit 2018-06-28 102736**. The new appraisal report, with an effective date of June 7, 2018, showed a fair market value of $522,500 and was produced by Michael Robinson, the same appraiser who produced the original appraisal report approximately five and a half years before. *See* **Exhibit 2018-06-07**.

The Association notified Plaintiff again that it refused to close the Agreement under its terms. *See* **Exhibit 2018-06-28 102736**. Plaintiff replied that day stating, stating, in part, ". . . 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 . . . is incorrect and has [no] legal basis, as we've discussed before." *See* **Exhibit 20180628 103600**.

Plaintiff performed all duties, promises, and obligations required of him under the terms of the Sale Agreement, and all conditions precedent to closing the Sale Agreement occurred prior to April 9, 2018. Under the terms of the Sale Agreement, as amended by the parties, the Association

was obligated to transfer and convey to Plaintiff the Property by May 25, 2018 at the latest. The Association failed and refused to convey the Property to Plaintiff, and continues to fail and refuse to convey the Property to Plaintiff.

Upon Plaintiff's information and understanding, the Association remains in good standing with the Office of the Secretary of State of South Carolina and may transact business.

PROCEDURAL POSTURE

Plaintiff commenced this action on December 4, 2018, and the Association filed its Answer to the Complaint on January 7, 2019. The Attorney General's instant Motion was filed on January 28, 2019, and Charleston County School District filed a Motion to Intervene on February 7, 2019.

ARGUMENT AND CITATION OF AUTHORITY

The Attorney General has offered a "Motion of the Attorney General of the State of South Carolina to Intervene and Memorandum In [sic] Support" (the "Motion"). *See* **Exhibit 2019-01-25**. Plaintiff is unable to determine from this document a clear form of argument in support of the Attorney General's desire to intervene, but Plaintiff does note that besides making passing reference to SCRCP 24, the Motion calls on a total of nine legal authorities, including three code sections in South Carolina statutory law, one doctrine of *parens patriae*, and five South Carolina court cases, apparently in support of the Attorney General's invocation of the *parens patriae* doctrine. Below, Plaintiff will address these legal authorities to show that they do not provide the Attorney General with any basis to intervene in this case. Finally, Plaintiff will address the application of SCRCP 24 more broadly.

I. S.C. Code Ann. § 1-7-130 Provides No Authority for the Attorney General to Intervene Because Its Subject Matter is Public Charities, And the Instant Case Does Not Involve a Public Charity.

The first legal authority cited by the Attorney General is S.C. Code Ann. § 1-7-130. The Attorney General simply states, "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...'" (**Motion, Page 2**) but then says nothing more about that code section and does not actually state an argument as to how it allows him to intervene. The cited code section gives no support for the Attorney General's Motion to intervene because the Association is not a public charity; thus, the part of the code cited by him is irrelevant in the instant case. The Association is not an organization that enjoys broad public support or itself supports other public charities, and nowhere has the Attorney General alleged that the Association is a public charity. Thus, while it is unclear why the Attorney General has referenced § 1-7-130, this code section cannot possibly support his Motion to intervene. Accordingly, the Attorney General is not vested with any authority under S.C. Code Ann. § 1-7-130 to intervene in this lawsuit.

II. S.C. Code Ann. §62-7-405 Provides No Authority for the Attorney General to Intervene Because Its Subject Matter is Charitable Trusts, And the Instant Case Does Not Involve a Charitable Trust.

The second legal authority cited by the Attorney General is S.C. Code Ann. §62-7-405 (**Motion, Page 1**). He only makes passing reference to this code section in the first sentence of his Motion and never comes back to it. The cited code section does not support the Attorney General's Motion because it is a portion of the South Carolina Trust Code (the "Trust Code") which has no bearing on the instant case, since the Trust Code only applies to "express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust" and "does not apply to constructive trusts [or] resulting trusts[.]" S.C. Code Ann. § 62-7-102.

This action does not involve any express trust, and Plaintiff is not aware of any express trust relating to the Association or its assets. Furthermore, the Attorney General has made no allegation that an express trust exists. "[A]n express trust must be manifested and proved by some

writing signed by the party declaring the trust." *Lollis v. Lollis*, 291 S.C. 525, 528 (1987) (citing *Whitmire v. Adams*, 273 S.C. 453, 257 S.E.2d 160 (1979); *Privett v. Garrison*, 235 S.C. 119, 110 S.E.2d 17 (1959)). And just as in the above-cited cases, "Because there is no writing in this case, the property could not be subject to an express trust." Therefore, while it is not clear why the Attorney General has made reference to §62-7-405, this code section cannot possibly provide support for his Motion to intervene in this matter.

III. S.C. Code Ann. § 33-31-1202 Provides No Authority for the Attorney General to Intervene Because Nowhere Does the Code Section Give Him the Power to Approve or Disapprove of the Association's Sale of Property as the Attorney General Alleges It Does.

The third legal authority cited by the Attorney General is S.C. Code Ann. § 33-31-1202. The Attorney General simply states, "Further S.C. Code Ann. § 33-31-1202(1) 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." (**Motion, Page 2**.) Again, the Attorney General fails to make any argument about how this section entitles him to intervene in Plaintiff's case but proceeds to discuss the difference between the 2013 and the present fair market values of the subject Property and then inexplicably states he has advised Plaintiff and the Association he will not approve the Sale Agreement.

The oblique reference to S.C. Code Ann. § 33-31-1202 and vague insinuation that it provides the Attorney General with the power to approve or disapprove transactions of nonprofit corporations is not enough to establish that power for himself. No language whatsoever 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. For the Attorney General to assert this power is to enrobe himself and take a seat at the judge's bench.

Because § 33-31-1202 says nothing whatsoever about any power of the Attorney General to interfere with a contract such as the Sale Agreement, this code section cannot possibly support the Motion to intervene in this case and actually runs afoul of the very intention of the subsection (a) of § 33-31-1202, which is to expressly authorize a nonprofit corporation to sell any or all of its property for consideration determined by the board of directors.

IV. The Attorney General's Invocation of the *Parens Patriae* Doctrine With His Citation to Five South Carolina Court Cases Fails to Establish a Basis for His Motion to Intervene (1) Because He Has Failed to Make an Argument and (2) Because the Cases Concern Charitable Trusts and Public Charities, Which Are Not Related to This Matter

The Attorney General invokes the *parens patriae* doctrine and common law in a sentence that is somewhat difficult to parse: "The Attorney General is authorized to intervene as a party to this action in his *parens patriae* authority in accordance with common law as well as his statutory authority to protect the public interest and to enforce the proper application of funds given or appropriated to any charitable trust and to protect the interests of the public at large in matters involving the administration and enforcement of charitable trusts and the sale of assets of a nonprofit corporation outside the ordinary course of business." Deconstructing this sentence, it amounts to the following three statements:

1. "The Attorney General is authorized to intervene as a party to this action in his *parens patriae* authority in accordance with common law." Plaintiff will dedicate (below) most of this section to addressing this assertion.
2. "The Attorney General is authorized to intervene as a party to this action in his statutory authority to protect the public interest and to enforce the proper application of funds

given or appropriated to any charitable trust and to protect the interests of the public at large in matters involving the administration and enforcement of charitable trusts." Plaintiff, in Sections I, II, and III above has already addressed each statutory authority invoked by the Attorney General and shown why each one fails to provide a basis for his Motion to intervene. Here the Attorney General has provided no additional support for his Motion.

3. ". . . and the sale of assets of a nonprofit corporation outside the ordinary course of business." The Attorney General adds this phrase to the end of his sentence without legal support, but appears simply to be referring back to the language of S.C. Code Ann. § 33-31-1202(f) requiring a nonprofit corporation to 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 . . . ." As noted in the Factual Background, the Association provided such notice April 4, 2018 and thus satisfied the requirement (as admitted by the Attorney General, **Motion, Page 2**). As already shown in Section III above, § 33-31-1202 provides no grounds whatsoever for the Attorney General to approve or disapprove the sale of the Property by the Association and therefore cannot provide a basis for the Attorney General's Motion to Intervene.

Subtracting out parts (2) and (3) of the above-referenced sentence, we are left not with an argument but a plain assertion that the Attorney General's *parens patriae* authority "in accordance with common law" gives him grounds to intervene in this case, followed by citations to five South

Carolina court cases[1] as the referenced "common law" with which his *parens patriae* authority must be in accord.

The court should deny the Attorney General's Motion insofar as it is based on his assertion that the *parens patriae* doctrine supports him for the following reasons:

1. The Attorney General Has Failed to Make an Argument And Thus Failed to Satisfy His Burden in Moving to Intervene.

   The Attorney General is the party making application to intervene in this case. His failure to state what the *parens patriae* doctrine is and how it supports his Motion to intervene, his failure to provide language from any of the five cases he has referenced or state how they further his application, and – in short – his failure to make any argument to the court about the *parens patriae* doctrine should lead the court to deny his application insofar as it is based on the *parens patriae* doctrine and common law. To do otherwise would be inimical to our adversarial legal system.

2. If the Court Independently Infers an Argument from the Cases Cited by the Attorney General, the Motion Should Still Fail as the Five Cases Do Not Support the Motion; Each Case Pertains to a Charitable Trust or a Public Charity, And This Case Involves Neither.

   Each of the five cases cited by the Attorney General is a case adjudicating the affairs of a charitable trust or a public charity and is therefore presumptively irrelevant to the

[1] The cases are (1) 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, (2) South Carolina Dep't of Mental Health v. McMaster, et al. 372 S.C. 175, 642 S.E.2d 552 (2007), (3) Epworth Children's Home v. W. F. Beasley, et al, 365 S.C. 157, 616 S.E.2d 710 (2005), (4) Furman Univ. v. McLeod, 238 S.C. 475, 482, 120 S.E.2d 865 (1961), and (5) W. C. Watson v. W. F. Wall, et al, 229 S.C. 500, 93 S.E.2d 918 (1956).

instant case, which involves no charitable trust and no public charity, and is not alleged by the Attorney General to involve either.

Furthermore, four of the five cases make no reference at all to the *parens patriae* doctrine, so it is not possible they would provide support for the Attorney General's Motion to intervene via his *parens patriae* authority.

One case does make reference to the Attorney General's *parens patriae* authority. It is *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, from the Richland County Court of Common Pleas. *See* **Exhibit 2016-02-08**. In this case, a South Carolina public charity, at the demand of the Attorney General, sought court approval to sell substantially all of its assets (*Id.* Pages 1-2). Circuit Court Judge DeAndrea G. Benjamin, who approved the sale, states,

> "The Attorney General advised Plaintiff/Petitioner that it would require prior court approval of the proposed sale at the stated Sales Price. 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.

(*Id.* Page 2.)

The only other pertinent portion of the opinion is one of the judge's conclusions of law (in a list) stating, "The Attorney has reviewed this matter in accordance with his common law and statutory authority and has no objection to the sale" (*Id.* Page 4.) This case does not provide support to the Attorney General's Motion to intervene because (1) it describes a public charity which is governed by statute in South Carolina under S.C. Code Ann. § 1-7-130, and a public charity the Association is not, and (2) the

Attorney General's *parens patriae* authority is not a matter under dispute within this case; therefore, the case has limited, if any, value in elucidating the nature or limits of the *parens patriae* doctrine under South Carolina law.

V. Apart from the Legal Authorities Cited by the Attorney General's Motion, the *Parens Patriae* Doctrine Does Not Support the Attorney General's Intervening in This Matter Because the Transaction Which Is the Subject of It Lies Outside the Scope of the Attorney General's *Parens Patriae* Authority.

Plaintiff's research into the Attorney General's *parens patriae* authority at common law revealed only court cases adjudicating the affairs of charitable trusts and public charities. However, Plaintiff will not here argue that the Association, because it cannot be described as a charitable trust or a public charity, therefore is necessarily immune from the Attorney General's *parens patriae* oversight since, at its core, the doctrine gives the Attorney General a supervisory role over the management of "charitable property" for the benefit of indeterminate public beneficiaries. James C. Baughman, *Trustees, Trusteeship, and the Public Good: Issues of Accountability for Hospitals, Museums, Universities, and Libraries* 27 (1987). Charitable property can be held, *e.g.*, within a private foundation formed as a corporation, which is neither a charitable trust nor a public charity.

The primary reason the Attorney General has this supervisory role at common law is because members who are indeterminate beneficiaries or potential beneficiaries of the charitable property lack standing to sue the charitable organization themselves and enforce the charitable trust (or in this case, the corporate charter). "Because a member of the general public benefits from a charitable trust [nonprofit corporation] but cannot bring suit against such a trust [corporation], the government allows state attorneys general to supervise charities and to compel their legal responsibilities." Jennifer L. Komoroski, *The Hershey Trust's Quest to Diversify: Redefining the State Attorney General's Role When Charitable Trusts Wish to Diversify*, 45 Wm. & Mary L. Rev.

1769, 1783 (2004), citing Mary Grace Blasko et al., Standing to Sue in the Charitable Sector, 28 U.S.F.L. Rev. 37, 38 (1993).

Absent statutory authority, the Attorney General's *parens patriae* authority is only the authority to cause the fiduciary of the charity to pursue the charitable mission. "An attorney general's *parens patriae* power over charitable trusts is usually denoted as the power of enforcement, which implies 'the duty to oversee the activities of the fiduciary who is charged with management of the funds, as well as the right to bring to the attention of the court any abuses which may need correction.'" Komoroski, supra, at 1784, citing *Marion R. Fremont-Smith, Foundations and Government* 82, 198 (1965).

Where a charity, which is not a charitable trust and not a public charity, is concerned, Plaintiff does not find common law or statutory authority in South Carolina which empowers the Attorney General to exceed the scope of his supervisory role over the charity's fiduciary personnel, or, specifically, to interfere with a sale contract involving a third party. In the instant case, an action for specific performance of the Sale Agreement, the Attorney General seeks to void the contract, an impermissible abuse of his authority. What's more, the only reason Plaintiff was forced to file this action is that the Attorney General demanded that the Association breach the contract and refuse to close. The Attorney General must not be rewarded in his abuse of power by being allowed to intervene in this case and further interfere with the Sale Agreement. All that the Attorney General may do in his *parens patriae* capacity is supervise the fiduciary of the Association and cause her to pursue the Association's charitable mission. Perhaps if he had done so in 2013, the transaction would have closed in a timely manner, and he would have no complaints now about the transaction in 2019 closing for a 2013 price.

VI. There Is No Constructive Trust, So the Attorney General Cannot Advance His Motion by Asserting One Exists.

In his Motion, the Attorney General states that the purchase price for the Property in the Sale Agreement is "substantially below market value." This statement is misleading; the Sale Agreement must be judged based on the time at which it was entered. On the Effective Date, the purchase price was the fair market value of the Property. The Sale Agreement gave the Association the option *but not the obligation* to delay the closing, and this option could only provide the Association with additional value, not detract from the value of the contract for the Association. Why the Association delayed the closing for five years, the Plaintiff does not know, but he must not be punished by the Attorney General's attempt to void the Sale Agreement. If the Attorney General were nonetheless to make an argument that a constructive trust emerged, the argument would fail for the reasons below.

While the Association has created no trusts, charitable or otherwise relating to its assets, South Carolina courts do recognize the doctrine of constructive trusts. "A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud." *McNair v. Rainsford*, 330 S.C. 332, 356 (Ct. App. 1998) (citing *SSI Med. Servs. v. Cox*, 301 S.C. 493, 500 (1990); *Whitmire v. Adams*, 273 S.C. 453, 257 S.E.2d 160 (1979)). "A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty. In order to establish a constructive trust, the evidence must be clear and convincing." *SSI Medical Servs.*, 301 S.C. at 500, 392 S.E.2d at 793-94 (internal citations omitted). A constructive trust arises "whenever circumstances under which property was

acquired make it inequitable that property should be retained by one holding legal title" and such a trust "results from fraud, bad faith, abuse of confidence, or violation of fiduciary duty which gives rise to obligation in equity to make restitution[.]" *McNair*, 330 S.C. at 356-57 (citing *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987); *Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995)).

The circumstances of this case do not make it inequitable for Plaintiff to obtain title to the Property, as no fraud, bad faith, abuse of confidence, or violation of fiduciary duty accompanied Plaintiff's actions with respect to the Sale Agreement. As stated in Plaintiff's Complaint, Plaintiff made every effort to accommodate the Association in the Sale Agreement, including his agreement to a flexible and extended closing date, despite his desire and ability to close on the Property immediately. Therefore, any allegation (there is none so far) that a constructive charitable trust was created, giving rise to apparent authority of the Attorney General to intervene, fails as a matter of law. Assuming, *arguendo*, that the court were to determine that a charitable trust does exist, the *parens patriae* doctrine may still not provide the Attorney General with authority to intervene.

> The function of the attorney general, as *parens patriae* of charitable trusts, is to oversee the activities of the trustees to the end that the trust is performed and maintained in accordance with the provisions of the trust document, and to bring any abuse or deviation on the part of the trustees to the attention of the court for correction. The authority of the Attorney General over charitable trusts does not extend beyond the performance of that function.

Wilson v. Dallas, 403 S.C. 411, 456 (Toal, C.J., concurring) (internal quotations and citations omitted).

VII. The Attorney General Has No Argument Supporting His Motion to Intervene Based on SCRCP 24.

The Attorney General introduces his Motion with the phrase, "Pursuant to S.C.R.C.P. 24," but never again discusses Rule 24 or explains to the court specifically how it entitles him to intervene

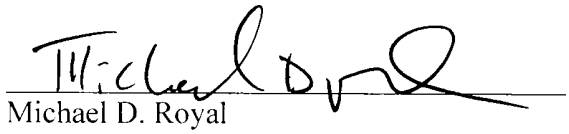
in this case. Rule 24 does not provide the Attorney General grounds to intervene for the following reasons:

1. Section (a)(1) does not provide grounds for the Attorney General's Motion because no statute provides him an unconditional right to intervene in this case.
2. Section (a)(2) does not provide grounds for the Attorney General's Motion because he has not claimed an interest relating to the property or transaction which is the subject of the action.
3. Section (b)(1) does not provide grounds for the Attorney General's Motion because no statute provides him a conditional right to intervene in this case.
4. Section (b)(2) does not provide grounds for the Attorney General's Motion because he has made no claim or defense which has a question or law or fact in common with the Plaintiff's action, which is an action for specific performance of the Sale Agreement.

CONCLUSION

Because the Attorney General of South Carolina has failed to satisfy the requirements of SCRCP 24, and because the he has no statutory or common law authority to intervene in this case, Plaintiff Michael D. Royal respectfully requests that this Court deny the Attorney General's Motion to Intervene.

[SIGNATURE PAGE FOLLOWS]



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

PRO SE PLAINTIFF

June 3, 2019
Charleston, South Carolina

Exhibit 1971-01-16
Association's Application for Amendment of Corporate Charter

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM THE ORIGINAL ON FILE IN THIS OFFICE

Application for Amendment of Eleemosynary Charter

Jan 2[illegible] Rec By
Refiled Record 1776 Page

Mark Hammond
Secretary of State of South Carolina

Fee Paid $ 25.00
C. B. 20
Date FEB 5 1971
Bk. 14 Page 533

THE STATE OF SOUTH CAROLINA,
County of Charleston

To the Secretary of State of South Carolina:

WHEREAS, There was issued by the Secretary of State a charter dated January 24, 1901 constituting and creating THE SOUTH CAROLINA KINDERGARTEN ASSOCIATION-Amended on 1-20-31 changing name to THE FREE KINDERGARTEN ASSOCIATION, into an eleemosynary corporation, under the laws of this State, with its principal place of business at _____ (Street and No.), in the City of Charleston, County of Charleston and the State of South Carolina, empowering it to engage in the business as set forth in Declaration and Petition.

The undersigned, representing a majority of the duly elected and qualified members present after due notice, hereby certify that not less than five days notice (a copy of which is hereto attached) was given in the _____, a newspaper published in the County of Charleston on November 3, 1970 or (by written notice A written notice was sent to each member 5 days prior to the meeting on Certified mailed to each member) of a meeting of members on November 3, 1970 which notice stated the time and place of meeting and the purpose thereof.

And further, that said meeting was duly held pursuant to notice, and a resolution was adopted by a majority vote as follows:

Insert Resolution

RESOLUTION - DISSOLUTION CLAUSE: 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.

And, further, your petitioners certify that they have complied in all respects with Title 12-761, of the Code of Laws of South Carolina, 1962, and all amendments thereto.

Wherefore they pray that the charter of the said THE FREE KINDERGARTEN ASSOCIATION be so amended.

Dated at Charleston, this 16 day of January, 19 71.

DIRECTORS OR AUTHORIZED MANAGING BOARD MUST SIGN BELOW
(Please type or print name opposite signature)

(Signature)	(Type or Print Name)
Mrs Harry H. Lindstedt	Mrs. Harry H. Lindstedt- President
Mrs. Fred N. Thom.	Mrs. Fred N. Thom - Vice-President
Mrs Vince Moseley Secretary	Mrs. Vince Moseley - Secretary
Ann E. Morse	Miss Ann E. Morse - Treasurer
Mrs. Wade L. Murray	Mrs. Wade Murray - Director

R. p. 980

Exhibit 1971-02-05
Association's Amendment to Corporate Charter

THE STATE OF SOUTH CAROLINA

EXECUTIVE DEPARTMENT

By the Secretary of State 3562

Whereas,

Mrs. Harry H. Lindstedt, Mrs. Fred N. Them, Mrs. Vince Moseley, 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. 1901.

HAVE CERTIFIED, over their signatures, Resolutions authorizing in behalf of the aforesaid Corporation 24th

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 members of the aforesaid Corporation, of which five 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 13, Code of Laws of South Carolina, 1962, 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, 1962, 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, 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

O. FRANK THORNTON,
Secretary of State

Exhibit 1990-10-18
News and Courier Article About June Wells

SPORTS | *Cincinnati makes it two in World Series play* Page 1-D

WEATHER: Cloudy and breezy. 60 percent rain chance. High in mid-80s. Details, 2-A. THURSDAY, Oct. 18, 1990

The News and Courier

Charleston, S.C. *The South's Oldest Daily Newspaper* 25 cents

The Post-Courier | Peninsula Charleston | October 18, 1990

THIS WEEK

Part-time job at Hanckel Kindergarten grows on director



June Murray Wells

By DOROTHY GIVENS
Of the Post-Courier staff

When June Murray Wells walked through the doors of the Marion S. Hanckel Kindergarten at 34 Pitt St. back in the early 1960s, she thought she would be there for only a few months.

The music teacher had been in a car accident and Mrs. Wells' mother, who was director of the kindergarten, needed someone to help out until she returned. Mrs. Wells volunteered.

At the time, she was a French and history teacher at Porter Military Academy. She would sing with four- and five-year olds for an hour and return to Porter Military Academy to teach older students history and a foreign language.

The music teacher eventually got better, but she never returned. As for Mrs. Wells, what was only going to be a three-month visit turned out to be almost 30 years of service at what may be the oldest free, private kindergarten in Charleston.

Mrs. Wells said Hanckel Kindergarten evolved from a school that operated in a room of a local sugar bagging factory in the late

1800's. The school was called the S.C. Kindergarten Association. The factory, now the site of the King Street Palace, employed mostly women. And the kindergarten was set up to serve them.

The kindergarten later moved to Huger Street and was renamed the Henrietta Aiken Kelly Kindergarten. This school, along with the Elizabeth Klinck Tiedemann Kindergarten, were operated under the Free Kindergarten Association of Charleston. Both were named for pioneers in pre-school education. Mrs. Wells said both schools served the children of poor families.

Mrs. Wells arrived at the kindergarten in 1958 and worked as a driver. She recalled, "These children were so poor, they would walk barefoot in the winter because they didn't have shoes. One Christmas, I piled them all up in the car and we were going to sing carols for some officers. The children were unusually quiet and I wondered what was wrong. It turned out they had never ridden in a car before and they were very frightened."

The coming of Interstate 26 later forced the kindergarten to move to its present location

Please see HANCKEL, Page Five



Staff Photo by Dorothy Givens

Playing and learning go hand-in-hand at Hanckel Kindergarten for (from left) students Matthew Reece, Ricky Rollins, and Annie McLaughlin.

HANCKEL

from Page One

on Pitt Street. Mrs. Wells said Kelly and Tiedemann kindergartens were combined and was renamed Hanckel Kindergarten, after its benefactor, Marion Stuart Hanckel. Mrs. Wells became director of the school when her mother died in August.

With the move, the kindergarten's purpose changed from a school that served poor children to children whose families are not necessarily poor, said Mrs. Wells.

"A large percentage of our children are from one-parent families. We also have some children who are from military families," said Mrs. Wells.

Hanckel Kindergarten also works with children with special problems and children from unusual family situations.

"We'll get children in here who is so afraid and so shy, but after a while, they blossom and become more self-confident." said Mrs. Wells.

Mrs. Wells and her assistant, Mrs. Norma Sudano, are responsible for keeping up with 20 four- and five-year olds from 9 to 11:30 a.m. From the kindergarten, some of the children go on to a day-care center.

Many of the students are referred to the kindergarten by Love 'N Care day-care center on Savannah Highway. Others are referred to the school by either Hanckel Kindergarten board members or former Hanckel Kindergarten students.

In fact, said Mrs. Wells, some of the students are grandchildren and great-grandchildren of Hanckel alumni.

Mrs. Wells said Hanckel Kindergarten receives no financial support from any city, state or federal agency, but operates on interest from a $100,000 estate willed to the kindergarten by Miss Hanckel. Miss Hanckel, who died in 1957, was supervisor of kindergartens in Charleston and principal of the S.C. Training School.

The interest from the estate, said Mrs. Wells, is enough to pay the kindergarten's utilities and "that's about it. We truly operate on a shoestring budget. Everything we have here, from art supplies, toys, even paper towels and snacks for the children are donated by local charity groups."

Many of the school's equipment are leftovers from days gone by. Mrs. Wells said the school had outdoor play equipment, but Hurricane Hugo blew it away last year, along with the school's roof, "which was fine because we needed a new roof anyway," said Mrs. Wells.

Mrs. Wells and Mrs. Sudano receive a small stipend. "It's not much," said Mrs. Wells, but she said the rewards of helping a child to learn outweigh any monetary gains.

"Sometimes, when I get children in here who are on their way to the first grade and can't read or write their own names, or don't know their colors, it makes me feel good to teach them."

Exhibit 2012-12-19
Appraisal of 34 Pitt Street

File No. 12-149



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.

COPY

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

Client File #:		Appraisal File #:	12-149

Appraisal Institute®
Professionals Providing Real Estate Solutions

Summary Appraisal Report · Residential

AI Reports™ | Form AI-100.01

Appraisal Company: Charleston Appraisal Service, Inc.
Address: 304 Meeting Street, Suite 201, Charleston, SC 29401
Phone: 843-723-6256 Fax: 843-723-4676 Web:

Appraiser: Michael C. Robinson, MAI, SRA	Co-Appraiser:
AI Membership: X SRA X 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: 407-284-9258 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.

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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 [X] 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 represened 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.

Inspection of Subject:

Appraiser:
[ ] None [ ] Interior [X] Exterior
[X] Date of Inspection 11/28/12

Co-Appraiser:
[X] None [ ] Interior [ ] Exterior
[ ] Date of Inspection

Living Area Measured:
[X] Yes [ ] No
[ ] Other:

Data Sources Used:

[X] MLS
[X] Public Records
[X] Office Files
[X] Owner
[ ] Plans & Specifications
[ ] Purchase Agreement
[X] Other: Tax Map

Approaches to Value Developed:

Cost Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Sales Comparison Approach:
[X] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[ ] Is not applicable or necessary and omitted in this analysis

Income Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Additional Scope of Work Comments: NONE

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

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

MARKET AREA ANALYSIS

Location	Built Up	Growth	Supply & Demand	Value Trend	Typical Marketing Time
[X] Urban	[ ] Under 25%	[ ] Rapid	[ ] Shortage	[ ] Increasing	[ ] Under 3 Months
[ ] Suburban	[ ] 25-75%	[X] Stable	[X] In Balance	[X] Stable	[ ] 3-6 Months
[ ] Rural	[X] Over 75%	[ ] Slow	[ ] Over Supply	[ ] Decreasing	[X] Over 6 Months

Neighborhood Single Family Profile

Price		Age
300,000	Low	100
3,000,000	High	250
750,000	Predominant	150

Neighborhood Land Use

1 Family	80.0 %	Commercial	5.0 %
Condo	5.0 %	Vacant	%
Multifamily	10.0 %	Other	%

Neighborhood Name: Harleston Village

PUD [ ] Condo [ ] HOA: $ N/A /

Amenities: None

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

Site Similarity/Conformity To Neighborhood

Size:	View:
[ ] Smaller than Typical	[ ] Favorable
[X] Typical	[X] Typical
[ ] Larger than Typical	[ ] Less than Favorable

Zoning/Deed Restriction

Zoning: General Business

[X] Legal [ ] No Zoning
[ ] Legal, non-conforming
[ ] Illegal

Covenants, Condition & Restrictions: [ ] Yes [X] No [ ] Unknown
Documents Reviewed [ ] Yes [X] No
Ground Rent: $ N/A /

Utilities

Electric	[X] Public	[ ] Other	
Gas	[X] Public	[ ] Other	
Water	[X] Public	[ ] Other	
Sewer	[X] Public	[ ] Other	

Off Site Improvements

Street	[X] Public	[ ] Private	
Alley	[ ] Public	[ ] Private	None
Sidewalk	[X] Public	[ ] Private	
Street Lights	[X] Public	[ ] 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

[X] **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	SALE NO.1		SALE NO.2		SALE NO.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 buy 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 SF x $35/SF minus $15,000 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 Zip Code 29401
Client Michael D. Royal

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.

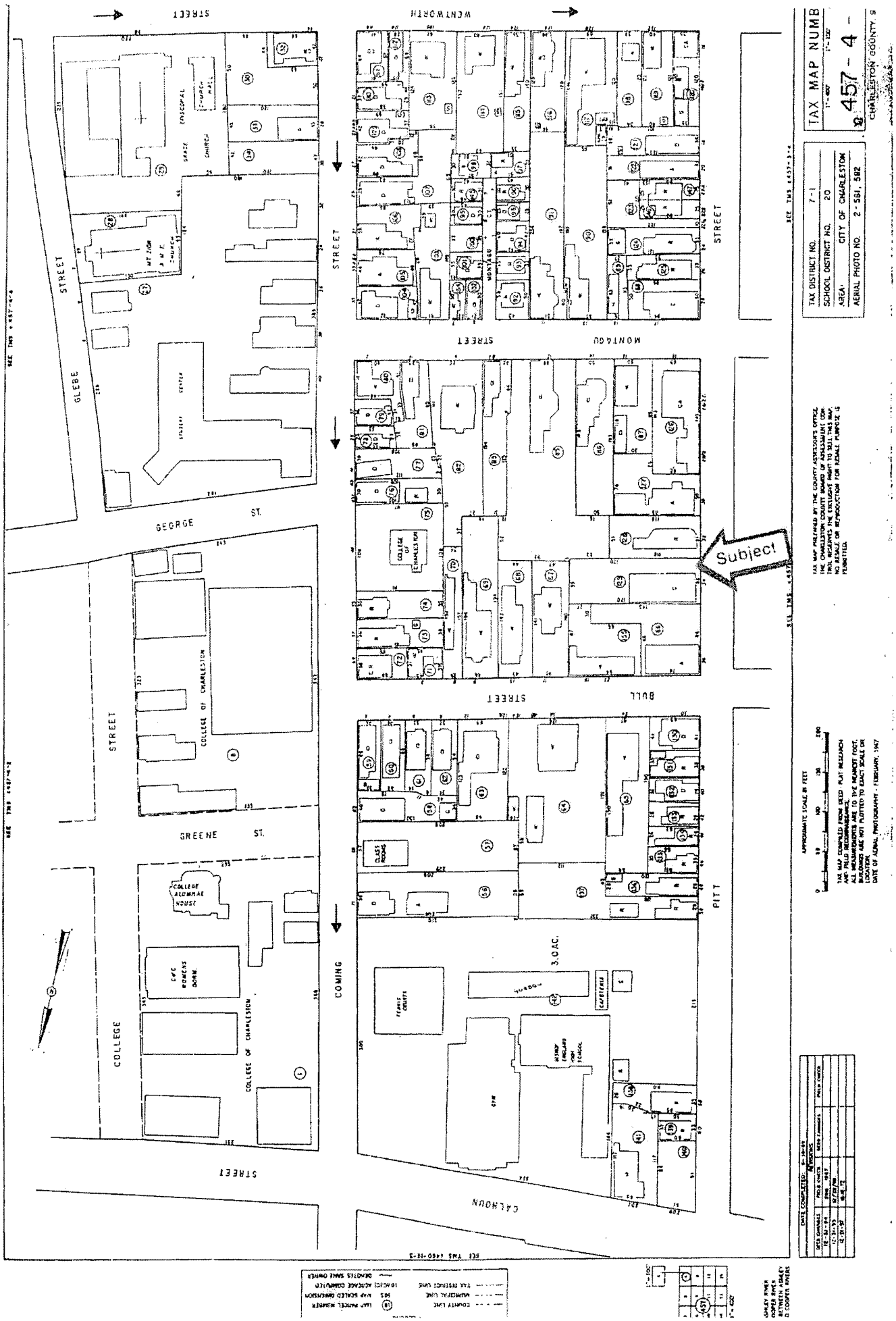
My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent even.

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.

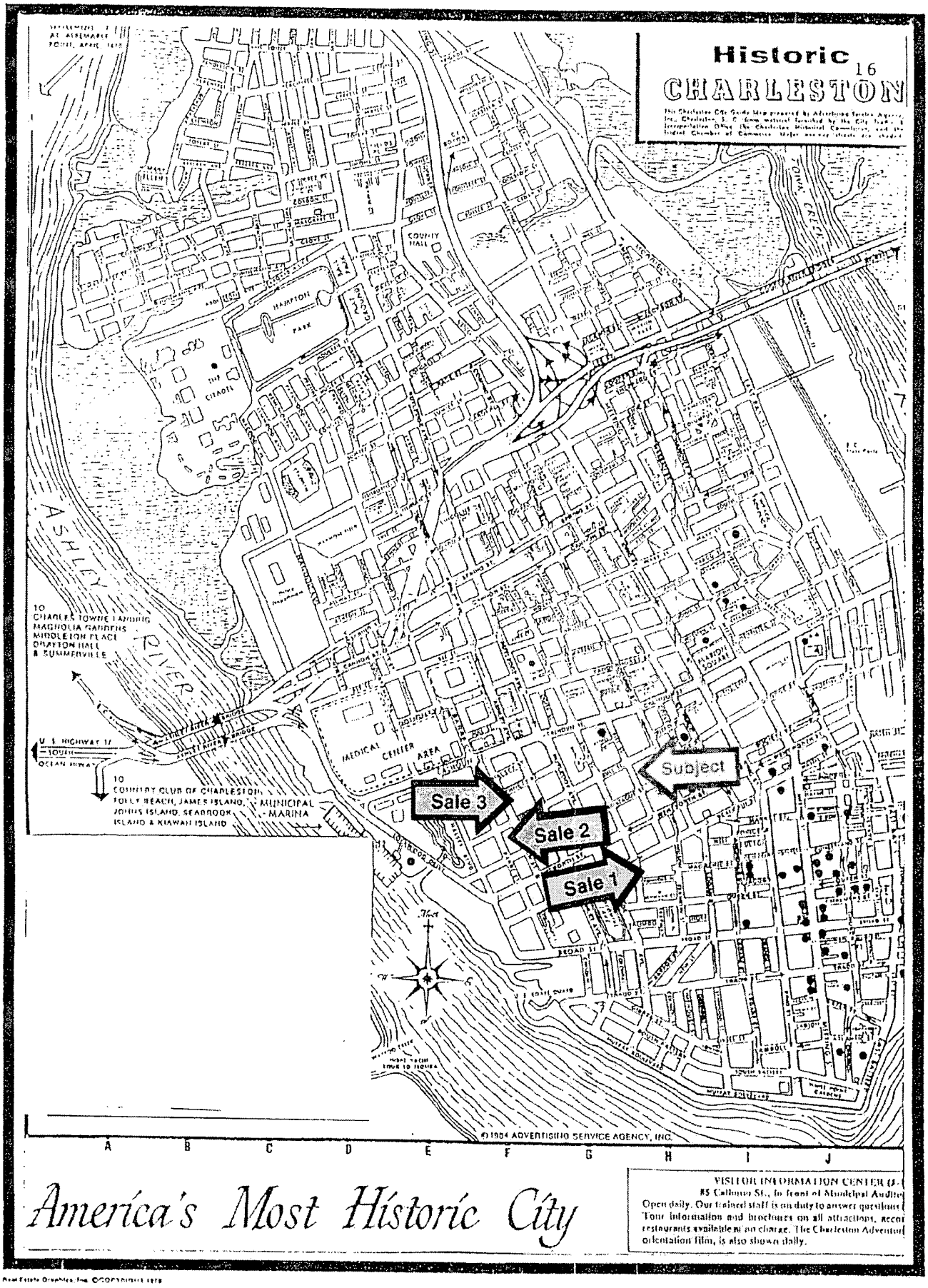
This appraisal is intended to meet the requirements of Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, Public Law.

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.

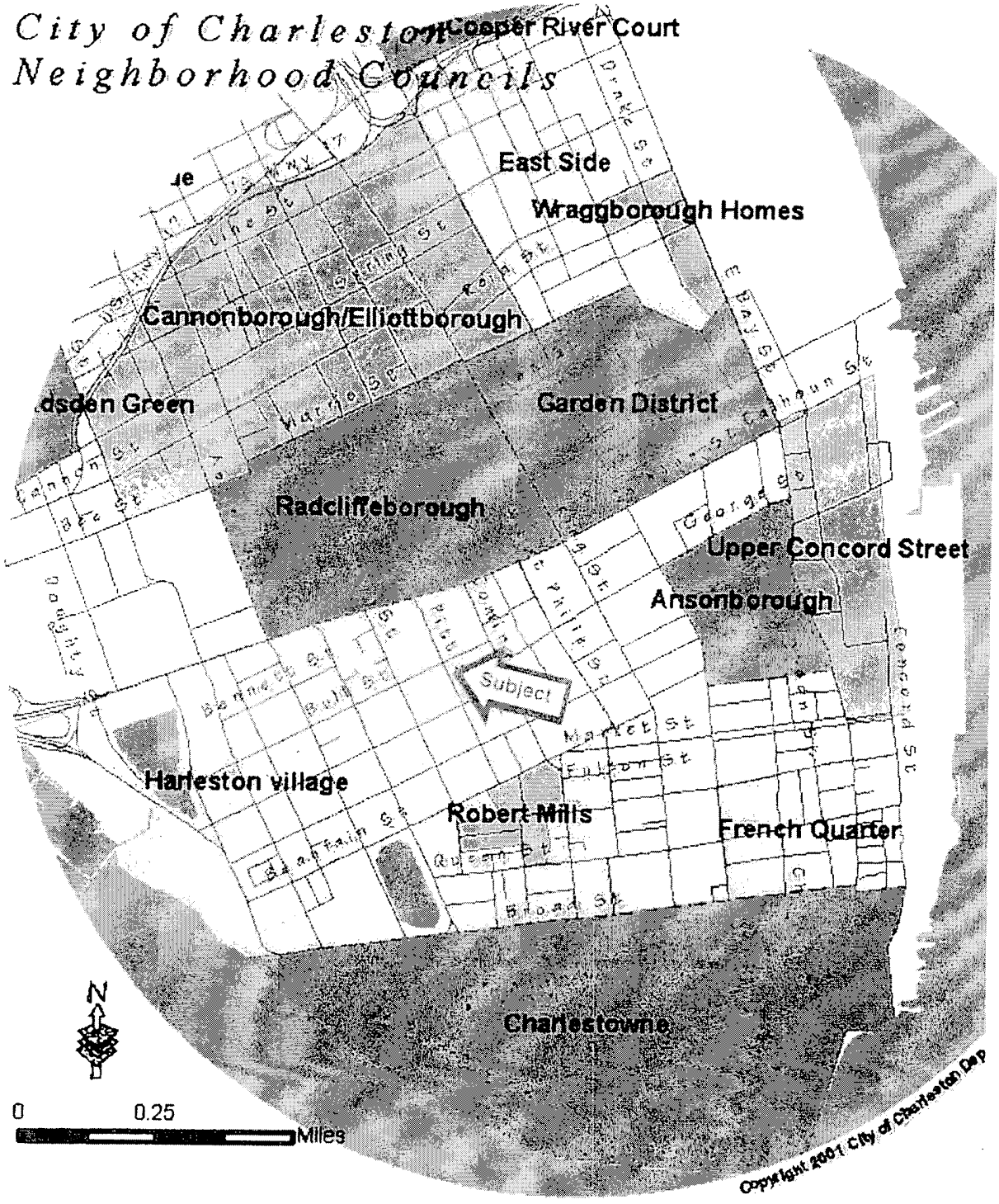
As of the date of this report, I, Michael C. Robinson, MAI, SRA, have completed the requirements under the continuing education program of the Appraisal Institute and also the continuing education program of the South Carolina Real Estate Appraiser's Board.


TAX MAP NUMB
457 - 4 -
CHARLESTON COUNTY, S
TAX DISTRICT NO. 7-1
SCHOOL DISTRICT NO. 20
AREA- CITY OF CHARLESTON
AERIAL PHOTO NO. 2-561, 582
Subject
WENTWORTH STREET
MONTAGU STREET
GLEBE STREET
GEORGE ST.
COLLEGE OF CHARLESTON
GREENE ST.
COLLEGE STREET
COMING STREET
BULL STREET
PITT
CALHOUN
3.0 AC.
COLLEGE ALUMNAE HOUSE
CVC WOMENS DORM
CLASS ROOMS
FAMILY COURTS
GYM
CAFETERIA
APPROXIMATE SCALE IN FEET

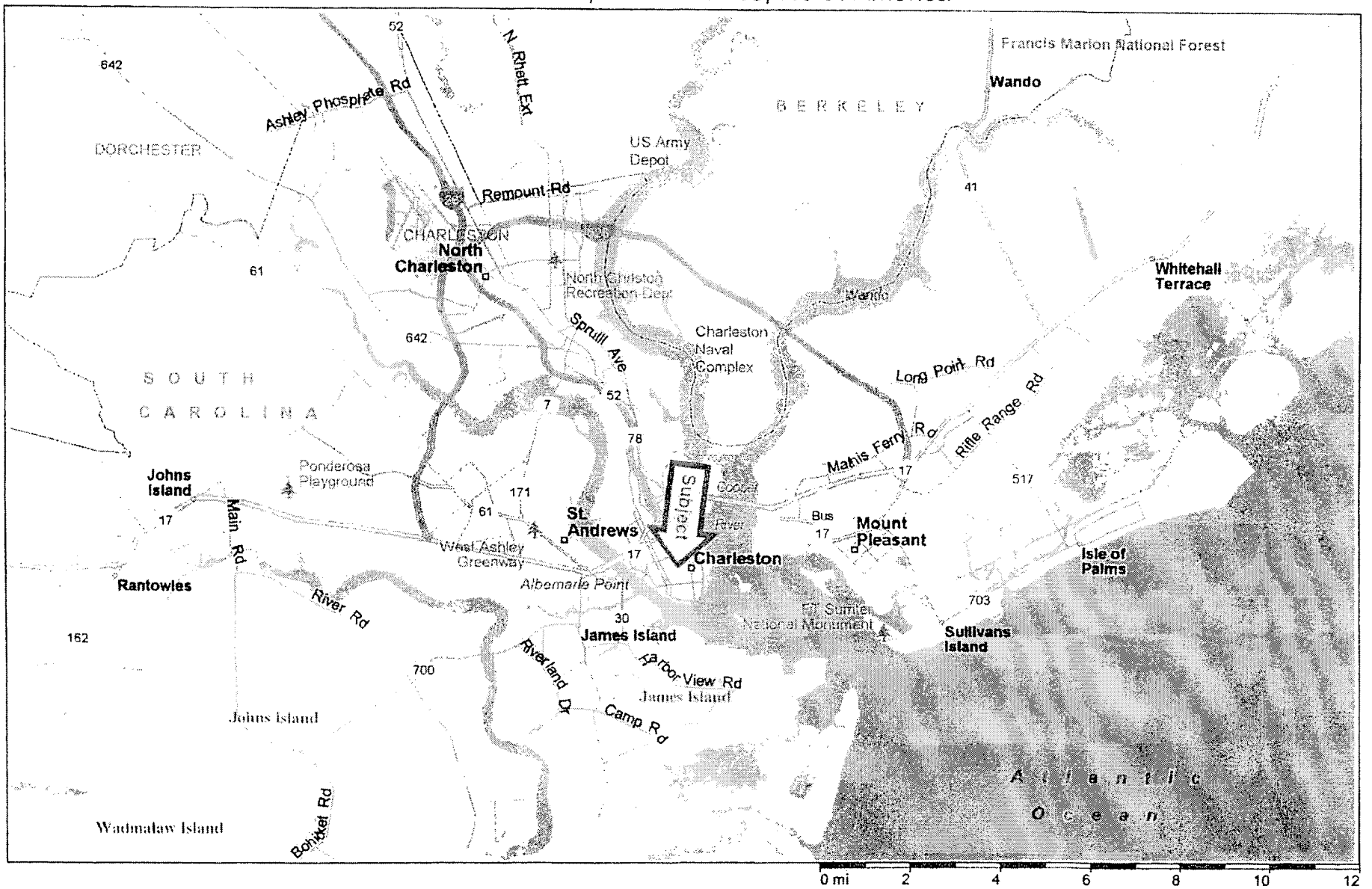
R. p. 996



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City of Charleston
Neighborhood Councils
Cooper River Court
East Side
Wraggborough Homes
Cannonborough/Elliottborough
Garden District
Radcliffeborough
Upper Concord Street
Ansonborough
Subject
Harleston village
Robert Mills
French Quarter
Charlestowne
N
0
0.25
Miles
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South Carolina, United States, North America



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Client:	Michael D. Royal	Client File #:	
Subject Property:	34 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 indented 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 form seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parites 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 create 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 [X] 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. Robinson, MAI, SRA Report Date 01/11/2013

or Certification # CG-76 ST SC

or License # _____ ST _____

Expiration Date 6/30/2014

COPY

CO-APPRAISER:

Signature _____

Name _____ Report Date _____

or Certification # _____ ST _____

or License # _____ ST _____

Expiration Date _____

Exhibit 2013-04-23
Real Estate Purchase and Sale Agreement

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	# Total Pgs	# Bill'd Pgs	Ex / Tr Page Cost	# Refs	Chat	Pstg	Value in OOO	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
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!

BP0325703

MEMORANDUM OF REAL ESTATE PURCHASE AND SALE AGREEMENT

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"), on April 23, 2013 entered into an agreement (the "Agreement") for the purchase and sale of all of Seller's estate, right, title and interest in the following described real property (the "Property"), such contract to close on or before April 9, 2018:

> 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

Both the Purchaser and the Seller hold copies of the Agreement at their respective addresses referenced above.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Real Estate Purchase and Sale Agreement to be executed under proper authority:

SELLER

Free Kindergarten Association of Charleston

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

WITNESSES

Barbara R. McQuillan
Witness Name:

Larry W. Christianson
Witness Name:

STATE OF SOUTH CAROLINA §
§ ACKNOWLEDGEMENT
COUNTY OF CHARLESTON §

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.

STATE OF SOUTH CAROLINA
NOTARY PUBLIC
DONNA TRAPP OOSTDYK

Donna Trapp Oostdyk
Notary Public, State of South Carolina
My commission expires: 9.22.21

PURCHASER

Michael D. Royal

WITNESSES

Barbara R. McQuillan
Witness Name:

Larry W. Christianson
Witness Name:

STATE OF SOUTH CAROLINA §
§ ACKNOWLEDGEMENT
COUNTY OF CHARLESTON §

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

STATE OF SOUTH CAROLINA
NOTARY PUBLIC
DONNA TRAPP OOSTDYK

Donna Trapp Oostdyk
Notary Public, State of South Carolina
My commission expires: 9.22.21

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

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

RECORDED

Date:	April 23, 2013
Time:	1:38:44 PM

Book	Page	DocType
0325	703	Contr/Sale

Charlie Lybrand, Register
Charleston County, SC

MAKER:
FREE KINDERGARTEN ETC

RECIPIENT:
ROYAL MICHAEL D

Original Book:

Original Page:

# of Pages: 3
# of Sats:
# of References:

Note:

Recording Fee	$	10.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	0.50
Chattel	$	-
TOTAL	$	10.50

DRAWER: Drawer 1
CLERK: KLH

0325 Book

703 Page

04/23/2013 Recorded Date

3 # Pgs

Original Book

Original Page

D Doc Type

13:38:44 Recorded Time

Exhibit 2016-02-08
Sisters of Charity v. Alan Wilson

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000087

Sisters of Charity Providence Hospital
PLAINTIFF(S)

Alan Wilson
South Carolina Attorney General
DEFENDANT(S)

Submitted by: _____	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.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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:

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
		$
		$
		$

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.**

Circuit Court Judge _____ **Judge Code** 2161 **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

William George Newsome III

Mary Frances G. Jowers

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Sisters of Charity Providence Hospitals, Plaintiff/Petitioner, vs. Alan Wilson, Attorney General of South Carolina; and The Sisters of Charity of St. Augustine Health System, Inc., Defendants/Respondents.	Case No. 2016-CP-40-00087 ORDER

This matter came before the Court on January 27, 2016 pursuant to a Complaint/Petition of the Plaintiff/Petitioner, Sisters of Charity Providence Hospitals, a religious corporation incorporated as a South Carolina nonprofit corporation, seeking an Order approving the sale of substantially all of its assets. Plaintiff/Petitioner was represented by Matthew B. Roberts and William G. Newsome III; Defendant/Respondent Alan Wilson, Attorney General of South Carolina, was represented by Assistant Deputy Attorney General Mary Frances Jowers; and Defendant/Respondent The Sister of Charity of St. Augustine Health System, Inc., was represented by Matthew B. Roberts and William G. Newsome III.

Without objection, counsel for Plaintiff/Petitioner summarized the factual history of the proposed sale of its assets to Providence Holding Company, LLC ("LifePoint Sub"), an indirect wholly-owned subsidiary of LifePoint Hospitals Holdings, Inc., a Delaware corporation ("LifePoint"). Plaintiff/Petitioner intends to sell its assets and assets of its wholly-owned subsidiaries (the "Subject Assets") used in the operation of Providence Hospitals in Columbia, South Carolina, or office buildings, physician clinics, and other facilities associated with Providence Hospitals to LifePoint Sub, and Defendant The Sisters of Charity of St. Augustine

Health System, Inc., an Ohio nonprofit corporation ("SCHS") and the sole member of Plaintiff/Petitioner, and LifePoint entered into a letter of intent to that effect. In the letter of intent, the sales price for the Subject Assets is set for One Hundred Thirty Million Dollars ($130,000,000), with adjustments for the amount of net working capital and expenses for certain capital expenditures (the "Sales Price"). Pursuant to the Letter of Intent, all of the Sales Price will be paid to Plaintiff/Petitioner at closing.

To support the Sales Price, Plaintiff/Petitioner obtained an appraisal of the Subject Assets by Value Management Group, LLC, dated October 13, 2015 (the "Appraisal"), prepared by Elliott Jeter, CFA, CPA/ABV. The Sales Price is within the Appraisal's range of value for the Subject Assets.

Plaintiff/Petitioner provided the Attorney General with written notice (the "Notice Letter") of its intent to sell all or substantially all of its assets other than in the usual and regular course of its activities pursuant to Section 33-31-1202 of the South Carolina Nonprofit Corporation Act of 1994 (the "Act"). The Attorney General advised Plaintiff/Petitioner that it would require prior court approval of the proposed sale at the stated Sales Price. 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 South Carolina Dep't of Mental Health v. McMaster, et al., 372 S.C. 175, 642 S.E.2d 552 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); Epworth Children's Home v. W. F. Beasley, et al., 365 S.C. 157, 616 S.E.2d 710 (2005); and Furman Univ. v. McLeod, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

At the hearing, the Attorney General called as a witness John E. Gibson, Jr., CPA/ABV, CVA, who was qualified by the Court as an expert in business valuation. He testified that he was retained by Defendant Alan Wilson to conduct a technical review of the Appraisal. Mr. Gibson explained the published uniform standards that exist for appraisers regarding the methods and measures expected in producing a reliable appraisal. He stated that he reviewed the Appraisal applying those standards. It was his opinion that the Appraisal was in full accord with those standards and found the appraisal to be thorough and comprehensive. He also testified that he agreed with the Appraisal's conclusion regarding the fair market value of the Subject Assets, and that the Sales Price was a commercially reasonable price for the Subject Assets.

After carefully considering the evidence, testimony, exhibits and arguments of counsel, I make the following findings of fact and conclusions of law pursuant to Rule 52, SCRCP. To the extent any of the following finds of fact constitute conclusion of law, they are adopted as such, and to the extent that any conclusions of law constitute findings of fact, they are so adopted:

FINDINGS OF FACT

1. The Subject Assets consist of office buildings, physician clinics, and other facilities associated with Providence Hospitals located in Richland County, South Carolina.

2. As part of its efforts to sell the Subject Assets, Plaintiff/Petitioner arranged for and obtained an appraisal of the Subject Assets.

3. The Plaintiff/Petitioner's sole member, SCHS, and LifePoint have entered into a Letter of Intent to sell the Subject Assets for a Sales Price equal to One Hundred Thirty Million Dollars ($130,000,000), with adjustments for the amount of net working capital and expenses for certain capital expenditures.

4. The Appraisal supports the sale of the Subject Assets for the Sales Price.

CONCLUSIONS OF LAW

1. The Sales Price and other terms of the sale set forth in the Letter of Intent are fair and reasonable.

2. Pursuant to the South Carolina Nonprofit Corporations Act of 1994, 33-31-101, *et seq.*, the Plaintiff/Petitioner is authorized to sell the Subject Assets at the Sales Price and otherwise on terms consistent with the Letter of Intent.

3. The Attorney General has reviewed this matter in accordance with his common law and statutory authority and has no objection to the sale.

IT IS THEREFORE DECLARED AND ORDERED:

A. The sale of the Subject Assets by the Plaintiff/Petitioner at the Sales Price and otherwise on terms consistent with the Letter of Intent is hereby authorized and approved.

B. The Clerk of Court is directed to enter judgment on this Order authorizing and approving the sale of the Subject Assets pursuant to Rule 54(b) SCRP.

The Honorable DeAndrea G. Benjamin,
Circuit Judge

January 27, 2016
Columbia, South Carolina

Exhibit 2018-04-04
Association's Notice of Sale

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

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 2018-04-11
Amendment to PSA Extending Closing Date

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 Murray Wells (Seal)
June M. Wells
Its: Sole Surviving Member

{01094787.DOCX 3}

Exhibit 2018-04-24
Amendment to PSA Extending Closing Date

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
Its: Sole Surviving Member

{01103940.DOCX}

Exhibit 2018-04-26 111800
Email from Michael D. Royal

From: Michael D. Royal
To: Treadwell Josey; 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 Royal
Managing Member – Pareto Group LLC
[redacted] | michael@pareto.ai

Exhibit 2018-05-11
Association's Letter Refusing to Close

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 2018-05-14 152200
Email from Michael D. Royal

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 Royal
Managing Member – Pareto Group LLC
[illegible] | e. michael@pareto.gr

Exhibit 2018-05-14 162100
Email from Michael D. Royal

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd.
Suite 200
Mt. Pleasant, SC 29464
Ph: (843) 856-4488
Fax: (843) 856-0613

Michael Royal
1941 Savage Road, Suite 100A
PMB 615
Charleston, SC 29407

May 14, 2018

Matter No. 4144.0001
Invoice No. 24828

RE: Royal Purchase of 34 Pitt Street

LEGAL SERVICES RENDERED

	344 Pitt St. Negotiations	
	Total Professional Services	3,103.00

DISBURSEMENTS & EXPENSES

03/30/2018	Zoning Verification Request Letter	10.00
04/05/2018	Corporate Documents - DE SOS Certificate of Good Standing - Pareto Group LLC	90.00
05/14/2018	SCSOS Cert of Existence - pd by firm Amex 03/19/2018	14.00
05/14/2018	SC Archives - Document Fee (Resolution of FKAC) charged to firm MC 03/21/2018	10.00
05/14/2018	Title Search Invoice 30519 to Jackie Davis (due)	190.00
05/14/2018	Title Search - Invoice 30578 (Conservator File) to Jackie Davis (due)	33.00
	Total Disbursements & Expenses	347.00
	Total Due for this Statement	3,450.00
	Balance Now Due (please pay this amount)	$3,450.00

Exhibit 2018-05-18 120255
Email from Mary Frances Jowers

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

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

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
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@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 2018-06-07
Appraisal of 34 Pitt Street

File No. 18-064



SUMMARY APPRAISAL REPORT OF THE PROPERTY LOCATED AT

34 Pitt Street

Charleston, SC 29401

as of

June 7, 2018

for

C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

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

June 11, 2018

C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

Property -	34 Pitt Street Charleston, SC 29401
Borrower -	C. Havird Jones, Jr.
File No. -	18-064
Case No. -	

Dear Mr. Jones:

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 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 June 7, 2018 is

$522,500

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

Client File #:		Appraisal File #:	18-064

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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:

Appraiser: Michael C. Robinson, MAI, SRA							Co-Appraiser:						
AI Membership:	X SRA	X MAI	SRPA	Associate member	None		AI Membership:	SRA	MAI	SRPA	Associate member	None	
E-mail: mrobinson@charlestonappraisal.com							E-mail:						

Client: C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen. Contact: Mr. Havird Jones
Address: Office of the S. C. Attorney General, 1000 Assembly Street Columbia, SC29201
Phone: 803-734-3654 Fax: Email: s.jones@scag.gov

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: 2017

SUBJECT PROPERTY HISTORY

Owner of Record City of Charleston (Per Tax Records)

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	$ 522,500
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 from 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: June 7, 2018 **$**522,500

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

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Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

ASSIGNMENT PARAMETERS

Intended User(s): Havird Jones, Office of the Attorney General

Intended Use: Assistance in proceedings by S.C Attorney General

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: June 7, 2018

Interest Appraised [X] 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.) Existing structure on site does not contribute to value. It is assumed to be demolished, and that cost has been deducted from the land value estimate as vacant.

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.

Inspection of Subject:

Appraiser:
[ ] None [X] Interior [X] Exterior
[X] Date of Inspection 6/7/2018

Co-Appraiser:
[X] None [ ] Interior [ ] Exterior
[ ] Date of Inspection

Living Area Measured:
[X] Yes [ ] No
[ ] Other:

Data Sources Used:

[X] MLS
[X] Public Records
[X] Office Files
[X] Owner
[ ] Plans & Specifications
[ ] Purchase Agreement
[X] Other: Tax Map

Approaches to Value Developed:

Cost Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Sales Comparison Approach:
[X] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[ ] Is not applicable or necessary and omitted in this analysis

Income Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Additional Scope of Work Comments: NONE

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

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

MARKET AREA ANALYSIS

Location	Built Up	Growth	Supply & Demand	Value Trend	Typical Marketing Time
[X] Urban	[ ] Under 25%	[ ] Rapid	[ ] Shortage	[X] Increasing	[ ] Under 3 Months
[ ] Suburban	[ ] 25-75%	[X] Stable	[X] In Balance	[ ] Stable	[ ] 3-6 Months
[ ] Rural	[X] Over 75%	[ ] Slow	[ ] Over Supply	[ ] Decreasing	[X] Over 6 Months

Neighborhood Single Family Profile

Price		Age
300,000	Low	100
3,000,000	High	250
750,000	Predominant	150

Neighborhood Land Use

1 Family	80.0%	Commercial	5.0%
Condo	5.0%	Vacant	%
Multifamily	10.0%	Other	%

Neighborhood Name: Harleston Village

PUD [ ] Condo [ ] HOA: $ N/A /

Amenities: None

Market area description and characteristics: Neighborhood stores 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: 56' x 170' x 55' x 170'

Area: 9,435 Square Feet (per tax map)

View: Interior

Shape: Rectangular

Drainage: Appears Adequate

Utility: Good/Average

Site Similarity/Conformity To Neighborhood

Size:	View:
[ ] Smaller than Typical	[ ] Favorable
[X] Typical	[X] Typical
[ ] Larger than Typical	[ ] Less than Favorable

Zoning/Deed Restriction

Zoning: Residential DR-1F

[ ] Legal [ ] No Zoning

[ ] Legal, non-conforming

[X] Illegal

Covenants, Condition & Restrictions: [ ] Yes [X] No [ ] Unknown

Documents Reviewed [ ] Yes [X] No

Ground Rent: $ N/A /

Utilities

Electric	[X] Public	[ ] Other	
Gas	[X] Public	[ ] Other	
Water	[X] Public	[ ] Other	
Sewer	[X] Public	[ ] Other	

Off Site Improvements

Street	[X] Public	[ ] Private	
Alley	[ ] Public	[ ] Private	None
Sidewalk	[X] Public	[ ] Private	
Street Lights	[X] Public	[ ] 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 to poor condition and has not been occupied in more than 15 years. Mold and mildew appear present on the inside. There are vines climbing on the sides and roof of the building. The roof has several very large holes allowing rain freely. Schools are prohibited in residentially zoned districts (was legal, non-conforming, but that status has been lost). 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, now on ground level, 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 the value of the property.

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

SITE VALUATION

Site Valuation Methodology

X **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

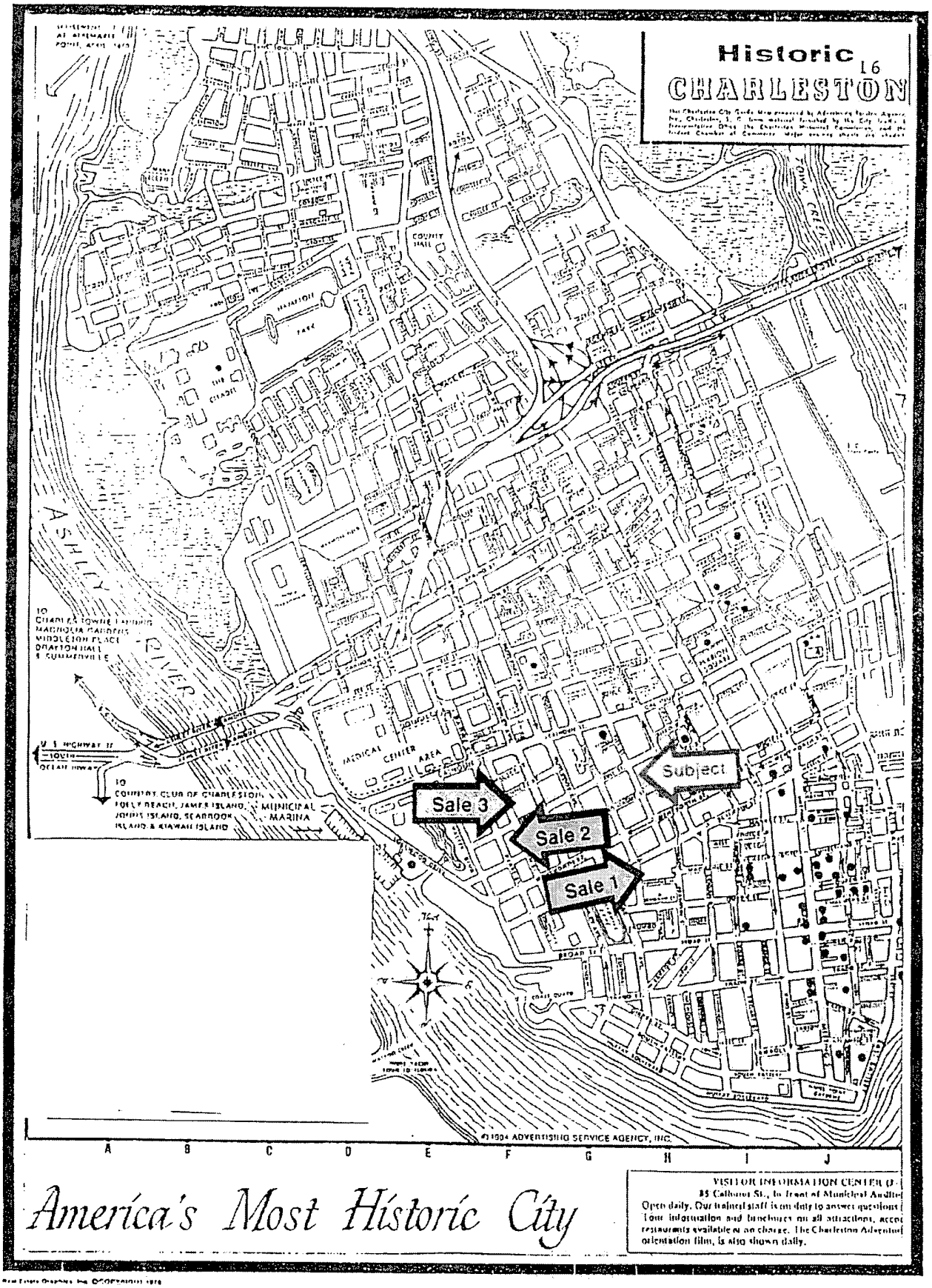
ITEM	SUBJECT	SALE NO. 1		SALE NO. 2		SALE NO. 3	
Address	34 Pitt Street Charleston	15 Smith Street 457-08-03-074		61 Gadsden Street 457-02-04-006		126 Beaufain Street 457-03-03-108	
Proximity to Subject		4 Blocks		8 Blocks		6 Blocks	
Sales Price	N/A	499,000		600,000		350,000	
Price / SF	N/A	47.01		40.51		67.31	
Data Source/ Verification	Inspection	Office Files		Office Files		Office Files	
Sale Date	6/18	12/13/15	+12.5%	8/4/14	+19%	6/8/15	+15%
Location	Harleston Village	Harleston Village		Harleston Village		Harleston Village	
Site Size	9,435 SF	10,614 SF		14,810 SF	+10%	5,200 SF	-25%
Site View	Interior	Interior (-)	+10%	Interior		Interior	
Site Improvements	Building/no value	Building/no value		None		None	
Corner	No	No		No		No	
Zoning	Residential	Residential		Residential		Residential	
Net Adjustment			+23		+29		-10
Indicated Value			$ 58.17/SF		$ 53.03/SF		$ 58.05/SF
Net Adjustment			%		%		%
Gross Adjustment			%		%		%

Site Valuation Comments: The subject site is located in the Old and Historic District of downtown Charleston where there are very few vacant lots; consequently, such sales are very infrequent. In order to recognize price increases occur in this market over the past three years, all sales have been adjusted by 5% per annum. The sales were adjusted for improving market conditions prior to making other adjustments. Sale 1 is across from a low income housing project. Sales 2 and 3 are larger and smaller than the subject site requiring positive and negative adjustments, respectively.

Site Valuation Reconciliation: Sales 1 and 3 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 $57.50 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. For an exact cost, I recommend a proposal from a demolition contractor be obtained.

9,435 SF x $57.50/SF minus $20,000 Estimated Demolition Cost = $522,513

Opinion of Site Value	$ 522,500


Historic
CHARLESTON
16
ASHLEY RIVER
Subject
Sale 3
Sale 2
Sale 1
MEDICAL CENTER AREA
A B C D E F G H I J
America's Most Historic City



DATE COMPLETED: 9-14-93			
REVISIONS			
FIELD CHANGES	FIELD CHECK	OFFICE CHANGES	OFFICE CHECK
12-31-84	1987		
12-31-93	8/23/93		
12-31-97	10-15-97		

APPROXIMATE SCALE IN FEET

0 50 100 150 200

TAX MAP COMPILED FROM DEED - PLAT RESEARCH AND FIELD RECONNAISSANCE.
ALL MEASUREMENTS ARE TO THE NEAREST FOOT.
BUILDINGS ARE NOT PLOTTED TO EXACT SCALE OR LOCATION.
DATE OF AERIAL PHOTOGRAPHY - FEBRUARY, 1982

TAX MAP PREPARED BY THE COUNTY ASSESSOR'S OFFICE. THE CHARLESTON COUNTY BOARD OF ASSESSMENT CONTROL RESERVES THE EXCLUSIVE RIGHT TO SELL THIS MAP. NO RESALE OR REPRODUCTION FOR RESALE PURPOSE IS PERMITTED.

TAX DISTRICT NO.	7-1
SCHOOL DISTRICT NO.	20
AREA	CITY OF CHARLESTON
AERIAL PHOTO NO.	2-581, 582

TAX MAP NUMB

1" = 400' 1" = 100'

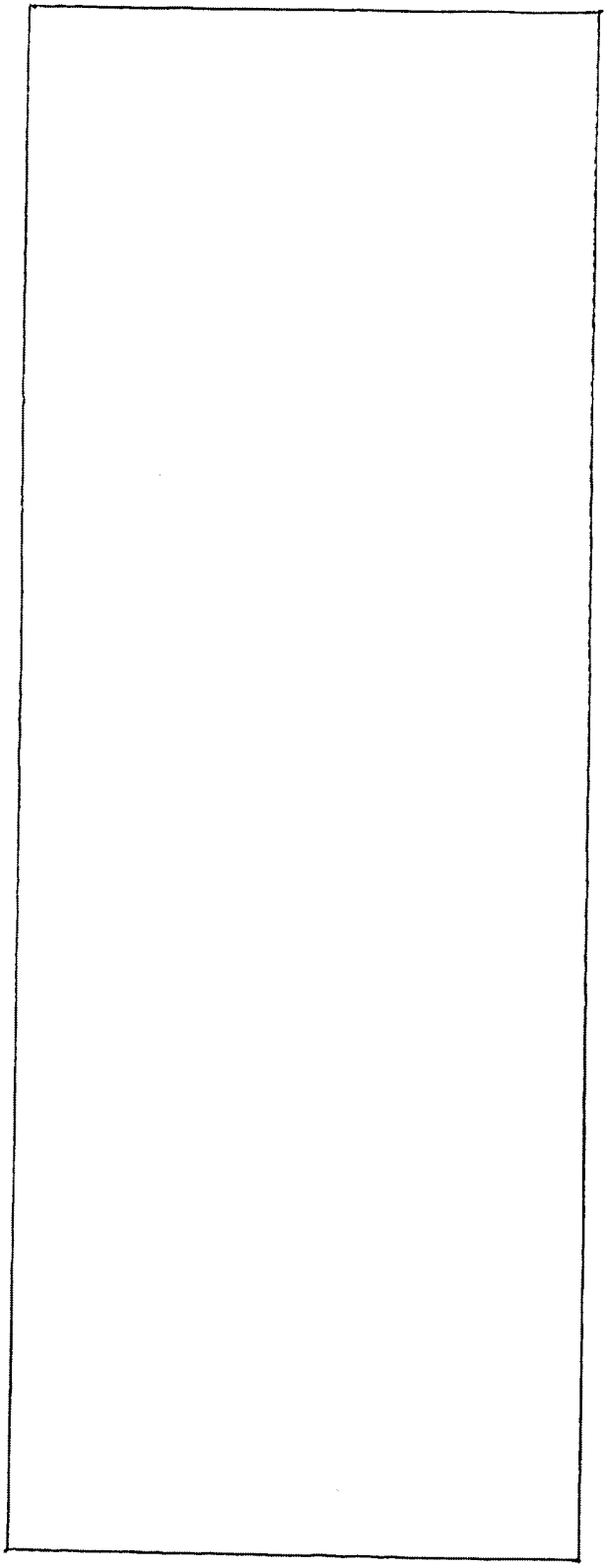
10 457 - 4 -

CHARLESTON COUNTY, S

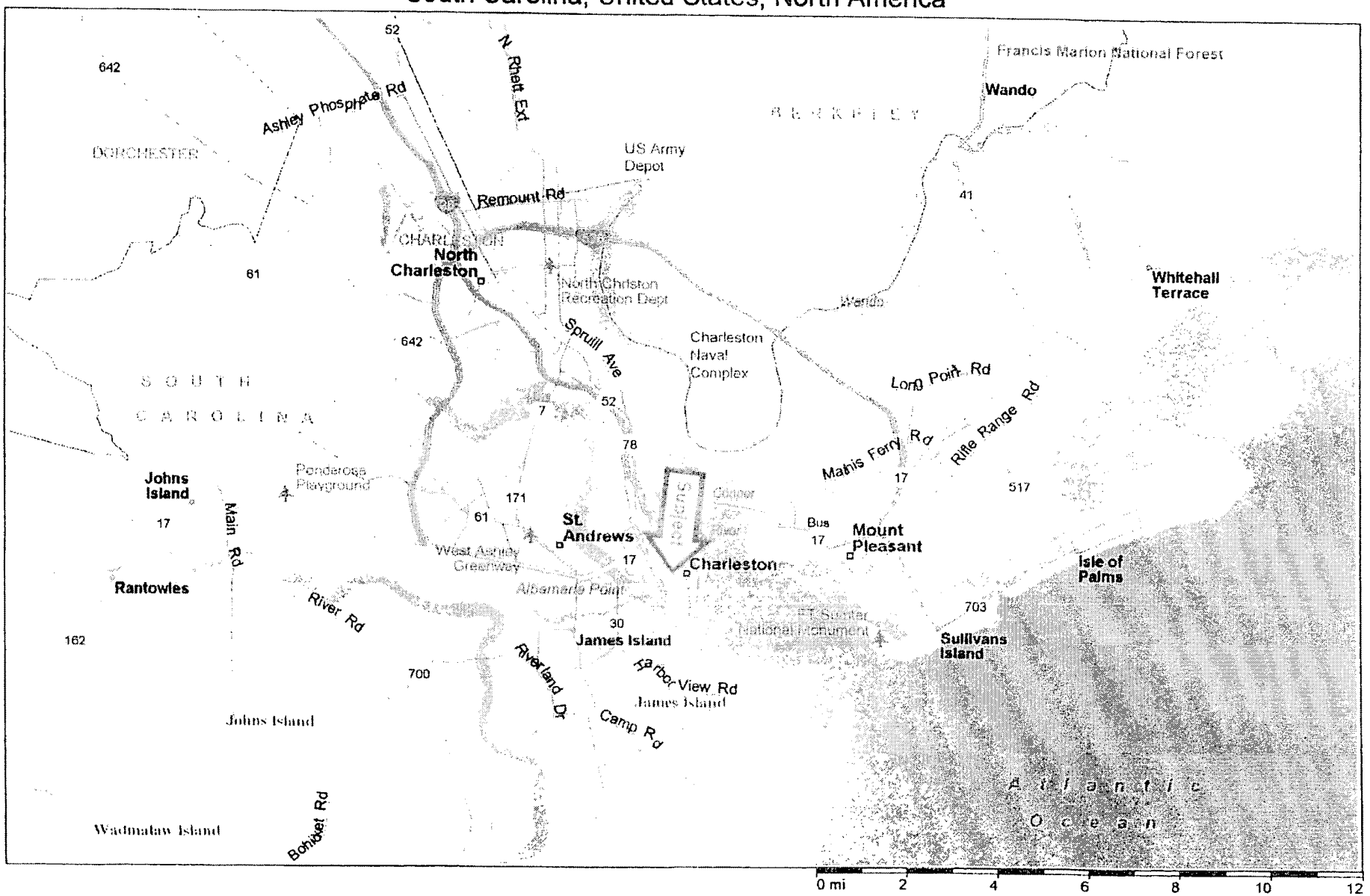
File No. 18-063

Borrower or Owner C. Havird Jones, Jr.
Property Address 34 Pitt Street
City Charleston County Charleston State SC Zip Code 29401
Lender or Client C. Havird Jones, Jr., Sr. Asst. Deputy Atty.

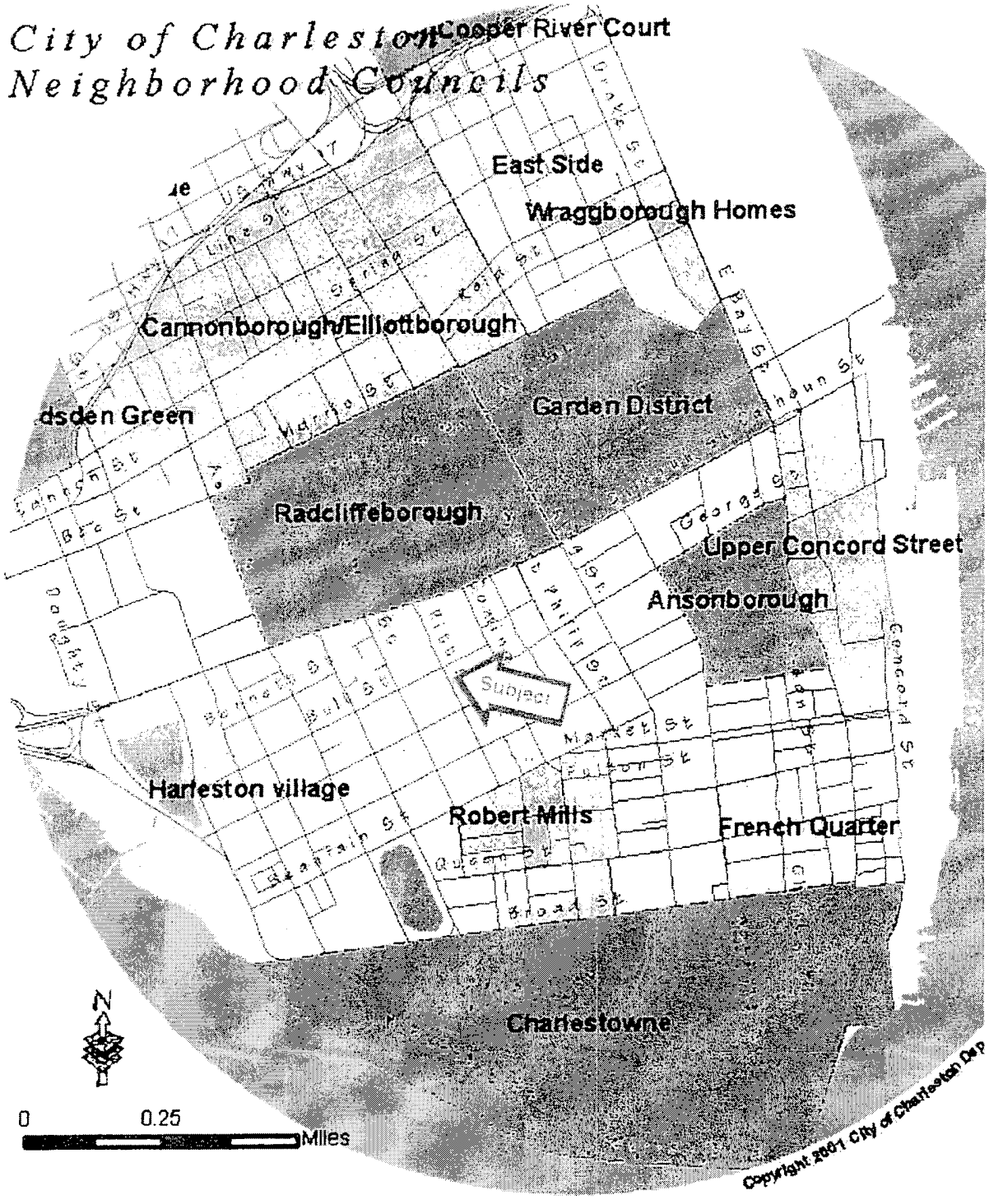
34 PITT STREET



South Carolina, United States, North America



Copyright © and (P) 1988–2007 Microsoft Corporation and/or its suppliers. All rights reserved. http://www.microsoft.com/streets/
Certain mapping and direction data © 2007 NAVTEQ. All rights reserved. The Data for areas of Canada includes information taken with permission from Canadian authorities, including: © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario. NAVTEQ and NAVTEQ ON BOARD are trademarks of NAVTEQ. © 2007 Tele Atlas North America, Inc. All rights reserved. Tele Atlas and Tele Atlas North America are trademarks of Tele Atlas, Inc.


City of Charleston
Neighborhood Councils
Cooper River Court
East Side
Wraggborough Homes
Cannonborough/Elliottborough
Garden District
dsden Green
Radcliffeborough
Upper Concord Street
Ansonborough
Subject
Harleston village
Robert Mills
French Quarter
Charlestowne
N
0
0.25
Miles
Copyright 2001 City of Charleston Dep

Borrower or Owner C. Havird Jones, Jr.
Property Address 34 Pitt Street
City Charleston County Charleston State SC Zip Code 29401
Client C. Havird Jones, Jr., Sr. Asst. Deputy Atty.

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 made a personal inspection of the property that is the subject of this report.

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, 2018 to December 31, 2019 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 even.

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 continuing education program for designated members of the Appraisal Institute and also the continuing education program of the South Carolina Real Estate Appraiser's Board.

Client:	C. Havird Jones, Jr., Sr. Asst Dep Atty Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 indented 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 14 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 form 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 mace 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 create financing or sales concessions granted by anyone associated with the sale.

Source: *Appraisal Institute Dictionary of Real Estate Appraisal*

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 Appriasal Institute relating to review by its duly authorized representatives.

Designated Appraisal Institute Member Certify:

- As of the date of this report, I [X] 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 Michael C Robinson

Name Michael C. Robinson, MAI, SRA Report Date 06/11/2018

or Certification # CG-76 ST SC

or License # _____ ST _____

Expiration Date 6/30/2018

CO-APPRAISER:

Signature _____

Name _____ Report Date _____

or Certification # _____ ST _____

or License # _____ ST _____

Expiration Date _____

Exhibit 2018-06-28 102736
Email from Rick Stringer

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.

Sincerely, Rick Stringer

Exhibit 2018-06-28 103600
Email from Michael D. Royal

From: Michael D. Royal
To: rick stringer
Cc: Mary Frances Jowers; Gretchen Stringer-Robinson; Treadwell Josey; 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 not legal basis, as we've discussed before.

Regards,

Michael

Michael Royal
Managing Member | Pareto Group LLC
[illegible] | Charleston SC 29407
[illegible] | 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>; 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.

Sincerely, Rick Stringer

Exhibit 2019-01-25
Attorney General's Motion to Intervene and Memorandum in Support

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.	)	

Motion of the Attorney General of the State of South Carolina to Intervene and Memorandum In Support

Pursuant to S.C.R.C.P. 24, the Attorney General of the State of South Carolina moves to intervene in this matter as a necessary party defendant pursuant to his statutory authority under S.C. Code Ann. §1-7-130 and §62-7-405 and common law authority under the South Carolina Nonprofit Corporation Act of 1994, S.C. Code Ann. § 33-31-1202. The defendant Free Kindergarten Association of Charleston ("Free Kindergarten") is a nonprofit corporation and its sole assets are the real property and improvements located at 34 Pitt Street in Charleston which are the subject of this action.

The Free Kindergarten was established as a nonprofit corporation on January 24, 1901 under the name "South Carolina Kindergarten Association." Its charter was amended to its current name on January 20, 1931. *See* Exhibit A. The mission of the Free Kindergarten was to provide kindergarten programs to the public at a time when early childhood education was not readily accessible to the average South Carolinian. The Attorney General is informed

and believes the Free Kindergarten has not operated as a kindergarten since the 2000s and its property on Pitt Street has been vacant since that time. The Charter of the Free Kindergarten was amended in November 3, 1970 by board resolution attached as Exhibit B to provide:

> "RESOLUTION-DISSOLUTION CLAUSE: In the event of dissolution, the residual assets of the Free Kindergarten Association will be turned over to Charleston County School District $20, part of the South Carolina State School System for general use in this said Charleston School District #20.

Thus it was the intent of the Free Kindergarten that its assets or their value upon liquidation are to be given to Charleston County School District #20 on dissolution. The real estate sales contract which is the subject of this action involves the sale of 34 Pitts Street, so effectuates the sale of all or substantially all of the Free Kindergarten's outside of the usual and regular course of the Free Kindergarten's business activities.

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..." Further 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." The Free Kindergarten gave the Attorney General notice by letter dated April 4, 2018 of the proposed sale of all/substantially all of its assets outside the normal course of business, as required by S.C. Code Ann.§ 33-31-1202. *See* Complaint, Exhibit I. The Real Estate Purchase and Sale Agreement for the sale of 34 Pitts Street from the Free Kindergarten to the Plaintiff is dated April 23, 2013 and the proposed sales price is $315,200.

The Attorney General obtained an appraisal reflecting the value of the property is $522,500 as of June 7, 2018. *See* Exhibit C. Prior to the institution of this action, the Attorney General advised the parties that it would not approve the proposed sale of the Free Kindergarten's assets on the grounds the sales price was substantially below market value. The Attorney General also advised the parties that he wanted to made a party to any legal action to enforce the contract or provided with notice of the action so he could intervene. *See* Exhibit J to Plaintiff's Complaint.

The Attorney General is authorized to intervene as a party to this action in his parens patriae authority in accordance with common law as well as his statutory authority to protect the public interest and to enforce the proper application of funds given or appropriated to any charitable trust and to protect the interests of the public at large in matters involving the administration and enforcement of charitable trusts and the sale of assets of a nonprofit corporation outside the ordinary course of business. *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 (attached)(sale of assets of non-profit other than in the usual and regular course of business); *South Carolina Dep't of Mental Health v. McMaster, et al.* 372 S.C. 175, 642 S.E.2d 552 (2007);*Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865 (1961); and *W. C. Watson v. W. F. Wall, et al.* , 229 S.C. 500, 93 S.E.2d 918 (1956).

Based upon the foregoing, the Attorney General respectfully requests that this Court grant this Motion and allow the Attorney General to intervene in this action as a necessary

party defendant. The Attorney General's proposed Answer in this matter is attached as Exhibit D.

Rule 11 Certification: I certify the prior to filing this Motion, the Attorney General's Office has communicated with counsel for the Free Kindergarten Association of Charleston who has consented to the Motion.

Respectfully submitted,

ALAN M. 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, SC 29211
(803) 734-3680

BY: _____
Attorneys for South Carolina Attorney General Alan Wilson

January 25, 2019

Exhibit A

THE STATE OF SOUTH CAROLINA

EXECUTIVE DEPARTMENT

By the Secretary of State

Whereas, Jane L. Raisin and Elizabeth J. Adger

a majority of the Board of Directors of

SOUTH CAROLINA KINDERGARTEN ASSOCIATION

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 a change of name to that of

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON

(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 Section 4315 Code of Laws of South Carolina, 1922, and all amendments thereto.

NOW, THEREFORE, I, W P BLACKWELL Secretary of State, by virtue of the authority in me vested by Chapter L, of the Code of Laws of South Carolina, 1922, and amendments thereto, and all Acts or parts of Acts me thereto enabling, 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 20th day of January, in the year of our Lord one thousand nine hundred and thirty-one and in the one hundred and fifty-fifth year of the Independence of the United States of America.

W. P. Blackwell

Secretary of State.

Application for Amendment of Eleemosynary Charter

Exhibit B

For Use By The Secretary of State	
File No.	44
Form No.	3562
Fee Paid $	25.00
C. B.	20
Date	FEB 5 1971
Bk.	11 Page 533

THE STATE OF SOUTH CAROLINA,

County of Charleston

To the Secretary of State of South Carolina:

WHEREAS, There was issued by the Secretary of State a charter dated January 24, 1901 constituting and creating THE SOUTH CAROLINA KINDERGARTEN ASSOCIATION-Amended on 1-20-71 changing name to THE FREE KINDERGARTEN ASSOCIATION, into an eleemosynary corporation, under the laws of this State, with its principal place of business at _____ (Street and No.), in the City of Charleston, County of Charleston and the State of South Carolina, empowering it to engage in the business as set forth in Declaration and Petition.

The undersigned, representing a majority of the duly elected and qualified members present after due notice, hereby certify that not less than five days notice (a copy of which is hereto attached) was given in the _____, a newspaper published in the County of Charleston on November 3, 1970 or (by written notice A written notice was sent to each member 5 days prior to the meeting on Certified mailed to each member) of a meeting of members on November 3, 1970 which notice stated the time and place of meeting and the purpose thereof.

And further, that said meeting was duly held pursuant to notice, and a resolution was adopted by a majority vote as follows:

Insert Resolution

RESOLUTION - DISSOLUTION CLAUSE: 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.

And, further, your petitioners certify that they have complied in all respects with Title 12-761, of the Code of Laws of South Carolina, 1962, and all amendments thereto.

Wherefore they pray that the charter of the said THE FREE KINDERGARTEN ASSOCIATION be so amended.

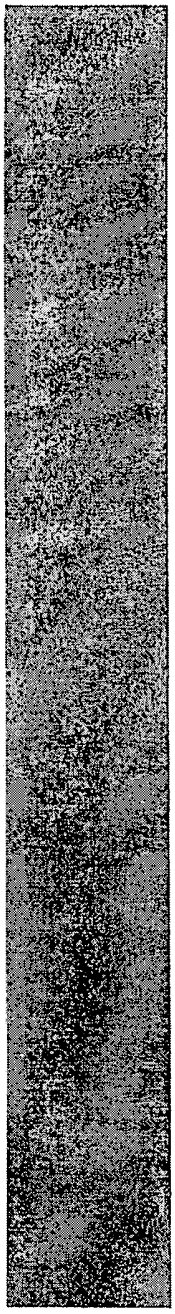
Dated at Charleston, this 16 day of January, 19 71.

DIRECTORS OR AUTHORIZED MANAGING BOARD MUST SIGN BELOW
(Please type or print name opposite signature)

(Signature)	(Type or Print Name)
Mrs Harry H. Lindstedt	Mrs. Harry H. Lindstedt- President
Mrs Fred N. Thom	Mrs. Fred N. Thom - Vice-President
Mrs Vince Moseley Secretary	Mrs. Vince Moseley - Secretary
Ann E. Morse	Miss Ann E. Morse - Treasurer
Mrs. Wade L. Murray	Mrs. Wade Murray - Director

File No. 18-064

Exhibit C



SUMMARY APPRAISAL REPORT OF THE PROPERTY LOCATED AT

34 Pitt Street

Charleston, SC 29401

as of

June 7, 2018

for

C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

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

Exhibit C

June 11, 2018

C. Havird Jones, Jr., Sr. Asst.Dep.Atty Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

Property -	34 Pitt Street
	Charleston, SC 29401
Borrower -	C. Havird Jones, Jr.
File No. -	18-064
Case No. -	

Dear .Mr. Jones:

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 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 June 7, 2018 is

$522,500

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

Client File #:		Appraisal File #:	18-064

Exhibit C

Appraisal Institute®
Professionals Providing Real Estate Solutions

AI Reports™ | Form A1-100.01

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:

Appraiser: Michael C. Robinson, MAI, SRA		Co-Appraiser:	
AI Membership:	X SRA X MAI SRPA Associate member None	AI Membership:	SRA MAI SRPA Associate member None
E-mail: mrobinson@charlestonappraisal.com		E-mail:	

Client: C. Haviird Jones, Jr., Sr. Asst.Dep.Atty.Gen. Contact: Mr. Haviird Jones
Address: Office of the S. C. Attorney General, 1000 Assembly Street Columbia, SC29201
Phone: 803-734-3654 Fax: Email: s.jones@scag.gov

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: 2017

SUBJECT PROPERTY HISTORY

Owner of Record: City of Charleston (Per Tax Records)
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 $ 522,500
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 from 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: June 7, 2018 $522,500

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

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*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:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	Exhibit C
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

ASSIGNMENT PARAMETERS

Intended User(s): Havird Jones, Office of the Attorney General

Intended Use: Assistance in proceedings by S.C.Attorney General

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: June 7, 2018

Interest Appraised [X] 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.) Existing structure on site does not contribute to value. It is assumed to be demolished, and that cost has been deducted from the land value estimate as vacant.

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.

Inspection of Subject:

Appraiser:
[ ] None [X] Interior [X] Exterior
[X] Date of Inspection 6/7/2018

Co-Appraiser:
[X] None [ ] Interior [ ] Exterior
[ ] Date of Inspection _____

Living Area Measured:
[X] Yes [ ] No
[ ] Other: _____

Data Sources Used:

[X] MLS
[X] Public Records
[X] Office Files
[X] Owner
[ ] Plans & Specifications
[ ] Purchase Agreement
[X] Other: Tax Map

Approaches to Value Developed:

Cost Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Sales Comparison Approach:
[X] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[ ] Is not applicable or necessary and omitted in this analysis

Income Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Additional Scope of Work Comments: NONE

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

Exhibit C

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

MARKET AREA ANALYSIS

Location	Built Up	Growth	Supply & Demand	Value Trend	Typical Marketing Time
[X] Urban	[ ] Under 25%	[ ] Rapid	[ ] Shortage	[X] Increasing	[ ] Under 3 Months
[ ] Suburban	[ ] 25-75%	[X] Stable	[X] In Balance	[ ] Stable	[ ] 3-6 Months
[ ] Rural	[X] Over 75%	[ ] Slow	[ ] Over Supply	[ ] Decreasing	[X] Over 6 Months

Neighborhood Single Family Profile

Price		Age
300,000	Low	100
3,000,000	High	250
750,000	Predominant	150

Neighborhood Land Use

1 Family	80.0%	Commercial	5.0%
Condo	5.0%	Vacant	%
Multifamily	10.0%	Other	%

Neighborhood Name: Harleston Village

PUD [ ] Condo [ ] HOA: $ N/A /

Amenities: None

Market area description and characteristics: Neighborhood stores 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: 56' x 170' x 55' x 170'

Area: 9,435 Square Feet (per tax map)

View: Interior

Shape: Rectangular

Drainage: Appears Adequate

Utility: Good/Average

Site Similarity/Conformity To Neighborhood

Size:	View:
[ ] Smaller than Typical	[ ] Favorable
[X] Typical	[X] Typical
[ ] Larger than Typical	[ ] Less than Favorable

Zoning/Deed Restriction

Zoning: Residential DR-1F

[ ] Legal [ ] No Zoning

[ ] Legal, non-conforming

[X] Illegal

Covenants, Condition & Restrictions: [ ] Yes [X] No [ ] Unknown

Documents Reviewed [ ] Yes [X] No

Ground Rent: $ N/A /

Utilities

Electric	[X] Public	[ ] Other	
Gas	[X] Public	[ ] Other	
Water	[X] Public	[ ] Other	
Sewer	[X] Public	[ ] Other	

Off Site Improvements

Street	[X] Public	[ ] Private	
Alley	[ ] Public	[ ] Private	None
Sidewalk	[X] Public	[ ] Private	
Street Lights	[X] Public	[ ] 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 to poor condition and has not been occupied in more than 15 years. Mold and mildew appear present on the inside. There are vines climbing on the sides and roof of the building. The roof has several very large holes allowing rain freely. Schools are prohibited in residentially zoned districts (was legal, non-conforming, but that status has been lost). 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, now on ground level, 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 the value of the property.

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	Exhibit C
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

SITE VALUATION

Site Valuation Methodology

X **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	SALE NO. 1		SALE NO. 2		SALE NO. 3	
Address	34 Pitt Street Charleston	15 Smith Street 457-08-03-074		61 Gadsden Street 457-02-04-006		126 Beaufain Street 457-03-03-108	
Proximity to Subject		3 Blocks		8 Blocks		6 Blocks	
Sales Price	N/A	499,000		600,000		350,000	
Price / SF	N/A	47.01		40.51		67.31	
Data Source/ Verification	Inspection	Office Files		Office Files		Office Files	
Sale Date	6/18	12/13/15	+12.5%	8/4/14	+19%	6/8/15	+15%
Location	Harleston Village	Harleston Village		Harleston Village		Harleston Village	
Site Size	9,435 SF	10,614 SF		14,810 SF	+10%	5,200 SF	-25%
Site View	Interior	Interior (-)	+10%	Interior		Interior	
Site Improvements	Building/no value	Building/no value		None		None	
Corner	No	No		No		No	
Zoning	Residential	Residential		Residential		Residential	
Net Adjustment			+23		+29		-10
Indicated Value			$ 58.17/SF		$ 53.03/SF		$ 58.05/SF
Net Adjustment			%		%		%
Gross Adjustment			%		%		%

Site Valuation Comments: The subject site is located in the Old and Historic District of downtown Charleston where there are very few vacant lots; consequently, such sales are very infrequent. In order to recognize price increases occur in this market over the past three years, all sales have been adjusted by 5% per annum. The sales were adjusted for improving market conditions prior to making other adjustments. Sale 1 is across from a low income housing project. Sales 2 and 3 are larger and smaller than the subject site requiring positive and negative adjustments, respectively.

Site Valuation Reconciliation: Sales 1 and 3 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 $57.50 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. For an exact cost, I recommend a proposal from a demolition contractor be obtained.

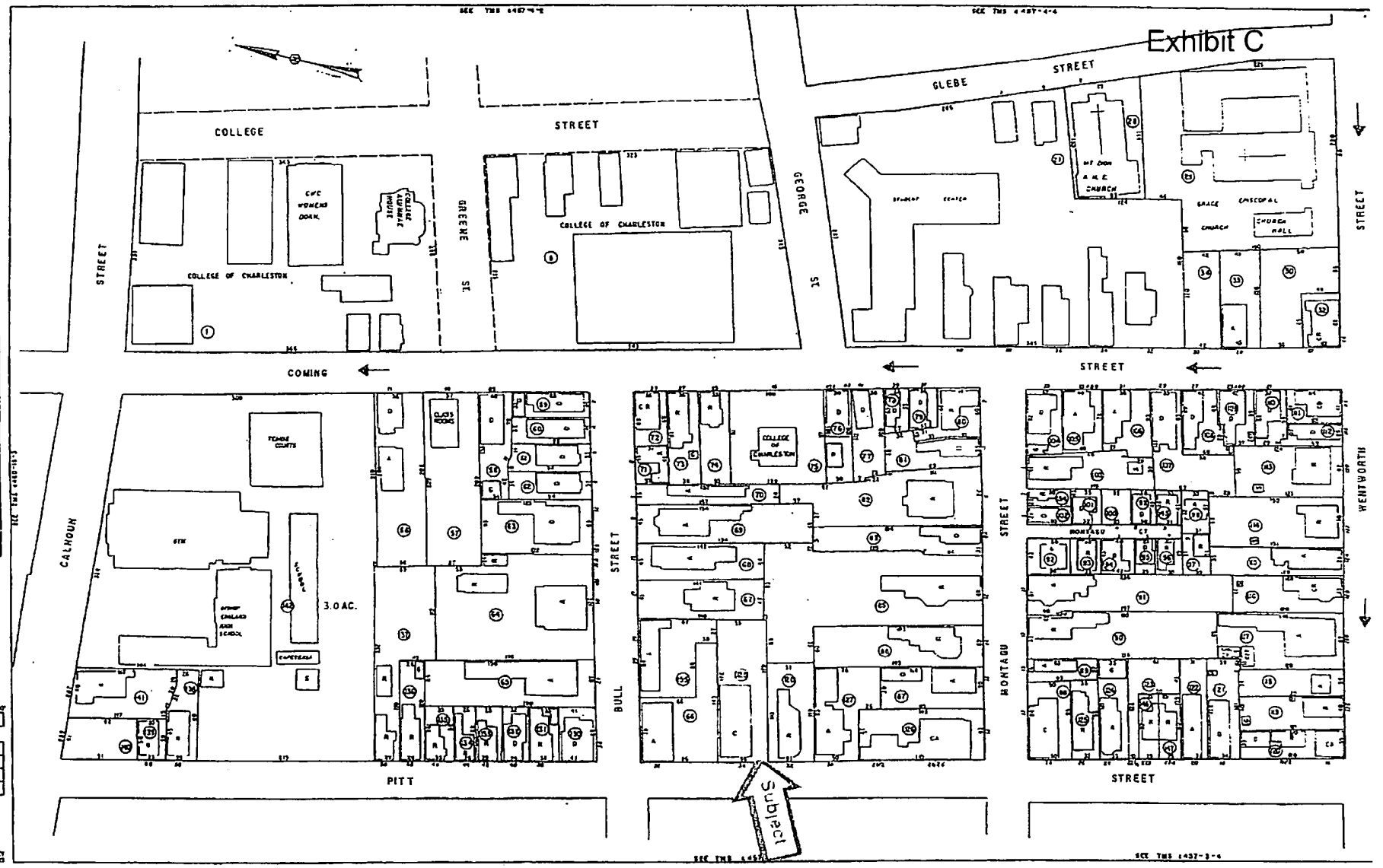
9,435 SF x $57.50/SF minus $20,000 Estimated Demolition Cost = $522,513

Opinion of Site Value	$ 522,500

America's Most Historic City
Sale 1
Sale 2
Sale 3
Subject
Historic
CHARLESTON

Exhibit C

Exhibit C



DATE COMPLETED: 9-20-71			
REVISIONS			
FIELD CHANGES	FIELD CHECK	OFFICE CHANGES	FINAL CHECK
12-31-74	1967		
12-31-75	12/22/76		
6-11-77	6-9-77		

APPROXIMATE SCALE IN FEET

0 50 100 150 200

THIS MAP COMPILED FROM DEED - PLAT RESEARCH AND FIELD RECONNAISSANCE.
ALL MEASUREMENTS ARE TO THE NEAREST FOOT.
BUILDINGS ARE NOT PLOTTED TO EXACT SCALE OR LOCATION.
DATE OF AERIAL PHOTOGRAPHY - FEBRUARY, 1967

THIS MAP PREPARED BY THE COUNTY ASSESSOR'S OFFICE. THE CHARLESTON COUNTY BOARD OF ASSESSMENT CONTROL RESERVES THE EXCLUSIVE RIGHT TO SELL THIS MAP. NO RESALE OR REPRODUCTION FOR RESALE PURPOSE IS PERMITTED.

TAX DISTRICT NO.	7-1
SCHOOL DISTRICT NO.	20
AREA:	CITY OF CHARLESTON
AERIAL PHOTO NO.	2-561, 562

TAX MAP NUMB

1"= 400' 1"= 100'

457 - 4 -

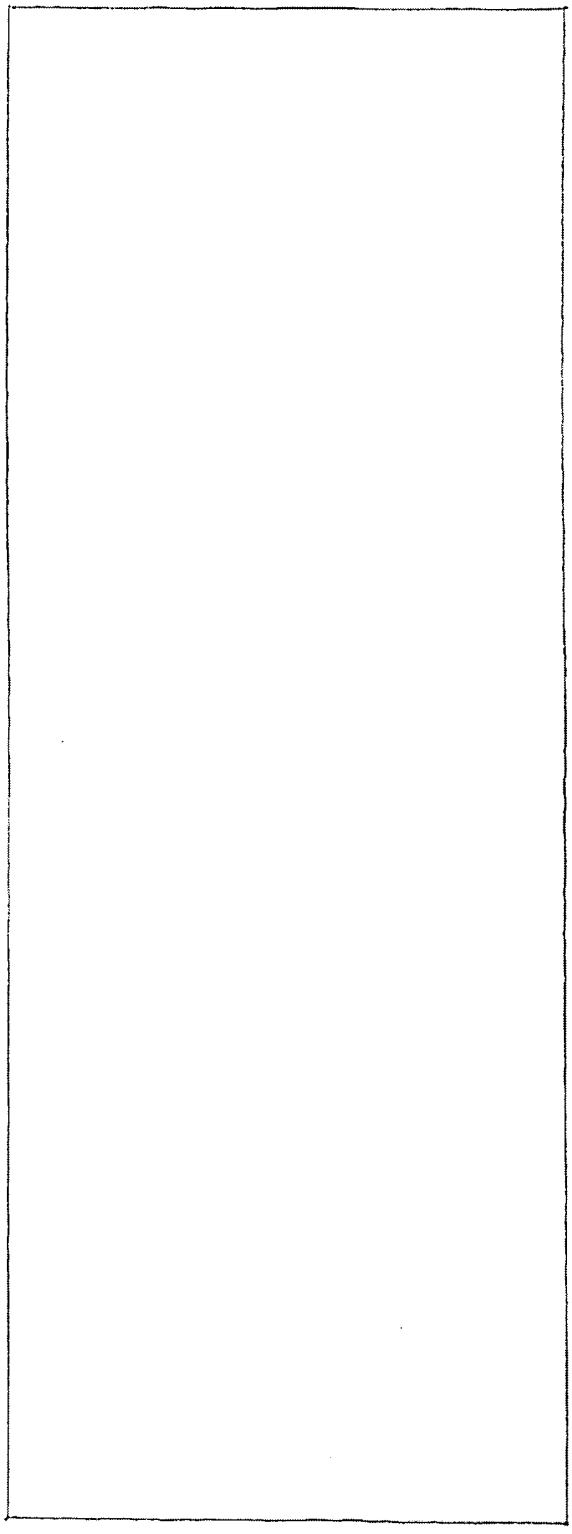
CHARLESTON COUNTY, S

File No. 15-061

Exhibit C

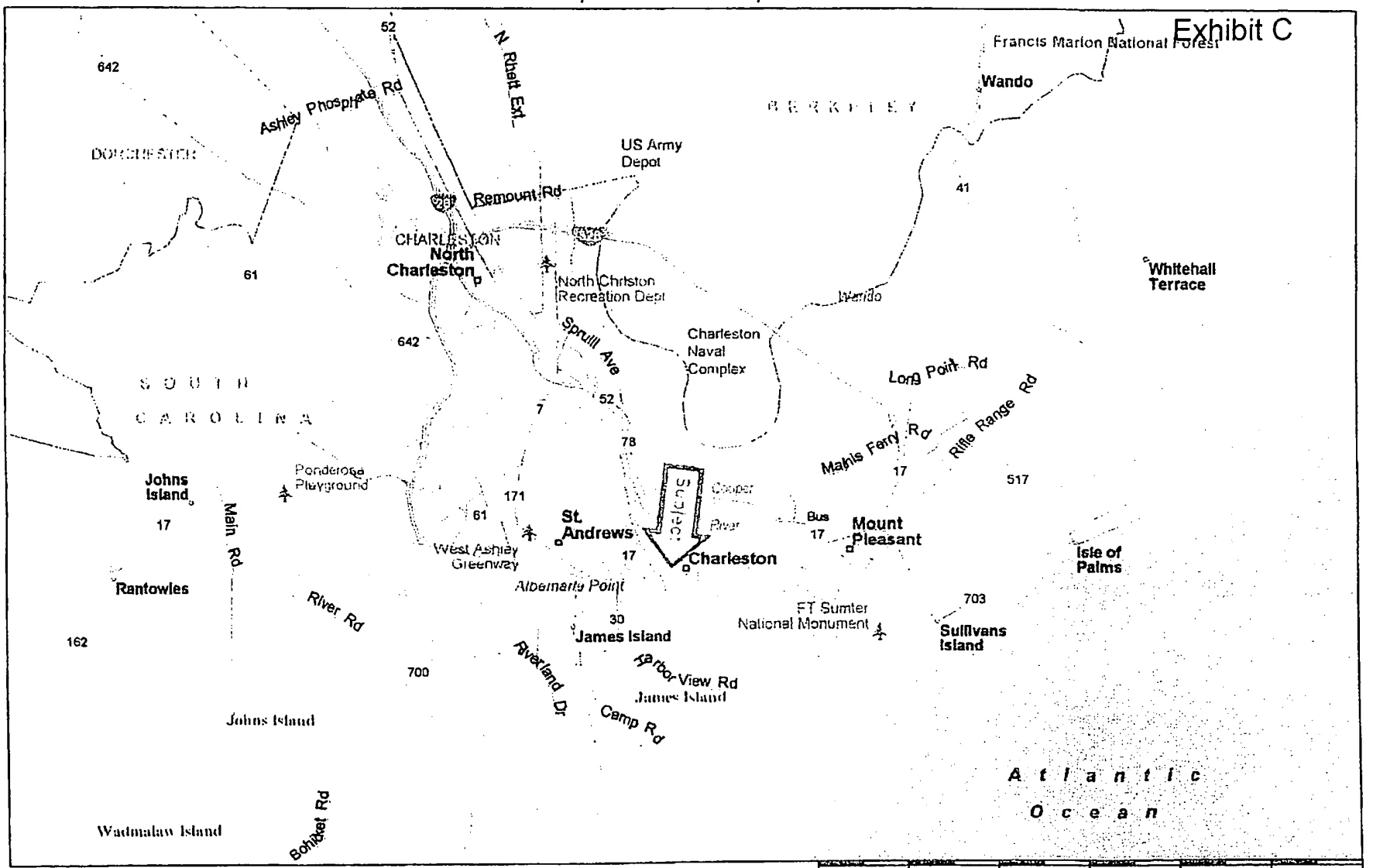
Borrower or Owner C. Havird Jones, Jr.
Property Address 34 Pitt Street
City Charleston County Charleston State SC Zip Code 29401
Lender or Client C. Havird Jones, Jr., Sr. Asst. Deputy Atty.

34 PITT STREET



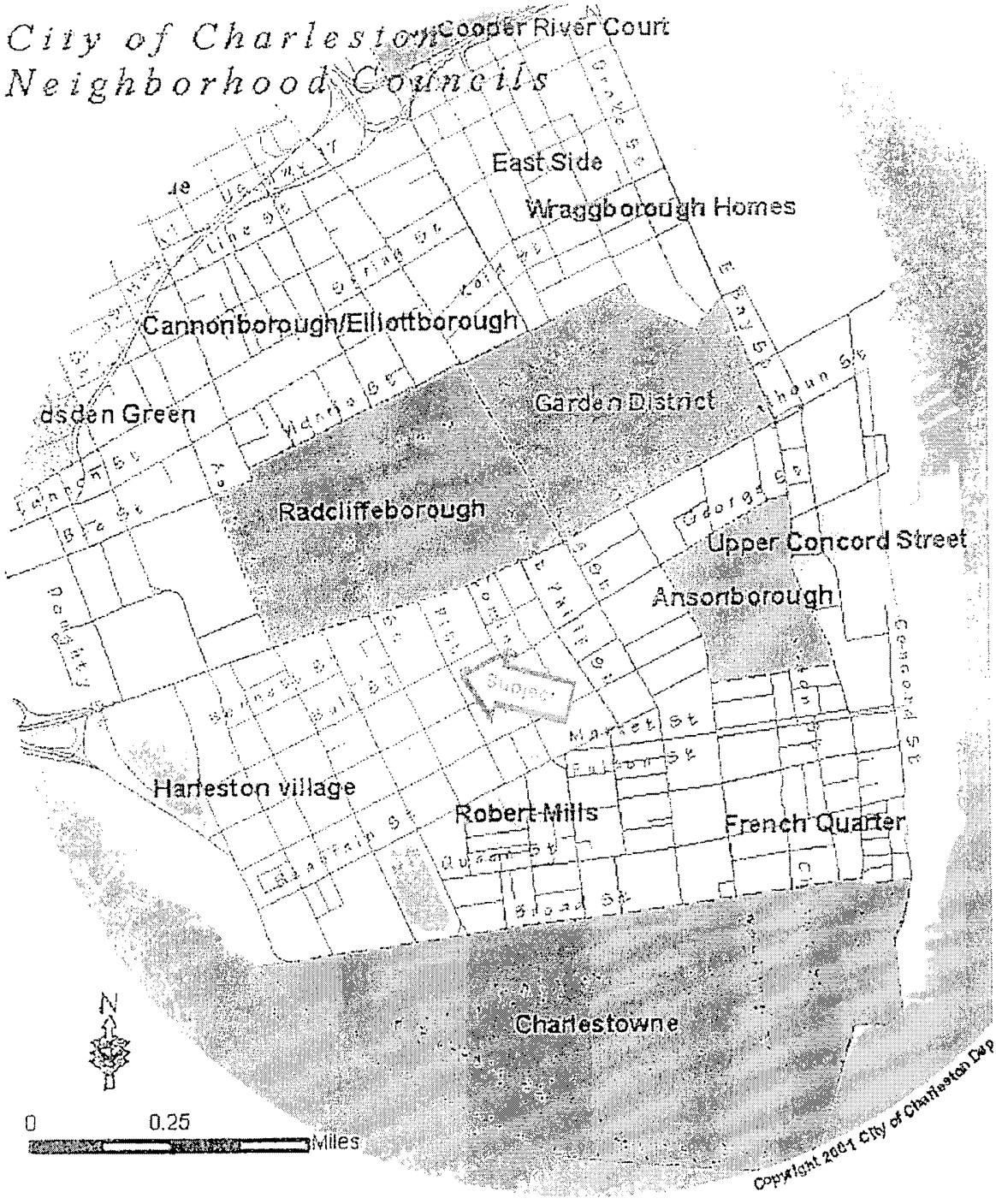
South Carolina, United States, North America

Exhibit C



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Exhibit C


City of Charleston
Neighborhood Councils
Cooper River Court
East Side
Wraggborough Homes
Cannonborough/Elliottborough
Garden District
Radcliffeborough
Upper Concord Street
Ansonborough
Harleston village
Robert Mills
French Quarter
Charlestowne
N
0
0.25
Miles
Copyright 2001 City of Charleston Dep

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 made a personal inspection of the property that is the subject of this report.

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, 2018 to December 31, 2019 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 even.

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 continuing education program for designated members of the Appraisal Institute and also the continuing education program of the South Carolina Real Estate Appraiser's Board.

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	Exhibit C
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 indented 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 14 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 form 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 create financing or sales concessions granted by anyone associated with the sale.

Source: *Appraisal Institute Dictionary of Real Estate Appraisal*

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	Exhibit C
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 [X] 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:		CO-APPRAISER:	
Signature	Michael C Robinson	Signature	
Name	Michael C. Robinson, MAI, SRA	Name	
Report Date	06/11/2018	Report Date	
or Certification #	CG-76	or Certification #	
ST	SC	ST	
or License #		or License #	
ST		ST	
Expiration Date	6/30/2018	Expiration Date	

Exhibit D

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.	)	
	)	

South Carolina Attorney General Alan Wilson's Answer to Complaint

Intervenor/Defendant Alan M. Wilson, Attorney General of the State of South Carolina ("The 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 speak for themselves. 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. 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. 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 speak 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 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 28, 29 and 30 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.

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.

Exhibit D

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 corporation and its beneficiaries and for such other relief that the Court deems appropriate.

ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

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

January 25, 2019

MICHAEL D. ROYAL

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June 3, 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
C/A No. 2018-CP-10-5739

Dear Ms. Armstrong:

Enclosed please find for filing the original and one copy of the Memorandum in Opposition to the Attorney General of South Carolina's Motion to Intervene and a Certificate of Service for same. Please file the original and return a clocked-in copy to the bearer of this correspondence.

All counsel of record are being served by copy of this letter and all enclosures.

Sincerely,

Michael D. Royal

Enclosures

cc: All Counsel of Record

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Michael D. Royal,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

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

Defendants.

_____

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:09 a.m. on June 4, 2019 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

Christine A. Smith, Court Reporter
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P.O. Box 30276
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P R O C E E D I N G S

THE COURT: This morning we have -- this matter is captioned Michael Royal as the Plaintiff. Mr. Royal is present?

MR. ROYAL: Yes, sir.

THE COURT: You're representing yourself, correct, Mr. Royal?

MR. ROYAL: Yes, sir.

THE COURT: Versus the Free Kindergarten Association of Charleston as the Defendant. Who is representing the Defendant in this?

MR. STRINGER: We are, Your Honor.

THE COURT: Mr. Stringer, glad to have you. It's Case No. 2018-CP-10-5739. This morning we have Motions to Intervene by the Attorney General's office and also by -- I believe it's the school district; is that correct?

MS. ARIAIL: Yes, sir.

THE COURT: And for the AG's office?

MS. MATTHEWS: Yes, sir. Ann Marie Matthews and Mary Francis Jowers.

THE COURT: Very good. Ms. Jowers. Ms. Ariail?

MS. ARIAIL: I'm Bright Ariail for the

Charleston County School District.

THE COURT: Very good. Let's start -- I think that the first motion was filed by the Attorney General's office?

MS. MATTHEWS: That's correct.

THE COURT: Ms. Matthews, go ahead and make your record.

MS. MATTHEWS: Judge, to give a little bit of background, this action involves the sale of all of the known assets of the Free Kindergarten Corporation, which is a nonprofit corporation formed for the charitable purpose of operating a free Kindergarten for students in the City the Charleston. It was founded in 1901. That was a time when Kindergarten was only available for wealthy people who could pay for it. It was formed by a group to provide free Kindergarten for the poor basically.

Its charter was amended in 1970 by a Board of Resolution to provide in the event of dissolution its residual assets would be turned over to the Charleston County School District No. 20.

For a time the Kindergarten received income from a trust. That income ended because the purpose of the trust was so small that it wasn't deemed efficient to be administered anymore based on the

cost, and that money went to another charitable beneficiary.

THE COURT: That was the Hanckel Trust?

MS. MATTHEWS: That was the Hanckel Trust. So the sole asset of the Free Kindergarten now is the real property that's at 34 Pitt Street. It's our understanding that the Kindergarten has not been operational since approximately 2005. Ms. June Marie Wells, Mr. Stringer's client who is 85, is the last remaining member, and has been the only member we believe since sometime in the 1970s.

On April 4, 2018, pursuant to South Carolina Code 333-112-02, Mr. Stringer, Ms. Wells' attorney, notified the AG's office of a proposed sale of the Pitt Street property and sent us a copy of a contract. The contract was dated April 23, 2013. It was between Mr. Royal and the Free Kindergarten. Ms. Wells executed the contract on behalf of the Free Kindergarten. The purchase price was $315,200 based on an appraisal from December of 2012.

So we received the contract and the appraisal in 2018. The closing date in Paragraph 7 provided that it was April 9, 2018, or on such prior date chosen by the seller upon reasonable notice to the purchaser.

It also stated in Paragraph 8 that if the seller chose a closing date after May 31st, 2013, then if by the closing the purchaser in his sole discretion determines that the 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.

These provisions, we at the AG's office thought were a little unusual because it seemed to give the buyer the opportunity to sort of exit the transaction just about at any time, but the seller didn't have that same opportunity.

We were also concerned about the age of the appraisal. We got notice in 2018 that the only evidence of value we have was from a 2012 appraisal. It was also our understanding that Ms. Wells was not represented by an attorney when she signed the contract. She has only recently come to see Mr. Stringer, and that's when he realized that notice needed to be provided to the AG's office.

Our office was concerned that the sale price was below fair market value. We asked several times for a current fair market value back in April of 2018 and nothing was provided. So ultimately our office went out and obtained our own appraisal and the value

of the property was $522,500 as of June of 2018.

THE COURT: That appraisal was obtained by the Attorney General's office?

MS. MATTHEWS: Yes, sir. We were not able to get evidence of the current fair market value from the parties. So we have concerns about the purchase price, and we have concerns about the bargaining power of the parties at the time the contract was signed and some of the contract provisions which are unusual.

Mr. Royal, according to his website, is a real estate developer with a law degree and an MBA from UVA and a master's in real estate finance from the University of Cambridge. Ms. Wells was probably 82 or 83 years old at the time and was not represented by an attorney.

We understood that a lawsuit might be filed in this action and that we asked to be named as a party in the event one was filed or at a minimum be provided with a copy of the pleadings.

Mr. Royal did file a lawsuit back in December of 2018 for specific performance and damages. We were not named by him, and we were not provided with a copy of the complaint by him, but Mr. Stringer did provide us with a copy of the pleadings and we were

advised that this action was going on. We filed a Motion to Intervene in a timely manner on January 28th, 2019.

All parties have consented to the AG's Motion to Intervene except for Mr. Royal, who opposes it. We did receive a memo in opposition from Mr. Royal by e-mail yesterday. It is very lengthy. It is approximately 125 pages. I think the gist of his argument is that the Attorney General has no statutory or common law authority in bringing this action because the case doesn't involve a public charity or a public trust.

The Free Kindergarten is a nonprofit corporation that was formed for the charitable purpose of providing a free Kindergarten education to children who couldn't afford to pay for it. The articles were amended in 2007 to provide that upon dissolution the assets would go to the school district.

Basically the real property at 34 Pitt Street is a charitable trust and assets were being held in trust for the benefit of the school district. Operating a free Kindergarten is a charitable purpose. It's sort of a classic example of a charity, so we believe that it does qualify as both a

property impressed with a charity. It does qualify as a charity.

To go back to our statutory authority, South Carolina Code 1-7-130 provides that the Attorney General shall enforce the due allocation of funds given or appropriated to public charities within the state to prevent breaches of trust in the administration thereof.

South Carolina Code 62-7-405 governs charitable trusts and provides that a charitable trust may be created for the advancement of education such as this, and the settler, trustee, or the AG may bring an action to enforce the trust. The Attorney General also has common law and parens patriae to protect the public interest, which in this case would be the school children from Charleston District 20 who would be the beneficiaries of the proceeds from the sale of the property.

South Carolina Code 33-31-1202 provides that a public benefit or religious corporation must give 20 days notice to the Attorney General before it sells, leases, exchanges, or otherwise disposes of substantially all of its property if the transaction is not in the usual and regular course of the activities, unless we've given them an earlier

waiver. That's how we were entitled to the notice. There are multiple statutes that provide authority that an Attorney General's involvement in this action have a right to review the transaction to make sure that the public beneficiaries are protected.

THE COURT: So you did get the notice under the statute, and that's what started the inquiry and that's where we are; is that correct?

MS. MATTHEWS: Yes, sir. We got notice in April of 2018. The contract was signed in 2012.

THE COURT: I've got you.

MS. MATTHEWS: And that is why we are where we are.

THE COURT: Okay.

MS. MATTHEWS: I cited the Court to a number of cases in support of the AG's authority. In the Epworth Children's Home case, the Attorney General is the proper party to protect the interests of the public at large in administering or enforcing charitable trusts. Charitable trusts are entitled to favor under the law in accordance to the language with charitable trusts if possible. In both wills and trusts the Court must try and actually draft their intent. I think the intent here is pretty clear, to benefit children in the City of Charleston.

I think that's very clear.

The Sisters of Charity case cited in my brief, which Mr. Royal also cites in his materials, involved the sale of the assets of Providence Hospital in Columbia. It was a sale outside of the normal course of business since it was a sale of all of the assets. The AG was involved in that case as a necessary party. We were provided with a Notice of Sale as required by 33-31-1202. We required Court approval in that case just because the controversy was so large.

The Court in that case stated, The AG is a party in this matter pursuant to his parens patriae capacity in accordance with 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.

Also, the South Carolina Department of Mental Health versus McMaster case, the South Carolina Supreme Court case from 2007, that involved property conveyed to hospital regents for the purpose of a mental hospital at Bull Street.

The Department of Mental Health held that property in a charitable trust. It had to petition

the Court when it wanted to sell the property. There the Supreme Court recognized that properties conveyed or held by a public charity are impressed with a charitable trust and a sale of the property subject to the charitable trust had to be approved by the Court, and the proceeds remained in trust for the care and treatment of the beneficiaries who are the mentally ill. The AG was the proper party to protect their interest.

THE COURT: Factually, is that pretty similar to what we've got here?

MS. MATTHEWS: It's very similar to what we have here, Judge. I think the Court knows, you don't need a will to create a trust, and in construing these older trust documents and older documents, you need to -- as the Court knows, a Court of Equity is particularly well suited to look at the language of the agreement to determine if the language -- evidence is that this is a public charity, and evidence is there's an intent to create a charitable trust.

The document is not captioned -- this is a charitable trust, but you need to look at the substance of the agreement and the intent of the parties, and I think this is very clearly a public

charity, and I think the property is clearly in trust -- impressed with a charitable trust.

THE COURT: Do we have any document other than the creation of the Free Kindergarten Association in 1901 or the amendment, I guess it was, in 1970, '71 signed by the trustees that sets forth what the operating -- principals of the Free Kindergarten Association?

MS. MATTHEWS: No, but --

THE COURT: All I've seen are those two documents.

MS. MATTHEWS: I think that's about all that there is. It was discussed in the Hanckel trust case which Mr. Royal has cited, I believe, in his -- it generally talks about that the purpose of it is to create a charitable -- a Kindergarten for poor children that's free to attend. There are no other documents that we are aware of that we have been able to locate.

THE COURT: Okay.

MS. MATTHEWS: Some other Charleston cases the Court may be familiar with is the Knights of Columbus case with the Knights of Columbus Hall on Calhoun Street. That involved -- it was a corporation formed to hold the building, the Knights of Columbus

building, and that was deemed to be impressed with a charitable trust. The Evangelical Liebring (phonetic) Charity Society versus MCNV (phonetic) case that you may be familiar with that involved the Laurel Hill Plantation and the Archdale properties.

In that case the Supreme Court talked about the fact that no general rule could be laid down as to what benefits constitute a public charity and each case has to be judged on its own facts. Then the Court of Equity takes us through its view of attempts to create a public trust and will go to great lengths to try to classify something as a charitable trust and uphold it.

And also the Porcher versus Caplin case, a trust to provide medical assistance for crippled children, was for a charitable purpose and was a charitable trust.

THE COURT: All of that was which to say that the Attorney General has at least standing to be in the case; is that right?

MS. MATTHEWS: We have three statutes we're relying on for our right to be in this case, and we believe we also have -- there's a lot of precedent, you know, common law authority, but the older cases don't cite me to a statute, but they talk about the

Attorney General's right to be in the case to protect the public interest. Also under his general parens patriae authority under the Constitution he has the right to protect the public interest.

So we believe we have a right to intervene. Some of the arguments Mr. Royal addresses in his document, I think get to the merits. I'm just trying to kind of keep this to the Motion to Intervene.

THE COURT: That's the only question before me today. Thank you, Ms. Matthews.

MS. MATTHEWS: Thank you.

THE COURT: Ms. Ariail, let me go ahead and hear from you, and then Mr. Royal, I'll ask you to respond.

MS. ARIAIL: Your Honor, Bright Ariail for Charleston County School District. I'll refer to them as the district. I'm here to ask that you allow them to intervene per Rule 24(a)(2), which essentially allows intervention when four specific elements are met. Those are that the request for intervention is made in a timely manner, which here we filed our Motion for Intervention just after two months after the original Complaint was filed.

The second requirement is that we have an interest relating to the real property, which

obviously we do through the charter that was issued in 1971 related to the property at Pitt Street.

The third element -- and I'll discuss these more thoroughly, but the third element is that the disposition of this action without our intervention may impair or impede our ability to protect our interests.

Finally, if there's not another party in this case, and this is what I think is the important issue today -- is that there's not another party here that can properly protect the Charleston County School District's interest here.

One comment I wanted to make about the facts that the AG office presented today, they referred to Ms. Wells as a member of Free Kindergarten. My understanding is that Ms. Wells was actually a teacher, and she taught for the Kindergarten from, I believe, sometime in the 1950s all the way through 2005 when it ceased to operate.

In the early 1970s the last known board member, according to my information passed away in the early '70s. There was never a formal board in place after that point. Also, Ms. Wells was never a formal board member to my knowledge. Intervention should be liberally granted. There are minimal

burdens that we have to reach here today. I've provided -- last week I filed an extensive brief on this matter. I'll touch on a few things.

Again, the timely factor, I believe that's an easy one. The interest relating to the real property, again that's directly from that charter from Free Kindergarten that was filed and approved by the Secretary of State in 1971.

The third element, of course -- if we're not allowed to intervene, it may impair our ability to protect our interests. The biggest concern is that the fair amount of market value is not appropriate. We appreciate and have no issue with the appraisal that was done by the AG's office a year ago, but per the school district's chart, it actually has a responsibility at the time of sale of a property that's -- it's in its interest to perform an appraisal at that point in time.

So I don't know that the AG's office is prepared to perform another appraisal, and that's something that we would be required to do to protect our interest. The element that I mentioned that I thought was most important here today is that none of the other parties in this case can adequately protect the Charleston County School District's interest. Of

course Mr. Royal is directly adverse to us.

Free Kindergarten has basically taken a neutral position. They want the Court to decide what's to be done with the property and how it's to be disposed of. The AG's office and the district are the most aligned, but the differences there are this: Again, we would need to do our own appraisal. The AG's office, as you've just heard, is here to protect the public district whereas as the Charleston County School District is more concerned with the financial -- its financial well-being as well as the well-being of the educational programs that it has. For information, District 20 is the peninsula. That follows under the purview of the Charleston County School District, which is why it's captioned as that.

The AG has no benefit from the economic -- they have no direct economic interest. They're just interested in making sure that charitable trusts are properly handled for the people of South Carolina.

Another critical difference is the AG's office has asserted just a general denial. The Charleston County School District has issued a counterclaim, cross claim, request for a DJ action. We've got affirmative defenses, so we have much greater legal issues than any of the other parties here.

Obviously this all goes to --

THE COURT: You-all's position would be you-all are the ultimate beneficiary. You have an interest in seeing what happens with the property, correct?

MS. ARIAIL: Absolutely.

THE COURT: Very good. I think that's good for now.

MS. ARIAIL: Thank you.

THE COURT: Mr. Royal, let me hear from you.

MR. ROYAL: Thank you, Your Honor.

THE COURT: And again, they only seek to intervene at this point in time, so it's really more of a procedural motion. I think some of your language went to the substance of it, but I'm happy to hear from you and you can make a record. Okay?

MR. ROYAL: Thank you very much, Your Honor.

THE COURT: Yes, sir.

MR. ROYAL: By way of preface, this is the first time I've ever personally been involved in a dispute. It's certainly the first time I've tried to represent myself. I was thinking this morning how grateful I am that we can meet in a nice air conditioned room in a peaceful way and talk about a dispute and rights, duties, and obligations. I would

like to just express how grateful I am to be living in this time and this place.

I am here, Your Honor, to --

THE COURT: Let me cut to the chase with you. Your memorandum I had a chance to review at some length yesterday. I looked into the research. I've done it. That's why I asked some of the questions I asked. It was clear and cogent, but I will tell you, it was not convincing to me. So what I need you to do is to convince me as to why they should not be allowed to intervene. It smacked to me right off the bat that clearly the Attorney General's office had a right to intervene. All right? There's a statutory scheme out there that says that if this is a public charity or trust that they would have the right to intervene for that basis.

MR. ROYAL: Yes, sir.

THE COURT: The school district -- I'm less sure about their matter of right, but I do think that they certainly have a permissive right to intervene, but Ms. Ariail argues under Section (a)(2) of Rule 24 that they would have a matter of right to intervene. Clearly her client would be the ultimate beneficiary.

MR. ROYAL: Okay. Your Honor, I would like to agree with almost everything that's been said this

morning. I understand this morning's hearing is about Motions to Intervene, not substance, although I think I should clear up some of the factual history that you just heard. If I may speak to the school district first? I think that's a simpler matter.

THE COURT: Sure.

MR. ROYAL: My motion in opposition was based on the fact that the wrong party is appearing in your courtroom today. The Charleston County School District is an entirely separate entity from the entity that was named in the resolution for 1970 by the association. The association we're speaking about, Charleston School District No. 20, that --

THE COURT: Which you are aware still exists, right?

MR. ROYAL: Still exists in a slightly different format, but my argument is it still exists. If it doesn't exactly exist the way that it did, what exists today in a constituent district is a successor in interest. I spoke with the vice chairperson of the Board of Trustees of Charleston District No. 20 yesterday, the constituent of Charleston District No. 20, and she told me that she had no information about this case, had not been informed about it and I believe that that is the rightful beneficiary of the

residual assets.

There may be some argument that you may hear that this is essentially the same thing, but Your Honor, I think you've actually heard cases in your history in 2008 in which these parties were in lawsuits against each other. So I believe that the constituent district would have standing and is the rightful beneficiary of the residual interests of the association and the party that appears today for Charleston County School District is incorrect, and therefore cannot represent that there are any interests at stake under Rule 24.

That is the argument of my Motion in Opposition to Charleston County School District.

THE COURT: I'm with you. Thank you. Let's then go to the Attorney General's office.

MR. ROYAL: As far as the Attorney General, again, I want to agree with almost everything that you've heard this morning from the Attorney General's office, but I want to nuance this a little bit. First of all, I want to stipulate, this absolutely -- the association was set up to be a charity. I will absolutely stipulate to that. There is no question that this is a charity.

I also want to stipulate that the fair market

value for the subject property at 34 Pitt Street today is substantially different from what it was in 2013. There's been a huge increase in values across Charleston and especially for this property. There is no argument from me against that.

The third thing that I would like to stipulate that you heard this morning is that the contract that is the subject of the controversy is extremely unusual. It was not my intention to enter a contract like this, and this is where I would like to maybe fill you in on a little bit of factual information knowing that this is a procedural hearing.

Your Honor, I found this property when I was seeking to move back to Charleston in 2011 and 2012. Just cutting to the chase -- I want to save everybody time -- I went to great lengths to try to acquire this property when I noticed that it was no longer being actively used and it was in a lot of disrepair.

It took me quite a long time to find out who had title to the property because the record of title was incorrect and who controlled the property. When I finally found Ms. Wells I told her of my interest and made an offer and pursued this acquisition for months and months to the point where I felt like I probably should stop doing that and that I should

give up on the opportunity even though as soon as I saw the property I thought this would be the perfect place for me to live and work for the rest of my life. I really fell in love with it immediately.

Before I gave up, I changed the contract in such a way for a last-ditch effort because -- the concern for Ms. Wells is I don't want to be forced out of the property because of a closing deadline. I have a lot of things in here that belong to the school, that belong to the museum. I want to have plenty of flexibility about when I have to leave.

THE COURT: Does Ms. Wells reside in the property?

MR. ROYAL: No. No, sir. She lives in Folly Beach, but she's the only person who had a key to the property. She's the only person who controlled it. So in my last-ditch effort I said, Ms. Wells, I don't want to keep bugging you about this, but if you would be amenable I'm willing to put a provision in the contract or write the contract such that you can choose the closing date. You can't escalate the price over time, but I will make my offer to you at today's fair market value and you can choose whenever you would like to close for up to five years.

The provision that was mentioned earlier I

also agree with. If she chose not to close the contract within a reasonable period of time, 38 days from the effective date, I would have the option to terminate the contract. Now, that wasn't a free option. I would have to give up a $5,000 deposit. So if I was not in a financial position two years down the road and if she said, Okay, it's time to close and I didn't have the financing and the capability then I would give up $5,000 and the contract would be terminated.

So I want to partially stipulate that part, but nuance it a little bit. The third part of the fact that I want to correct -- the Charleston County School District has just said that Ms. Wells had no authority to assign a director. I've included in my exhibits, Your Honor, an article from what was in the News and Courier which states that she became a director in August of 1990. She's been associated with this organization for 61 years and I included, I don't know, maybe 20 or so exhibits that either show her signature with director on it or show in other ways that she was 100 percent authority over every aspect of this association going back at least until the mid-1990s.

She was the only person, actually according to

Judge Condon in his ruling in 2010 who had the capacity to act in any way on behalf of the organization. So that is dependent on Judge Condon, and I don't know of any facts that have changed her agency or relationship, vis-à-vis the association. I just want to make sure that that is -- I've gone over those facts.

Your Honor, as far as the AG's Motion to Intervene, I believe Your Honor, that under every source of legal authority that has been cited in the AG's motion in memorandum does not apply in this case, and if you'll allow I just want to go through each source of legal authority and tell you why it does not apply. The first --

THE COURT: Well, I read your brief. I've had a chance to do that, so we don't necessarily need to do that. Tell me why it's not -- it seems to me that you acknowledge that it is a public charity at this point in time. Why would the AG's office not have the right to intervene if it's a public charity?

MR. ROYAL: Your Honor, if I may, I think there's a difference between a charity as such and a public charity: A public charity being an organization that receives its funding from the public at large, from many organizations.

THE COURT: Well, what about the beneficiary?

MR. ROYAL: Yes, Your Honor. I believe the beneficiary is an indeterminant beneficiary, and therefore this organization should be categorized as a charity. That is not the same thing, Your Honor, as a public charity. The statute that has been cited by the AG governs public charities, not charities as such. I think the parens patriae authority does have oversight over charities in general but does not -- the statute that is cited by the AG does not come into play. They must only rely on the common law authority from parens patriae and not the statute.

THE COURT: Okay. But you would acknowledge that that would be sufficient to allow them in.

MR. ROYAL: No, sir.

THE COURT: I didn't think so. Tell me why.

MR. ROYAL: Okay. Your Honor, I believe on my reading of cases, I don't pretend to be an expert. I can only talk about what I've read. The common law authority of parens patriae allows the AG to oversee a fiduciary of a charity, and to manage that fiduciary if need be.

I don't believe that it gives the AG the authorized to manage me or to discuss the enforceability of a valid contract. Your Honor, I

want to say this, not too strongly because I'm not 100 percent certain, but that's my reading of the case law.

Your Honor, I also want to say, I couldn't find any case law in South Carolina referring to parens patriae authority of the AG in cases that were not about public charities and charitable trusts, neither of which are related to this case. This is a charity that is neither of those -- maybe considered a private charity or private foundation -- but it wouldn't be within the scope of any of the statutes that are cited by the AG.

So I think you have to look more deeply into the doctrine itself and how that may apply in this situation. My opinion is that while the AG can't rely on statutes, it can rely on the doctrine itself to the extent that there is some analogy in cases, in the case law, but I believe that that would point the Court towards applying this doctrine to the AG's power to oversee the manager of a charity.

I believe that the AG is overstepping its bounds in this case in effectively bringing the suit against me. The AG does not have the authority to sue me. I'm outside the scope of its supervisory capacity, but what it has done is it's ordered an

association that is within its purview to breach of contract and forced me to file an action for specific performance. Effectively what it's done is sued me.

THE COURT: All right. I don't agree with that. What I'm going to do, I'm going to grant the Attorney General's motion under Rule 24(a)(1), and I find that there is, in fact, statutory authority for their right to intervene. That's under Sections 1-7-130 and 62-7-405 of the South Carolina Code. Further, as to the common law of the parens patriae doctrine, I find there's authority for that, and I grant them that right, intervention as a matter of right.

MS. MATTHEWS: Thank you, Judge.

THE COURT: Ms. Ariail, as to the school district, Mr. Royal brings up an interesting dilemma, and that is the distinction between the Charleston County School District and Charleston County School District No. 20. I think they still exist as an entity; do they not?

MS. ARIAIL: Yes, sir.

THE COURT: All right. So what I'm going to do, I'm going to grant you the right to intervene. I'm going to do that under permissive language as opposed to a matter of right, 24(b), Rule 24(b), but

I think that we're going to need to look further into -- if in fact, School District No. 20 is unfamiliar with this litigation, they need to be noticed. I don't know if they have counsel or what they do. I'm not sure how that works, but he's correct. We've had some previous litigation here between School District 20 and the school board. It clearly indicates that the beneficiary is School District No. 20, but I think that that -- I need to get that figured out.

I'm going to ask you to speak with whomever is legal counsel for School District 20. If that's yourself then I guess you'll have to speak to yourself and get that clear before me. I think that absolutely needs to be covered. I do find that being a beneficiary gives you certain rights to participate in the litigation. I have to figure out who the proper party is.

MS. ARIAIL: All right, Your Honor.

THE COURT: It seems to me that the issue that you've raised in the Court is the status and/or ability of Ms. Wells to enter into this contract. That's the issue I hear you raising. I just need to make sure that we get that covered.

When we get to the substance of the matter,

we're going to be talking about that. Okay? Due to her age, you-all might want to take her deposition sometime soon now that I've let you-all into the case. All right?

So for now I'm just going to issue that -- Ms. Jowers, could I get from the Attorney General's office maybe a more thorough ruling? I'm going to do a Form 4 that just says what I just indicated, but I'm going to ask that you-all put some authority together with some statutory and case law together. Send that by Mr. Royal so he gets a chance to review it.

Mr. Royal, you may or may not agree with it, but I'm going to ask them to prepare an order that says exactly what we've talked about here today supporting the authority.

MS. MATTHEWS: Judge, when do you want that by?

THE COURT: How about in the next 15 or 20 days? Can you-all do that in that timeframe?

MS. MATTHEWS: Yes, sir.

THE COURT: Okay.

MR. ROYAL: Your Honor?

THE COURT: Just one second. How about -- the 21st is a Friday or something. Can you-all get it in

here by then?

MS. MATTHEWS: Yes, sir.

THE COURT: By the end of the day on the 21st. Certainly -- make sure you-all have e-mails and you-all can communicate by e-mail. You-all are going to need to communicate with each other.

Mr. Stringer, you're still in the case. Maybe not so actively, but you're --

MR. STRINGER: Very inactively. My lady lives on Social Security, so my job is not to spend lots of money that is not there.

THE COURT: Very good. But you can make her available for a deposition I'm sure?

MR. STRINGER: Oh, absolutely.

THE COURT: I think you-all need to probably go ahead and get that done sooner than later. Okay? Mr. Royal, yes, sir. You had a question?

MR. ROYAL: Sorry, sir. I just wanted to point out one thing. It was mentioned earlier that Ms. Wells was not represented at the time this contract was entered into, and I can understand why that would be a sensitive matter in this case. I just wanted to assure you that at the time I pleaded with her to seek legal counsel before entering the contract. I also put a provision in the contract

that I would reimburse her for up to $1,000 in legal expenses.

I just wanted to make sure that -- that was something that was on my mind very much at the time. She at the time refused to take that advice. That's all I had to say.

THE COURT: Thank you, Mr. Royal.

So I'm sure we'll gather again at some point in time in the future. Okay? Good to see you-all. Thank you-all for briefing that. That made my job a whole lot easier. I did a lot of reading.

(The proceedings were concluded at 10:48 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 4th day of December, 2019 at Charleston, Charleston County, South Carolina.

_____
Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

ELECTRONICALLY FILED - 2021 Jan 29 10:00 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2018-CP-10-5739
Michael D. Royal,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Defendant Free Kindergarten Association of Charleston Notice of Motion and Motion to Appoint Receiver**
	)	
Free Kindergarten Association Of Charleston, the Attorney General of the State of South Carolina and the Charleston County School District,	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant Free Kindergarten Association of Charleston ("FKAC"), by and through its attorney, will move before the Charleston County Master in Equity, pursuant to Rule 7(B) of the S.C. Rules of Civil Procedure and Section 33-31-1432 of the Code of Laws of South Carolina (1976), to appoint William Wade Wells as Receiver to continue the within litigation in behalf of the FKAC and wind up and liquidate and manage the affairs of the corporation throughout this litigation and subsequent dissolution. The Motion is to Appoint William Wade Wells as Receiver with all the powers as noted in Section 33-31-1432 of the Code of Laws of South Carolina (1976).

This Motion is based on the fact that the sole surviving member/director of the FKAC, June Murray Wells, died on November 29, 2020. Her sole heir, William Wade Wells, was appointed as Personal Representative of Mrs. Wells' estate on January 25, 2021. Mr. Wells has been involved in the FKAC for many years, assisting his mother in

doing day-to-day operations and maintenance of the sole asset, to wit: 34 Pitt Street, Charleston, Charleston County, South Carolina, 29401. This Motion is based on pleadings together with all papers, records, affidavits, and evidence filed in this case, oral arguments, applicable statutory law, case law, rules of court and any memorandums, law that may be provided prior to or at the hearing of this Motion.

For the foregoing reasons, FKAC respectfully requests that this Court grant FKAC's Motion to Appoint William Wade Wells as Receiver for FKAC with power to continue this litigation and subsequent dissolution.

Respectfully submitted,

_s/Patrick F. Stringer_____
Patrick F. Stringer, Esq.
S.C. Bar #5396
753 Folly Road (PO Box 12370)
Charleston, S.C. 29412 (29422-2370)
(843) 795-1331
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Attorney for Defendant FKAC

Charleston, S.C.
_Jan. 29____, 2021.

ELECTRONICALLY FILED - 2021 Jan 29 10:00 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-5739
Michael D. Royal, Plaintiff, vs. Free Kindergarten Ass'n of Charleston, Defendant. and The Attorney General of the State of South Carolina and the Charleston County School Board, Intervenors.	)	**NOTICE OF MOTION AND MOTION TO INTERVENE OF CHARLESTON CHAPTER NO. 4, UDC and the CONFEDERATE MUSEUM**

TO: MICHAEL D. ROYAL, PRO SE PLAINTIFF; PATRICK F. STRINGER, ESQ., ATTORNEY FOR FREE KINDERGARTEN ASSOCIATION OF CHARLESTON; JOSEPH K. QUALEY, ESQ., RECEIVER FOR THE FREE KINDERGARTEN ASSOCIATION OF CHARLESTON; MARY F. JOWERS, ESQ., ASSISTANT DEPUTY ATTORNEY GENERAL; and A. BRIGHT ARIAL, ESQ., ATTORNEY FOR INTERVENOR CHARLESTON COUNTY SCHOOL DISTRICT:

PLEASE TAKE NOTICE that the proposed Intervenors, Charleston Chapter No. 4, United Daughters of the Confederacy and the Confederate Museum ("Intervenors"), by and through its undersigned counsel and pursuant to Rules 25(a) and 19 of the South Carolina Rules of Civil Procedure, will appear before the Judge Mikell R. Scarborough, Charleston County Master in Equity, Courtroom 2A, Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, ten days hence, or at such other time, date and place as counsel may be heard for an Order granting Intervenors the right to intervene in this action for the purpose of assertion of one (1) cause of action against the successors-in-interest of the Defendant Free Kindergarten

Association of Charleston for claim and delivery pursuant to S.C. Code Ann. § 15-69-10 et seq.

This motion is based on the facts that:

1. The Intervenors are: (1) a chapter established in 1894 of the United Daughters of the Confederacy, which is a historical, benevolent, educational, memorial and patriotic organization incorporated under the laws of the District of Columbia in 1919; and (2) its museum, established in 1898, located at Market Hall, 188 Meeting Street, Charleston, SC 29401.

2. As demonstrated in the attached Affidavit of Ms. Jill Hunter Powell (a member of the chapter and the current executive director of the Museum), the late Ms. June M. Wells ("Wells") was a member of the chapter and the former executive director of the Museum.

3. In the aftermath of Hurricane Hugo in 1989, Market Hall was severely damaged and City of Charleston required the Intervenors to immediately vacate the building. It is the understanding of the Intervenors, that Ms. Wells was also a member of the Board of the Free Kindergarten Association of Charleston, and that its building at 34 Pitt Street ("Property") was available to host the collection.

4. Consequently, the entire contents of the Museum was moved to the Property under Ms. Wells' supervision in 1989. Ms. Wells even operated the Museum from the Property location.

5. In 2002, the Museum returned to Market Hall, but for some reason Ms. Wells did not return all of the Intervenors' property. She remained the executive director of the Museum until the age of 83 in 2017, and then passed away in November 2020 at the age of 85.

6. Towards the end of her life, Ms. Wells had trouble remembering things and was also extremely reticent about the collection and property of the Museum. At the time of her death, a number of items belonging to the Intervenors remain unaccounted for.

7. The Court-Appointed Receiver, Joseph K. Qualey, Esquire, pursuant to the Court's

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

direction in March 2021, removed boxes of the papers, records, books and other materials from the Property, which were decaying or in some cases water-damaged from exposure. He invited representatives of the Intervenors to his office, and the Intervenors inspected the materials salvaged by Mr. Qualey and his associate, Mr. Zach Smith, Esquire. The Intervenors wish to express their gratitude and appreciation to Messrs. Qualey and Smith for preserving these materials and dedicating their conference room to house them.

8. It is the belief of Ms. Jill Hunter Powell, the executive director of the Museum, that all of the papers, records, books and other materials removed by, and in the possession of, the Receiver Mr. Qualey are the property of the Intervenors. Consequently, the Intervenors would seek claim and delivery of the same from the successors-in-interest of the Free Kindergarten Association of Charleston.

9. The Intervenors have an interest relating to the property which is the subject of this action and is so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect that interest; moreover, the proposed Intervenor's interest is not adequately represented by the Defendant and/or the State of South Carolina and the Charleston County School District. *See*, Rule 25(a), SCRCP.

10. Additionally, the joinder of the Intervenors will not deprive the Court of jurisdiction over the subject matter of the action if it is joined, and it claims an interest relating to the subject matter of the action and is so situated that the disposition of the action in its absence may as a practical matter impair or impede its ability to protect that interest. *See*, Rule 19(a)(1)(i), SCRCP.

This motion is based on such memorandum of law, affidavits and other documents as may be submitted. Pursuant to Rule 11, SCRP, communication with opposing counsel either could not be had prior to filing of this motion and/or would serve no useful purpose.

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Respectfully submitted.

VARNADO LAW FIRM, LLC

/s Robert B. Varnado

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Attorney for the Defendant

June 17, 2021
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-5739
Michael D. Royal, Plaintiff, vs. Free Kindergarten Ass'n of Charleston, Defendant. and The Attorney General of the State of South Carolina and the Charleston County School Board, Intervenors.	)	**AFFIDAVIT OF JILL HUNTER POWELL**

PERSONALLY APPEARED BEFORE me, Jill Hunter Powell, who first being duly sworn, deposes and says as follows:

1. I am a citizen and resident of Charleston County, South Carolina; I am over the age of eighteen (18) years; and I am competent to make this affidavit.

2. I am a member of the Charleston Chapter No. 4, United Daughters of the Confederacy ("UDC Chapter"), which is a historical, benevolent, educational, memorial and patriotic organization incorporated under the laws of the District of Columbia in 1919.

3. I also currently serve as the Executive Director of the Confederate Museum d/b/a as the Museum at Market Hall ("Museum"), located at Market Hall, 188 Meeting Street, Charleston, SC 29401. The Museum is owned and operated by the UDC Chapter.

4. I knew the late Ms. June M. Wells, who was a member of the UDC Chapter and the former executive director of the Museum. She passed away in 2020 at the age of 85. Prior to that,

she served as the longtime executive director of the Museum until 2017, when she retired at the age of 83.

5. In the aftermath of Hurricane Hugo in 1989, Market Hall was severely damaged and City of Charleston required the Museum to immediately vacate the building. It is our understanding, that Ms. Wells was also a member of the Board of the Free Kindergarten Association of Charleston, and that its building at 34 Pitt Street ("Property") was available to host the collection. Consequently, the entire contents of the Museum was moved to the Property under Ms. Wells' supervision in 1989. Ms. Wells even operated the Museum from the Property location. In 2002, the Museum returned to Market Hall, but for some reason Ms. Wells did not return all of the Intervenors' property.

6. Towards the end of her life, Ms. Wells had trouble remembering things and was also extremely reticent about the collection and property of the Museum. At the time of her death, a number of items belonging to the Museum remain unaccounted for.

7. The Court-Appointed Receiver, Joseph K. Qualey, Esquire, pursuant to the Court's direction in March 2021, removed boxes of the papers, records, books and other materials from the Property, which were decaying or in some cases water-damaged from exposure. He invited us to his office, and myself and the President of the Chapter, Victoria Causey, inspected the materials salvaged by Mr. Qualey and his associate, Mr. Zach Smith, Esquire. We wish to express our gratitude and appreciation to Messrs. Qualey and Smith for preserving these materials and dedicating their conference room to house them.

8. I have no doubt that all of the papers, records, books and other materials recovered by Mr. Qualey belong to the UDC Chapter and/or the Museum. Many of the documents bear index for the Museum; many bear inscriptions and/or dedications; many of the newspaper clippings are

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

from turn-of-the-last-century files the rest are clearly property of the UDC Chapter. The records of the Palmetto Guard (from both the Civil War and after the War) were given to the Chapter/Museum, although we will offer them back to the reformed Palmetto Guard.

9. Particularly important to the UDC Chapter and the Museum are the following:

- Minute Book # 3, Daughters of the Confederacy (1904-1919)
- Ladies Memorial Association – M.A. Snowden
- Scrapbook Vol 4 1957 – Charleston Chapter
- Scrapbook 1938 – Charleston Chapter
- Scrapbook 1950s – Robert E. Lee picture on front page
- Scrapbook with various colored letters on front
- Market Hall Records Ledger (first begins May 12, 1892)
- 1951 Scrapbook (Museum)
- Smythe original letters (brown envelope)
- Letter signed by Daniel D. Everette
- Kershaw's Brigade picture
- Piece of Flag from Morris Island
- Letter from Charles Dwight
- 1875 Market Hall Ledger Book
- 1899 Hagood's Brigade Picture
- Company Roll, Company I – 1st Reg't SC Artillery

10. These papers, records, books and other materials have not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or an attachment against the property of the UDC Chapter and/or the Museum. The actual value of the papers, records, books and other materials cannot be determined at this time.

FURTHER AFFIANT SAITH NOT.

(signature on following page)

Jill Hunter Powell

SWORN BEFORE ME this the 17th day of June, 2021

Notary Public for the State of South Carolina
Name: Robert B. Varnado
My commission expires 4/30/21



ELECTRONICALLY FILED - 2021 Jun 17 2:10 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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,)	**NOTICE OF MOTION AND MOTION TO MODIFY PLAINTIFF'S NOTICE OF RULE 30(B)(6), SCRCP, DEPOSITION OF DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT AND TO QUASH PORTIONS THEREOF AND MOTION FOR PROTECTIVE ORDER**
)	
vs.)	
)	
)	
Free Kindergarten Association of)	
)	
)	
Charleston, the Attorney General of the)	
State of South Carolina and the)	
Charleston County School District,)	
)	
Defendants.)	
)	

Pursuant to Rules 26(a), 26(b) and 26(c), SCRCP, the Defendant, Charleston County School District (the "District" or "CCSD"), by and through its undersigned counsel, hereby moves to modify, so as to quash portions of Plaintiff's Notice of the Rule 30(b)(6), SCRCP, Deposition of Defendant Charleston County School District; specifically portions of The Matters for Examination in Plaintiff's Notice of Rule 30(b)(6), SCRCP Deposition of Defendant Charleston County School District (the "Notice") (Exhibit A) and for a protective order related to the Notice as set forth below. Specifically, the District moves that the scope of deposition discovery be limited and that deposition inquiry/examination not be had upon certain matters contained in The Matters for Examination in the Notice. The specific matters that the District requests be quashed and the specific grounds to quash those portions include:

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

MATTERS FOR EXAMINATION

3(a), 3(b) and 3(d) – The relationships between a) CCSD and Charleston School District #20; b) CCSD and Constituent District #20; . . . and (d) Charleston School District #20 and Constituent District #20.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad, unlimited in scope and time and contains subject matter irrelevant to this case; (b) the subject matter as limited to the relationship of the referenced entities to the extent it is relevant with respect to the real estate that is the subject of this action has already been determined by and established as the law of the case by this Court (see Order Granting Motion of Charleston County School District to Intervene filed August 22, 2019) ("Master's Order"); and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

9 - The governance, structure, operations, and history of CCSD, Charleston School District #20, and Constituent District #20.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time and contains subject matter irrelevant to this case; (b) the subject matter as limited to the governance, structure, operations, and history of CCSD to the extent it is relevant with respect to the real estate that is the subject of this action has already been determined by and established as the law of the case by this Court (see Order Granting Motion of Charleston County School District to Intervene filed August 22, 2109) ("Master's Order"); and (c) the examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in this litigation).

12 – CCSD's intentions for the use or disposal of the Property.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; (b) the resolution forming the basis of CCSD's beneficial and/or equitable interest in the real estate that is the subject of this action under the operation of the applicable law established as the law of the case by this Court (see Order Granting Motion of Charleston County School District to Intervene filed August 22, 2019) expressly allows for CCSD's general use of the Property; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to its irrelevancy in this action, the needs of the case and the issues at stake in this litigation).

13 – CCSD's Decision-Making Process with respect to acquisition and/or development of real property.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time; (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties' claims or defenses in the case; (c) the resolution forming the basis of CCSD's beneficial and/or equitable interest in the real estate that is the subject of this action under the operation of the applicable law established as the law of the case by this Court (see Order Granting Motion of Charleston County School District to Intervene filed August 22, 2019) expressly allows for CCSD's general use of the Property; and (d) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

16 – CCSD's policies and enforcement procedures relating to retention, management, storage, and/or destruction of both paper and electronic documents or records.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time; (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

17 – CCSD's policies and enforcement procedures relating to portable electronic devices used by, belonging to, or available to any agent, official, representative or employee of CCSD, or any member of any Committee, Commission or Board of CCSD. "Portable electronic devices" includes but is not limited to: a) laptop computers; b) portable digital assistants (PDAs); cellular telephones, including smartphones; d) mini computers and/or tablets; e) external hard drives; f) CDs and DVDs, and g) USB, flash or thumb drives.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

18 – The methods and procedures utilized by CCSD to conduct searches, and perform production, of both paper and electronic documents or records.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

19 – CCSD's policies and enforcement procedures relating to the use of CCSD's or personal computers and data, including but not limited to: a) desktop computers located in any CCSD building or office; and b) laptop or other home-based computers used for purposes of business or communication relating to CCSD matters.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

21 – CCSD's email system and instant messaging systems.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

22 – CCSD's onsite and off-site servers.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter

and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

23- Any individuals or entities responsible for the search and production of paper and electronic documents or records on behalf of CCSD.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unlimited in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

24 - Identities of, and other relevant information relating to, all persons or entities who have or had access to and/or are responsible for CCSD's network administration, backup, archiving, or other system operations from 2016 through the present.

The grounds to quash this portion of the Matters for Examination are that: (a) the subject matter is overbroad and unreasonable and excessive in scope and time (b) the subject matter is not relevant to this case and/or not likely to lead to the discovery of admissible evidence insomuch as it does not relate to any matter at issue in any of the parties 'claims or defenses in the case; and (c) examination upon this subject matter will cause unreasonable and undue burden and expense to the District (due to the overbroad and unlimited nature of the subject matter and its irrelevancy to this action, the needs of the case and the issues at stake in the litigation).

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

For the foregoing reasons, Defendant Charleston County School District respectfully requests that this Court quash the following Matters for Examination in Plaintiff's Notice of Rule 30(b)(6), SCRCP Deposition of Defendant Charleston County School District and provide a protective order for the District related to these matters.

- 3(a), (b), and (d)
- 9
- 12
- 13
- 16
- 17
- 18
- 19
- 21
- 22
- 23
- 24

With the exception of the portions of the Matters of Examination listed and addressed herein, Charleston County School District will provide a representative to testify on the other Matters of Examination listed in Plaintiff's Notice of Rule 30(b)(60 per the Notice.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: s/A. Bright Ariail
A. Bright Ariail (SC BAR 69570)
125E Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Attorney for Charleston County School District

November 11, 2021
Charleston, SC 29412

Rule 11, SCRCP Certification:

Undersigned counsel certifies that she has not contacted counsel for Plaintiff concerning this Notice Of Motion and Motion to Quash Portions of Plaintiff's Notice of Rule 30(b)(6)m SCRCP, Deposition of Defendant Charleston County School District and Motion for Protective Order insomuch as consultation would serve no useful purpose.

By: s/A. Bright Ariail
A. Bright Ariail

November 11, 2021

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District, Defendants.	Civil Action No. 2018-CP-10-05739 **PLAINTIFF'S NOTICE OF RULE 30(b)(6), SCRCP, DEPOSITION OF DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT**

TO: DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT AND ITS ATTORNEY, A. BRIGHT ARIAIL, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff Michael D. Royal ("Plaintiff"), by and through his undersigned counsel, will take the deposition of the designated representative(s) of Defendant Charleston County School District ("CCSD"), on the matters identified below, at 9:30 a.m. Eastern Time on November 22, 2021 at CCSD's office located at 75 Calhoun Street, Charleston, South Carolina 29401, in the Edisto Conference Room.

The deposition will be recorded by stenographic, audio, and/or audiovisual/videotape means, and taken before an officer authorized by law to administer oaths. Said deposition shall continue from time to time and day to day until completed, including any adjournments thereof. The deposition is being taken for pre-trial discovery, for use at trial, and for all other purposes as may be permitted by law. Further, counsel for Plaintiff gives notice, pursuant to Rule 30(j)(8), SCRCP, that they may use any and all documents produced or made available in discovery by any party during this deposition, and hereby give notice of Plaintiff's intent to question CCSD's

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

designated deponent(s) regarding any and all documents produced or made available by any party during the course of discovery, as well as those obtained by subpoena or other records request.

CCSD is requested and required to designate and produce one or more officers, directors, managing agents, or other persons (the "Deponent(s)") who consent(s) to testify on CCSD's behalf and who can knowledgably testify about information known or reasonably available to the organization relating to the Matters for Examination set forth below. If more than one witness is designated, CCSD shall identify the specific matter(s) on which each designated Deponent will testify. To fully answer questions related to the Matters for Examination, each Deponent is instructed to bring with him or her any documents reviewed by the Deponent which have not previously been produced in discovery. Each Deponent is required to appear for said depositions at the time and place above stated.

This deposition will be conducted in-person, such that Plaintiff, CCSD, the Deponent, and the court reporter will attend in-person. However, means will be provided for other parties and/or their counsel to attend via remote video-teleconference in light of the COVID-19 pandemic. If anyone so attends remotely, counsel for Plaintiff will provide the videoconferencing link to all counsel of record at least twenty-four (24) hours prior to the deposition, and unmarked copies of the exhibits for this deposition will be emailed to counsel in advance of the deposition.

DEFINITIONS

Unless otherwise indicated, the following words and phrases are defined as follows:

1. The terms "CCSD," "you," and "your" shall mean and refer to Charleston County School District, a body corporate and politic established under the laws of the State of South Carolina, and any employee of CCSD, member of any Commission, Committee, or Board, of CCSD, and/or any person, individual, agent, or entity that formerly acted, or currently acts, for CCSD or on its behalf, individually and/or collectively.

2. "Constituent District #20" means and refers to that district of schools in downtown Charleston, South Carolina, as identified and described on CCSD's website at https://www.ccsdschools.com/Page/1210.

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

3. "Charleston School District #20" means and refers to the entity or organization identified on the amendment to FKAC's charter dated on or about February 5, 1971.

4. The term "AG" shall mean and refer to the Attorney General of the State of South Carolina and any attorney, individual, employee, agent, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

5. The term "FKAC" shall mean and refer to Free Kindergarten Association of Charleston, a nonprofit corporation organized and existing under the laws of the State of South Carolina, and any attorney, employee, agent, board member, member, person, individual, body, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

6. "June Wells" means and refers to the deceased June Murray Wells, a former resident and citizen of Charleston County, South Carolina, who passed away on or about November 29, 2020.

7. The terms "Plaintiff" and "Royal" shall mean and refer to Michael D. Royal, and any attorney, individual, employee, agent, or entity that acted or is currently acting for him or on his behalf, individually and/or collectively.

8. "Defendants" means and refers to FKAC, CCSD, and the AG, as each are defined herein.

9. The "Property" refers to that 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.

10. The "PSA" refers to that real estate purchase and sale agreement for the Property, entered into on or about April 23, 2013 between Plaintiff and FKAC, as amended or supplemented.

11. The term "Decision-Making Process" shall mean and refer collectively to the gathering of information, alternatives or options considered, documents and information weighed or considered, amount of time, meetings, interactions, criteria or factors, persons, boards, committees, commissions, other bodies, and other evaluations, information, actions, documents, or activities associated with, or involved in, a decision by CCSD to take an action with respect to the identified matter.

12. The terms "correspondence" and/or "communication(s)" mean and refer to any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, company intranet, social media message or post, electronic bulletin board or Internet site posting) and other understandings or conveyances sent or prepared to be sent by one person to another, however produced or reproduced, whether by "document" as herein defined or otherwise, which is made by you or others or which is distributed or circulated between or among persons, or data storage or processing units, including computer data storage and processing units, and any and all documents containing, consisting of, or relating or referring, in any way, either directly or

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

indirectly, to a communication. The terms "correspondence" and/or "communication(s)" specifically includes, but is not limited to, any exchange of information by any means of transmission, including, but not limited to, face-to-face conversations, mail, electronic mail, telegram, overnight delivery, carrier or courier service, telephone, facsimile or telex.

13. The term "social media" shall mean and refer to any platform, application, or website, including, but not limited to, Twitter, Facebook, Instagram, Tik Tok, YouTube, WhatsApp, Messenger, WeChat, Tumblr, Reddit, LinkedIn, or Snapchat, that enable users to electronically or digitally create, share, participate, view, and/or hear content, information, ideas and/or messages, in written, audio, video, or other form, and/or participate in social networking.

14. "Document" or "documents" shall mean and include, without limitation, the original, drafts, revisions and non-duplicative copies of any printed, typed, recorded, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in any form, whether or not claimed to be privileged, including, but not limited to, writings, drawings, graphs, charts, electronic data (including without limitation those inscribed by mechanical, facsimile, electronic, magnetic, digital or other means, computer programs, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code, peripheral drivers, PIF file, batch files, ASCII files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether the data consists in an active file, deleted file or file fragment), photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the requesting party through detection devices into reasonably usable form, memoranda, communications (as defined herein), e-mails, social media message or post, date files and fragments, notes, scraps of paper, diaries, calendars, reports, vouchers, invoices, journals, bills, orders, time slips or records, receipts, summaries, pamphlets, books, contracts, statistics, letters, telegrams, minutes, diaries, studies, returns, computations, logs, financial records or statements, checks, bank statements, medical records, X-rays, laboratory reports and/or orders, otherwise memorialized or communicated matter, whether typed, printed, photo-copied, filmed, micro-filmed, or recorded in any manner. The term "document(s)" includes each copy or reproduction which is not identical to the original or other produced copy.

15. The terms "related to," "relating to," and/or "relate(s) to" shall mean directly or indirectly supporting, pertaining to, arising from, linked to, regarding, discussing, concerning, referring to, evidencing, or in any way connected with or to the matter or issue discussed or requested.

16. "All facts" or "any facts" means each and every act, omission, incident, event, condition, or circumstance related to the requested matter or document, including relevant dates, omission, incident, event, condition, or circumstance related to the requested matter or document, the identification of persons who witnessed the act, omission, incident, event, condition or circumstance related to the requested document, and the identification of persons with knowledge of all facts or any acts related to the requested matter or document.

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

MATTERS FOR EXAMINATION

The matters on which examination is required are as follows:

1. Any fact, allegation, or cause of action alleged by Plaintiff in the Complaint, or defenses to Plaintiff's claims set forth or alleged by CCSD in its pleadings or filings in this case.

2. Any fact, allegation, claim, counterclaim, or cross-claim contained or set forth in any of the Defendants' pleadings or filings in this case.

3. The relationships between: a) CCSD and Charleston School District #20; b) CCSD and Constituent District #20; c) CCSD and FKAC; and d) Charleston School District #20 and Constituent District #20.

4. CCSD's interactions and communications with the AG relating to the Property, FKAC, and/or the PSA.

5. CCSD's interactions and communications with FKAC and/or June Wells relating to the Property, the PSA, and/or the AG.

6. CCSD's interactions and communications with Royal relating to the Property, the PSA, FKAC, June Wells, and/or the AG.

7. Carter Rowson's interactions and communications with CCSD relating to the Property, and/or CCSD's knowledge of Carter Rowson's interactions and communications with FKAC and/or June Wells relating to the Property.

8. CCSD's interactions and communications with Charleston Appraisal Service, Inc. relating to the Property.

9. The governance, structure, operations, and history of CCSD, Charleston School District #20, and Constituent District #20.

10. CCSD's claimed damages in this lawsuit, including the basis for its claim of entitlement to recovery of its attorneys' fees, as well as the current amount incurred and/or claimed as damages.

11. The factual basis for CCSD's claims to the Property and/or attempts to take title to or possession of any of FKAC's assets.

12. CCSD's intentions for the use or disposal of the Property.

13. CCSD's Decision-Making Process with respect to acquisition and/or development of real property.

14. Official or informal meetings of any two or more of CCSD's employees, personnel, agents, or board members, whether corporal or by electronic means, during which the Property,

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

the AG's involvement with any potential sale of the Property, Plaintiff, FKAC, or this case was discussed or mentioned.

15. CCSD's written discovery responses in this case.

16. CCSD's policies and enforcement procedures relating to retention, management, storage, and/or destruction of both paper and electronic documents or records.

17. CCSD's policies and enforcement procedures relating to portable electronic devices used by, belonging to, or available to any agent, official, representative or employee of CCSD, or any member of any Committee, Commission, or Board of CCSD. "Portable electronic devices" includes but is not limited to:

a. laptop computers

b. portable digital assistants (PDAs);

c. cellular telephones, including smartphones;

d. mini computers and/or tablets;

e. external hard drives;

f. CDs and DVDs; and

g. USB, flash, or thumb drives.

18. The methods and procedures utilized by CCSD to conduct searches, and perform production, of both paper and electronic documents or records.

19. CCSD's policies and enforcement procedures relating to use of CCSD's or personal computers and data, including but not limited to:

a. desktop computers located at any CCSD building or office; and

b. laptop or other home-based computers used for purposes of business or communication relating to CCSD matters.

20. Locations of electronic documents and records relevant to this litigation.

21. CCSD's e-mail systems and instant messaging systems.

22. CCSD's onsite and off-site servers.

23. Any individuals or entities responsible for the search and production of paper and electronic documents or records on behalf of CCSD.

24. Identities of, and other relevant information relating to, all persons or entities who have or had access to and/or are responsible for CCSD's network administration, backup, archiving, or other system operations from 2016 through the present.

You are invited to appear and to participate, as you deem proper and in accordance with Rule 30, SCRCP.

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ATTORNEYS FOR PLAINTIFF
MICHAEL D. ROYAL

November 3, 2021
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2021 Nov 11 7:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District, Defendants.	Civil Action No. 2018-CP-10-05739 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT'S MOTION TO LIMIT 30(b)(6) DEPOSITION**

INTRODUCTION

A case that began in an attempt to enforce a simple agreement to convey real property has exploded into a raging fire of abusive discovery tactics obfuscating the crux of the dispute. Defendant Charleston County School District ("CCSD") lit the fuse and continues to pour the gasoline, despite not being a party to the contract. While CCSD has filed countless motions to compel discovery and sanction Plaintiff, mercilessly demanding exacting compliance, its late-filed motion demonstrates its own refusal to adhere to the rules. The Court should deny CCSD's attempt to eliminate legitimate matters of examination, which are reasonable and appropriate under the relevant discovery standards.

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns an agreement entered into on April 23, 2013 between Plaintiff Michael D. Royal ("Royal") and Defendant Free Kindergarten Association of Charleston (the "Association") for Royal to purchase from the Association certain real property known as 34 Pitt Street, Charleston, South Carolina 29401 (the "Property"). The purchase price set forth in the PSA was based upon an appraisal of the Property dated December 19, 2012. To accommodate the

Association, the contract (the "PSA") granted the Association the flexibility to determine the transaction's closing date within a window of approximately five years. Despite Royal's continuous urging for a closing as soon as possible, the Association opted to close at the very end of the five-year period.

During its preparations to close on the transaction in 2018, the Association notified the Attorney General of the State of South Carolina (the "AG") of the sale pursuant to S.C. Code Ann. § 33-31-1202. Subsequently, the AG conducted an appraisal of the Property and instructed the Association not to close on the sale, objecting that the value of the Property in 2018 was greater than the 2013 value of the Property. Thereafter, the Association refused to close on the transaction in breach of the PSA, and Royal filed his Complaint against the Association on December 4, 2018. Subsequent motions to intervene by the AG and CCSD were granted in July of 2019.

After CCSD moved to dismiss the Complaint in August of 2021, alleging that Royal failed to conduct discovery, it has recently filed a flurry of histrionic motions seeking additional sanctions on old issues and objecting to Royal's attempts to conduct discovery in advance of the case's trial scheduled for December 15, 2021. The instant Motion concerns CCSD's apparent objections to Royal's Notice of Rule 30(b)(6), SCRCP, Deposition of CCSD. Royal's counsel first provided CCSD's counsel with a copy of said deposition notice on October 6, 2021, via email. *See* **Exhibit A** attached hereto, a copy of said email. Thereafter, the parties agreed upon a mutually convenient date for said deposition, and Royal formally noticed the Rule 30(b)(6), SCRCP, deposition of CCSD on November 3, 2021. *See* **Exhibit B** attached hereto (the "30(b)(6) Notice").

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Prior to filing the instant Motion on November 11, 2021, CCSD never objected in whole or in part to the deposition notice. Indeed, CCSD's counsel admits that she did not consult Plaintiff's counsel regarding the Motion prior to its filing. *See* Motion at 8.[1]

ARGUMENT AND CITATION OF AUTHORITY

CCSD's Motion fails for two main reasons – it waived any objections it may have had to the 30(b)(6) Notice, and the grounds it asserts lack any factual or legal support.

I. CCSD WAIVED ANY OBJECTIONS TO THE 30(B)(6) NOTICE.

As set forth above, CCSD received a copy of the draft 30(b)(6) Notice on October 6, 2021. On October 26, 2021, the parties agreed upon the location and date of said deposition. The matters for examination set forth in the 30(b)(6) Notice served upon CCSD on November 3, 2021 were unchanged from the draft notice previously provided. *Compare* Ex. A, *with* Ex. B. Over a month passed between the date of CCSD's receipt of the deposition notice and the date it filed the instant Motion. During that time, CCSD never objected to any part of or matter for examination included in the notice. Therefore, CCSD's request to quash and for protective order as to certain deposition topics is improper because the time for CCSD to raise such concerns has expired.

II. CCSD'S ALLEGED GROUNDS TO QUASH ARE WITHOUT MERIT.

In its Motion, CCSD largely asserted the same generic grounds to quash each of the separate matters for examination in the 30(b)(6) Notice which are the subject of the Motion. Therein, CCSD moved to quash and requested a protective order as to the matters for examination numbered 3(a), 3(b), 3(d), 9, 12, 13, 16, 17, 18, 19, 21, 22, 23, and 24 in the 30(b)(6) Notice. *See* Motion pp. 2-7. CCSD claims that these matters are overbroad in scope and time, irrelevant to the

[1] It is difficult to conceive the basis for CCSD's counsel's certification that such consultation would serve no useful purpose, particularly in the context of a discovery issue, and after ample time was given to CCSD to review and respond to proposed topics. *See id.*

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

subject matter of the case, and will cause undue burden and expense to CCSD due to the overbroad scope and irrelevancy of the topic.

Setting aside the non-specific form nature of the grounds, the larger issue for CCSD is that none of the grounds asserted has any validity – both in consideration of the facts of the case and the applicable Rules of Civil Procedure. The Motion makes no effort to show that the subject topics are noticed "in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party." Rule 30(d), SCRCP; *see also* Rule 26(c), SCRCP. In fact, the Motion contains no mention of the terms bad faith, annoyance, embarrassment, or oppression. This is likely because such assertions by CCSD would be patently false, particularly in light of the fact that Royal did not name CCSD as a party to this case – **CCSD is participating in this litigation on its own accord**, and has chosen to **aggressively** pursue a Counterclaim against Royal.

A. 30(b)(6) Notice Topics 3(a), 3(b), 3(d), and 9: The Relationships Between, and Governance, Structure, and History of CCSD and District #20.

Examination matters 3(a), 3(b), 3(d), and 9 were brought within the scope of relevance by CCSD itself – CCSD raised these relationships and its governance and structure as grounds to intervene in this action. While the Court ruled that CCSD was entitled to intervene in this matter based upon certain findings as to its relationship with Charleston School District #20 and/or Constituent District #20 (hereinafter, "District #20"), said findings within the Court's August 22, 2019 Order (the "Order") do not preclude Royal from conducting factual discovery which relates to the case.

Moreover, at the hearing on CCSD's Motion to Intervene, the Court specifically noted that there was "an interesting dilemma" raised by the "distinction between [CCSD] and [CCSD] No. 20." *See* Transcript of June 4, 2019 Hearing on the AG's and CCSD's Motions to Intervene, attached hereto as **Exhibit C**, at 29:16-19. The Court held that CCSD had a permissive right to

intervene under Rule 24(b), SCRCP, but expressly instructed CCSD's counsel to "look further into" the relationship between CCSD and District #20 because the Court had "to figure out who the proper party is." *Id.* at 29:22 – 30:18. Based upon CCSD's written discovery responses to date, it has not resolved this issue and it is ripe for discovery.

Additionally, key to consideration of these deposition topics are certain allegations made in CCSD's counterclaim as set forth below:

- CCSD asserts that it 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[.]" Answer, Counterclaim, Crossclaim and Request for Declaratory Judgment of CCSD, Prayer for Relief ¶ a.
- CCSD further asserts that Royal's PSA with the Association is null and void (*Id.* at b.), and that as a result of the PSA, CCSD's "legal, beneficial and/or equitable ownership of all assets of the Association . . . as well as the right to distribution of those residual assets upon the Association's dissolution have been jeopardized and subject to potential misapplication, loss, devaluation, and waste." *Id.* at ¶ 50.

In defending against CCSD's counterclaim, Royal is entitled to conduct discovery as to CCSD's allegations of devaluation and waste and its claim to ownership of the Association's assets. Exploration of these topics necessarily includes the underlying facts which CCSD relied upon in deciding to intervene, as well as the governance and structure of CCSD and District #20 as it relates to corporate actions, real estate transactions, and fiscal decisions. Additionally, even

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

assuming CCSD's assertion that it has certain control over District #20 to be true, discovery as to District #20's knowledge of this transaction or this litigation is certainly relevant. *See* Ex. C at 30.

CCSD previously admitted that District #20 still exists (*see id.* at 29:18-21), and as evidenced by a lawsuit brought by District #20 against CCSD decided by this Court in February of 2008, the two are separate entities. *See id.* at 22:2-12, 30:6-10. The Association's amendment to its charter clearly and specifically provides that upon dissolution its residual assets would be turned over to Charleston School District #20. *See id.* at 30:7-9; Order at 3 (¶ 6). This amendment was certified in 1971 – **after the enactment of Act 340** by the South Carolina General Assembly which consolidated the eight individual districts under the umbrella of the CCSD but allowed the individual districts to retain some autonomy.

The timing of the charter amendment and the express reference to District #20 evidences the Association's intent that the residual assets benefit District #20 to the exclusion of CCSD. Therefore, inquiries as to the history, operations, and structure of CCSD and District #20 are undoubtedly relevant to CCSD's pending claim for ownership and use of the Association's residual assets. Furthermore, given the equitable nature of some of the claims, it would be unfair to deprive Plaintiff of the right to learn more about this relationship, and unjust for the Court not to consider the strength and validity of CCSD's claimed entitlement in fashioning ultimate relief.

B. 30(b)(6) Notice Topics 12 and 13: CCSD's Intentions for Use or Disposal of the Property and Its Decision-Making Process as to Real Property Development and/or Acquisition.

Regardless of whether CCSD has authority over the assets and real property matters of District #20, Royal may still conduct discovery as to CCSD's real property policies and procedures and its potential uses of the Property. Contrary to CCSD's Motion (p. 3), the Order does not allow for CCSD's general use of the Property. Therein, the term "general use" is only found in the Order's quotes of the Association's 1971 charter amendment: "[i]n the event of dissolution, the

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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**." Order at 3 (¶ 6) (emphasis added).

It is unclear how these topics would fall outside the permissible scope of deposition subject matter. CCSD has expended a great deal of time and resources to intervene in and litigate this case, wherein it asserts a claim to the Association's assets, including the Property and structure thereon. Likewise, Royal is unable to discern how these topics pose an undue burden and expense upon CCSD. It is difficult to fathom that CCSD did not deliberate as to the decision to pursue the Property, and its intended use for the same in the event it succeeded. Moreover, as a body politic and corporate of the State of South Carolina, information relating to CCSD's assets, including real property, is a matter of public record subject to production in response to a request made under the Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.*

C. 30(b)(6) Notice Topics 16-19 and 21-24: CCSD's Records Retention and Production Policies.

CCSD copied and pasted the same boilerplate grounds for moving to quash each of these topics. *See* Motion pp. 3-6. These topics are relevant and well within the scope of permissible discovery – they relate to CCSD's abilities and methods used to respond to discovery requests. Furthermore, because CCSD has produced a very limited number of documents in this litigation and its privilege log is largely deficient (as set forth is Royal's November 17, 2021 Motion to Compel), these topics carry even more weight in and relevance to this litigation.

CONCLUSION

For the grounds and reasons contained in this memorandum, Royal respectfully requests that this Court deny CCSD's Motion to Modify, to Quash, and for Protective Order. Should the Court find merit in CCSD's Motion, Royal would request leave to modify the 30(b)(6) Notice to

conform with the Court's findings, such that the topics at issue in CCSD's Motion, as modified, may still be the subject of deposition testimony. Pursuant to Rule 37(b)(4), SCRCP, Royal respectfully requests that this Court award him his expenses, including attorneys' fees, incurred in opposing CCSD's Motion.

s/Evan P. Williams
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COUNSEL FOR PLAINTIFF
MICHAEL D. ROYAL

November 18, 2021
Mt. Pleasant, South Carolina

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Exhibit A

October 6, 2021 Email to CCSD's Counsel Enclosing Plaintiff's Proposed Notice of Rule 30(b)(6), SCRCP, Deposition of CCSD

Plaintiff's Memorandum in Opposition to Defendant Charleston County School District's Motion to Limit 30(b)(6) Deposition

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

From: Evan Williams
Sent: Wednesday, October 6, 2021 3:54 PM
To: bright@brightariaillaw.com
Cc: Jeff Tibbals; Mary Frances Jowers (mfjowers@scag.gov); Kristin Simons (ksimons@scag.gov); Patrick F. Stringer (pfstringer@yahoo.com); Robert B. Varnado (rvarnado@brown-varnado.com); Karen Hucks (khucks@bybeetibbals.com)
Subject: Royal v. Free Kindergarten Association of Charleston, et al.
Attachments: Royal Draft Notice Rule 30(b)(6) Depo of CCSD.pdf

Bright,

Attached is Plaintiff's draft notice of Rule 30(b)(6) Deposition of CCSD. If you could provide the availability of the witness(es) to testify on these topics that would be greatly appreciated.

Rick, Mary Frances, Kristin, and Rob, once we get CCSD's available dates we will work on finding a mutually convenient time (assuming everyone wants to attend).

Thank you, and please let me know if you have any questions or would like to discuss further.

Evan

———

Evan P. Williams
735 Johnnie Dodds Blvd. Suite 104, Mt. Pleasant, SC 29464
O: 843.881.1623 **D:** 843.513.1036
E: ewilliams@bybeetibbals.com

bybeetibbals.com

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BYBEE & TIBBALS
EMINENT DOMAIN & PROPERTY RIGHTS LITIGATION

*** **CONFIDENTIAL COMMUNICATION** *** The information contained in this e-mail message may be attorney-client privileged, attorney work product, or consist of strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and permanently delete the e-mail.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston; The Attorney General of the State of South Carolina; Charleston County School District; Charleston Chapter No. 4, United Daughters of the Confederacy; and the Confederate Museum, Defendants.	Civil Action No. 2018-CP-10-05739 **PLAINTIFF'S NOTICE OF RULE 30(b)(6), SCRCP, DEPOSITION OF DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT**

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff Michael D. Royal ("Plaintiff"), by and through his undersigned counsel, will take the deposition of the designated representative(s) of Defendant Charleston County School District ("CCSD"), on the matters identified below, at 9:30 a.m. Eastern Time on _____, 2021 at Bybee & Tibbals, LLC, 735 Johnnie Dodds Boulevard, Suite 104, Mount Pleasant, South Carolina 29464.

The deposition will be recorded by stenographic, audio, and/or audiovisual/videotape means, and taken before an officer authorized by law to administer oaths. Said deposition shall continue from time to time and day to day until completed, including any adjournments thereof. The deposition is being taken for pre-trial discovery, for use at trial, and for all other purposes as may be permitted by law. Further, counsel for Plaintiff gives notice, pursuant to Rule 30(j)(8), SCRCP, that they may use any and all documents produced or made available in discovery by any party during this deposition, and hereby give notice of Plaintiff's intent to question CCSD's

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

designated deponent(s) regarding any and all documents produced or made available by any party during the course of discovery, as well as those obtained by subpoena or other records request.

CCSD is requested and required to designate and produce one or more officers, directors, managing agents, or other persons (the "Deponent") who consent(s) to testify on CCSD's behalf and who can knowledgably testify about information known or reasonably available to the organization relating to the Matters for Examination set forth below. If more than one witness is designated, CCSD shall identify the specific matter(s) on which each designated Deponent will testify. To fully answer questions related to the Matters for Examination, each Deponent is instructed to bring with him or her any documents reviewed by the Deponent which have not previously been produced in discovery. Each Deponent is required to appear for said depositions at the time and place above stated.

DEFINITIONS

Unless otherwise indicated, the following words and phrases are defined as follows:

1. The terms "CCSD," "you," and "your" shall mean and refer to Charleston County School District, a body corporate and politic established under the laws of the State of South Carolina, and any employee of CCSD, member of any Commission, Committee, or Board, of CCSD, and/or any person, individual, agent, or entity that formerly acted, or currently acts, for CCSD or on its behalf, individually and/or collectively.

2. "Constituent District #20" means and refers to that district of schools in downtown Charleston, South Carolina, as identified and described on CCSD's website at https://www.ccsdschools.com/Page/1210.

3. "Charleston School District #20" means and refers to the entity or organization identified on the amendment to FKAC's charter dated on or about February 5, 1971.

4. The term "AG" shall mean and refer to the Attorney General of the State of South Carolina and any attorney, individual, employee, agent, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

5. The term "FKAC" shall mean and refer to Free Kindergarten Association of Charleston, a nonprofit corporation organized and existing under the laws of the State of South Carolina, and any attorney, employee, agent, board member, member, person, individual, body, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

6. The "Museum" shall mean and refer to the Confederate Museum and any attorney, person, body, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

7. The "UDC" shall mean and refer to Charleston Chapter No. 4, United Daughters of the Confederacy, and any attorney, person, body, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

8. "June Wells" means and refers to the deceased June Murray Wells, a former resident and citizen of Charleston County, South Carolina, who passed away on or about November 29, 2020.

9. The terms "Plaintiff" and "Royal" shall mean and refer to Michael D. Royal, and any attorney, individual, employee, agent, or entity that acted or is currently acting for him or on his behalf, individually and/or collectively.

10. "Defendants" means and refers to FKAC, CCSD, the AG, UDC, and the Museum, as each are defined herein.

11. The "Property" refers to that 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.

12. The "PSA" refers to that real estate purchase and sale agreement for the Property, entered into on or about April 23, 2013 between Plaintiff and FKAC, as amended or supplemented.

13. The term "Decision-Making Process" shall mean and refer collectively to the gathering of information, alternatives or options considered, documents and information weighed or considered, amount of time, meetings, interactions, criteria or factors, persons, boards, committees, commissions, other bodies, and other evaluations, information, actions, documents, or activities associated with, or involved in, a decision by CCSD to take an action with respect to the identified matter.

14. The terms "correspondence" and/or "communication(s)" mean and refer to any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, company intranet, social media message or post, electronic bulletin board or Internet site posting) and other understandings or conveyances sent or prepared to be sent by one person to another, however produced or reproduced, whether by "document" as herein defined or otherwise, which is made by you or others or which is distributed or circulated between or among persons, or data storage or processing units, including computer data storage and processing units, and any and all documents containing, consisting of, or relating or referring, in any way, either directly or indirectly, to a communication. The terms "correspondence" and/or "communication(s)" specifically includes, but is not limited to, any exchange of information by any means of transmission, including, but not limited to, face-to-face conversations, mail, electronic mail, telegram, overnight delivery, carrier or courier service, telephone, facsimile or telex.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

15. The term "social media" shall mean and refer to any platform, application, or website, including, but not limited to, Twitter, Facebook, Instagram, Tik Tok, YouTube, WhatsApp, Messenger, WeChat, Tumblr, Reddit, LinkedIn, or Snapchat, that enable users to electronically or digitally create, share, participate, view, and/or hear content, information, ideas and/or messages, in written, audio, video, or other form, and/or participate in social networking.

16. "Document" or "documents" shall mean and include, without limitation, the original, drafts, revisions and non-duplicative copies of any printed, typed, recorded, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in any form, whether or not claimed to be privileged, including, but not limited to, writings, drawings, graphs, charts, electronic data (including without limitation those inscribed by mechanical, facsimile, electronic, magnetic, digital or other means, computer programs, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code, peripheral drivers, PIF file, batch files, ASCII files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether the data consists in an active file, deleted file or file fragment), photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the requesting party through detection devices into reasonably usable form, memoranda, communications (as defined herein), e-mails, social media message or post, date files and fragments, notes, scraps of paper, diaries, calendars, reports, vouchers, invoices, journals, bills, orders, time slips or records, receipts, summaries, pamphlets, books, contracts, statistics, letters, telegrams, minutes, diaries, studies, returns, computations, logs, financial records or statements, checks, bank statements, medical records, X-rays, laboratory reports and/or orders, otherwise memorialized or communicated matter, whether typed, printed, photo-copied, filmed, micro-filmed, or recorded in any manner. The term "document(s)" includes each copy or reproduction which is not identical to the original or other produced copy.

17. The terms "related to," "relating to," and/or "relate(s) to" shall mean directly or indirectly supporting, pertaining to, arising from, linked to, regarding, discussing, concerning, referring to, evidencing, or in any way connected with or to the matter or issue discussed or requested.

18. "All facts" or "any facts" means each and every act, omission, incident, event, condition, or circumstance related to the requested matter or document, including relevant dates, omission, incident, event, condition, or circumstance related to the requested matter or document, the identification of persons who witnessed the act, omission, incident, event, condition or circumstance related to the requested document, and the identification of persons with knowledge of all facts or any acts related to the requested matter or document.

MATTERS FOR EXAMINATION

The matters on which examination is required are as follows:

1. Any fact, allegation, or cause of action alleged by Plaintiff in the Complaint, or defenses to Plaintiff's claims set forth or alleged by CCSD in its pleadings or filings in this case.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

2. Any fact, allegation, claim, counterclaim, or cross-claim contained or set forth in any of the Defendants' pleadings or filings in this case.

3. The relationships between: a) CCSD and Charleston School District #20; b) CCSD and Constituent District #20; c) CCSD and FKAC; and d) Charleston School District #20 and Constituent District #20.

4. CCSD's interactions and communications with the AG relating to the Property, FKAC, and/or the PSA.

5. CCSD's interactions and communications with FKAC and/or June Wells relating to the Property, the PSA, and/or the AG.

6. CCSD's interactions and communications with Royal relating to the Property, the PSA, FKAC, June Wells, and/or the AG.

7. Carter Rowson's interactions and communications with CCSD relating to the Property, and/or CCSD's knowledge of Carter Rowson's interactions and communications with FKAC and/or June Wells relating to the Property.

8. CCSD's interactions and communications with Charleston Appraisal Service, Inc. relating to the Property.

9. The governance, structure, operations, and history of CCSD, Charleston School District #20, and Constituent District #20.

10. CCSD's claimed damages in this lawsuit, including the basis for its claim of entitlement to recovery of its attorneys' fees, as well as the current amount incurred and/or claimed as damages.

11. The factual basis for CCSD's claims to the Property and/or attempts to take title to or possession of any of FKAC's assets.

12. CCSD's intentions for the use or disposal of the Property.

13. CCSD's Decision-Making Process with respect to acquisition and/or development of real property.

14. Official or informal meetings of any two or more of CCSD's employees, personnel, agents, or board members, whether corporal or by electronic means, during which the Property, the AG's involvement with any potential sale of the Property, Plaintiff, FKAC, or this case was discussed or mentioned.

15. CCSD's written discovery responses in this case.

16. CCSD's policies and enforcement procedures relating to retention, management, storage, and/or destruction of both paper and electronic documents or records.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

17. CCSD's policies and enforcement procedures relating to portable electronic devices used by, belonging to, or available to any agent, official, representative or employee of CCSD, or any member of any Committee, Commission, or Board of CCSD. "Portable electronic devices" includes but is not limited to:

a. laptop computers

b. portable digital assistants (PDAs);

c. cellular telephones, including smartphones;

d. mini computers and/or tablets;

e. external hard drives;

f. CDs and DVDs; and

g. USB, flash, or thumb drives.

18. The methods and procedures utilized by CCSD to conduct searches, and perform production, of both paper and electronic documents or records.

19. CCSD's policies and enforcement procedures relating to use of CCSD's or personal computers and data, including but not limited to:

a. desktop computers located at any CCSD building or office; and

b. laptop or other home-based computers used for purposes of business or communication relating to CCSD matters.

20. Locations of electronic documents and records relevant to this litigation.

21. CCSD's e-mail systems and instant messaging systems.

22. CCSD's onsite and off-site servers.

23. Any individuals or entities responsible for the search and production of paper and electronic documents or records on behalf of CCSD.

24. Identities of, and other relevant information relating to, all persons or entities who have or had access to and/or are responsible for CCSD's network administration, backup, archiving, or other system operations from 2016 through the present.

You are invited to appear and to participate, as you deem proper and in accordance with Rule 30, SCRCP.

[SIGNATURE FOLLOWS]

Jeffrey S. Tibbals S.C. Bar No. 72628
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843.881.1623

ATTORNEYS FOR PLAINTIFF
MICHAEL D. ROYAL

_____, 2021
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit B

Plaintiff's Notice of Rule 30(b)(6), SCRCP, Deposition of Defendant CCSD, Served November 3, 2021

Plaintiff's Memorandum in Opposition to Defendant Charleston County School District's Motion to Limit 30(b)(6) Deposition

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District, Defendants.	Civil Action No. 2018-CP-10-05739 **PLAINTIFF'S NOTICE OF RULE 30(b)(6), SCRCP, DEPOSITION OF DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT**

TO: DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT AND ITS ATTORNEY, A. BRIGHT ARIAIL, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff Michael D. Royal ("Plaintiff"), by and through his undersigned counsel, will take the deposition of the designated representative(s) of Defendant Charleston County School District ("CCSD"), on the matters identified below, at 9:30 a.m. Eastern Time on November 22, 2021 at CCSD's office located at 75 Calhoun Street, Charleston, South Carolina 29401, in the Edisto Conference Room.

The deposition will be recorded by stenographic, audio, and/or audiovisual/videotape means, and taken before an officer authorized by law to administer oaths. Said deposition shall continue from time to time and day to day until completed, including any adjournments thereof. The deposition is being taken for pre-trial discovery, for use at trial, and for all other purposes as may be permitted by law. Further, counsel for Plaintiff gives notice, pursuant to Rule 30(j)(8), SCRCP, that they may use any and all documents produced or made available in discovery by any party during this deposition, and hereby give notice of Plaintiff's intent to question CCSD's

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

designated deponent(s) regarding any and all documents produced or made available by any party during the course of discovery, as well as those obtained by subpoena or other records request.

CCSD is requested and required to designate and produce one or more officers, directors, managing agents, or other persons (the "Deponent(s)") who consent(s) to testify on CCSD's behalf and who can knowledgably testify about information known or reasonably available to the organization relating to the Matters for Examination set forth below. If more than one witness is designated, CCSD shall identify the specific matter(s) on which each designated Deponent will testify. To fully answer questions related to the Matters for Examination, each Deponent is instructed to bring with him or her any documents reviewed by the Deponent which have not previously been produced in discovery. Each Deponent is required to appear for said depositions at the time and place above stated.

This deposition will be conducted in-person, such that Plaintiff, CCSD, the Deponent, and the court reporter will attend in-person. However, means will be provided for other parties and/or their counsel to attend via remote video-teleconference in light of the COVID-19 pandemic. If anyone so attends remotely, counsel for Plaintiff will provide the videoconferencing link to all counsel of record at least twenty-four (24) hours prior to the deposition, and unmarked copies of the exhibits for this deposition will be emailed to counsel in advance of the deposition.

DEFINITIONS

Unless otherwise indicated, the following words and phrases are defined as follows:

1. The terms "CCSD," "you," and "your" shall mean and refer to Charleston County School District, a body corporate and politic established under the laws of the State of South Carolina, and any employee of CCSD, member of any Commission, Committee, or Board, of CCSD, and/or any person, individual, agent, or entity that formerly acted, or currently acts, for CCSD or on its behalf, individually and/or collectively.

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ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

3. "Charleston School District #20" means and refers to the entity or organization identified on the amendment to FKAC's charter dated on or about February 5, 1971.

4. The term "AG" shall mean and refer to the Attorney General of the State of South Carolina and any attorney, individual, employee, agent, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

5. The term "FKAC" shall mean and refer to Free Kindergarten Association of Charleston, a nonprofit corporation organized and existing under the laws of the State of South Carolina, and any attorney, employee, agent, board member, member, person, individual, body, or entity that acted or is currently acting for it or on its behalf, individually and/or collectively.

6. "June Wells" means and refers to the deceased June Murray Wells, a former resident and citizen of Charleston County, South Carolina, who passed away on or about November 29, 2020.

7. The terms "Plaintiff" and "Royal" shall mean and refer to Michael D. Royal, and any attorney, individual, employee, agent, or entity that acted or is currently acting for him or on his behalf, individually and/or collectively.

8. "Defendants" means and refers to FKAC, CCSD, and the AG, as each are defined herein.

9. The "Property" refers to that 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.

10. The "PSA" refers to that real estate purchase and sale agreement for the Property, entered into on or about April 23, 2013 between Plaintiff and FKAC, as amended or supplemented.

11. The term "Decision-Making Process" shall mean and refer collectively to the gathering of information, alternatives or options considered, documents and information weighed or considered, amount of time, meetings, interactions, criteria or factors, persons, boards, committees, commissions, other bodies, and other evaluations, information, actions, documents, or activities associated with, or involved in, a decision by CCSD to take an action with respect to the identified matter.

12. The terms "correspondence" and/or "communication(s)" mean and refer to any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, company intranet, social media message or post, electronic bulletin board or Internet site posting) and other understandings or conveyances sent or prepared to be sent by one person to another, however produced or reproduced, whether by "document" as herein defined or otherwise, which is made by you or others or which is distributed or circulated between or among persons, or data storage or processing units, including computer data storage and processing units, and any and all documents containing, consisting of, or relating or referring, in any way, either directly or

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

indirectly, to a communication. The terms "correspondence" and/or "communication(s)" specifically includes, but is not limited to, any exchange of information by any means of transmission, including, but not limited to, face-to-face conversations, mail, electronic mail, telegram, overnight delivery, carrier or courier service, telephone, facsimile or telex.

13. The term "social media" shall mean and refer to any platform, application, or website, including, but not limited to, Twitter, Facebook, Instagram, Tik Tok, YouTube, WhatsApp, Messenger, WeChat, Tumblr, Reddit, LinkedIn, or Snapchat, that enable users to electronically or digitally create, share, participate, view, and/or hear content, information, ideas and/or messages, in written, audio, video, or other form, and/or participate in social networking.

14. "Document" or "documents" shall mean and include, without limitation, the original, drafts, revisions and non-duplicative copies of any printed, typed, recorded, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in any form, whether or not claimed to be privileged, including, but not limited to, writings, drawings, graphs, charts, electronic data (including without limitation those inscribed by mechanical, facsimile, electronic, magnetic, digital or other means, computer programs, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code, peripheral drivers, PIF file, batch files, ASCII files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether the data consists in an active file, deleted file or file fragment), photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the requesting party through detection devices into reasonably usable form, memoranda, communications (as defined herein), e-mails, social media message or post, date files and fragments, notes, scraps of paper, diaries, calendars, reports, vouchers, invoices, journals, bills, orders, time slips or records, receipts, summaries, pamphlets, books, contracts, statistics, letters, telegrams, minutes, diaries, studies, returns, computations, logs, financial records or statements, checks, bank statements, medical records, X-rays, laboratory reports and/or orders, otherwise memorialized or communicated matter, whether typed, printed, photo-copied, filmed, micro-filmed, or recorded in any manner. The term "document(s)" includes each copy or reproduction which is not identical to the original or other produced copy.

15. The terms "related to," "relating to," and/or "relate(s) to" shall mean directly or indirectly supporting, pertaining to, arising from, linked to, regarding, discussing, concerning, referring to, evidencing, or in any way connected with or to the matter or issue discussed or requested.

16. "All facts" or "any facts" means each and every act, omission, incident, event, condition, or circumstance related to the requested matter or document, including relevant dates, omission, incident, event, condition, or circumstance related to the requested matter or document, the identification of persons who witnessed the act, omission, incident, event, condition or circumstance related to the requested document, and the identification of persons with knowledge of all facts or any acts related to the requested matter or document.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

MATTERS FOR EXAMINATION

The matters on which examination is required are as follows:

1. Any fact, allegation, or cause of action alleged by Plaintiff in the Complaint, or defenses to Plaintiff's claims set forth or alleged by CCSD in its pleadings or filings in this case.

2. Any fact, allegation, claim, counterclaim, or cross-claim contained or set forth in any of the Defendants' pleadings or filings in this case.

3. The relationships between: a) CCSD and Charleston School District #20; b) CCSD and Constituent District #20; c) CCSD and FKAC; and d) Charleston School District #20 and Constituent District #20.

4. CCSD's interactions and communications with the AG relating to the Property, FKAC, and/or the PSA.

5. CCSD's interactions and communications with FKAC and/or June Wells relating to the Property, the PSA, and/or the AG.

6. CCSD's interactions and communications with Royal relating to the Property, the PSA, FKAC, June Wells, and/or the AG.

7. Carter Rowson's interactions and communications with CCSD relating to the Property, and/or CCSD's knowledge of Carter Rowson's interactions and communications with FKAC and/or June Wells relating to the Property.

8. CCSD's interactions and communications with Charleston Appraisal Service, Inc. relating to the Property.

9. The governance, structure, operations, and history of CCSD, Charleston School District #20, and Constituent District #20.

10. CCSD's claimed damages in this lawsuit, including the basis for its claim of entitlement to recovery of its attorneys' fees, as well as the current amount incurred and/or claimed as damages.

11. The factual basis for CCSD's claims to the Property and/or attempts to take title to or possession of any of FKAC's assets.

12. CCSD's intentions for the use or disposal of the Property.

13. CCSD's Decision-Making Process with respect to acquisition and/or development of real property.

14. Official or informal meetings of any two or more of CCSD's employees, personnel, agents, or board members, whether corporal or by electronic means, during which the Property,

the AG's involvement with any potential sale of the Property, Plaintiff, FKAC, or this case was discussed or mentioned.

15. CCSD's written discovery responses in this case.

16. CCSD's policies and enforcement procedures relating to retention, management, storage, and/or destruction of both paper and electronic documents or records.

17. CCSD's policies and enforcement procedures relating to portable electronic devices used by, belonging to, or available to any agent, official, representative or employee of CCSD, or any member of any Committee, Commission, or Board of CCSD. "Portable electronic devices" includes but is not limited to:

a. laptop computers

b. portable digital assistants (PDAs);

c. cellular telephones, including smartphones;

d. mini computers and/or tablets;

e. external hard drives;

f. CDs and DVDs; and

g. USB, flash, or thumb drives.

18. The methods and procedures utilized by CCSD to conduct searches, and perform production, of both paper and electronic documents or records.

19. CCSD's policies and enforcement procedures relating to use of CCSD's or personal computers and data, including but not limited to:

a. desktop computers located at any CCSD building or office; and

b. laptop or other home-based computers used for purposes of business or communication relating to CCSD matters.

20. Locations of electronic documents and records relevant to this litigation.

21. CCSD's e-mail systems and instant messaging systems.

22. CCSD's onsite and off-site servers.

23. Any individuals or entities responsible for the search and production of paper and electronic documents or records on behalf of CCSD.

ELECTRONICALLY FILED - 2021 Nov 18 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

24. Identities of, and other relevant information relating to, all persons or entities who have or had access to and/or are responsible for CCSD's network administration, backup, archiving, or other system operations from 2016 through the present.

You are invited to appear and to participate, as you deem proper and in accordance with Rule 30, SCRCP.

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November 3, 2021
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ELECTRONICALLY FILED - 2021 Dec 08 11:17 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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.	)	
	)	**The Attorney General of the State of South Carolina's Pre-Trial Brief**
Free Kindergarten Association of Charleston,	)	
	)	
Defendant,	)	
	)	
The Attorney General of the State of South Carolina and The Charleston County School District	)	
	)	
Intervenors	)	
	)	

The Attorney General (also referred to as "AG") of the State of South Carolina respectfully submits this Pre-Trial Brief in the above-referenced matter.

(1) A concise, non-argumentative statement of the facts of the case.

The Free Kindergarten Association of Charleston (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 during a time when kindergarten programs cost money. Over time, public schools took over this role. FKAC has not operated as a kindergarten since the 2000s. Aside from miscellaneous personal property of de minimus value, the only known asset of the Free Kindergarten is real property and improvements located at 34 Pitt Street.

This is an action for specific performance of a Real Estate Purchase and Sales Agreement ("Agreement") involving the sale of 34 Pitt Street. On April 4, 2018, the Free Kindergarten's attorney notified the AG's office of the proposed sale, as required by S.C. Code Ann. § 33-31-

ELECTRONICALLY FILED - 2021 Dec 08 11:17 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

1202(f), and counsel sent the AG a copy of the Agreement. This was the first notice the Attorney General received regarding the sale, though the Agreement is dated April 23, 2013. The purchase price in the Agreement is $315,200, and 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."

The AG requested information about the current fair market value of the real property, but no appraisal or other evidence was provided other than an appraisal from April 23, 2013, five years prior to the notice. Given the lack of information about the fair market value, the AG obtained an updated appraisal from the same appraiser reflecting the fair market value was $522,500 as of June 7, 2018. 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, in addition to the concerns about the Agreement's unusual provisions.

Counsel for the Free Kindergarten provided the AG with notice of this action and a copy of the pleadings in December 2018. The Attorney General filed a Motion to Intervene which was granted by Order filed July 10, 2019. The Charleston County School District (CCSD) filed a Motion to Intervene which was granted by Order filed August 22, 2019. This matter is scheduled for trial on December 15, 2021.

(2) An objective statement of the facts in controversy.

The Attorney General is not aware of any significant factual dispute in this action.

(3) The legal issues involved. This includes the law applicable to the cause of action and the defense.

The AG will file a Memorandum on Legal Issues which will outline its position on the significant legal issues in this action, including the below issues:

(1) Did June Murray Wells have authority to execute the Agreement on behalf of the FKAC?

The Attorney General is not taking a position on this issue.

ELECTRONICALLY FILED - 2021 Dec 08 11:17 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

(2) When a nonprofit provides notice to the Attorney General, pursuant to section 33-31-1202, and the sale price is less than fair market value and the sale is contrary to public policy, what is the authority of the Attorney General in connection with such a proposed sale?

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

The Attorney General's Office may call Mike Robinson, appraiser, Charleston Appraisal Services, Inc., 304 Meeting Street, #201, 843-723-6256. The Attorney General reserves the right to call other witnesses listed in response to discovery.

(5) Any unusual problems relating to evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.

- The video deposition of June Murray Wells, deceased, may be offered.
- Counsel for the Free Kindergarten has been advised that he may be called as a witness by CCSD.
- Counsel for the Attorney General's Office has been advised that she may be called as a witness by the Plaintiff.

(6) Any unusual question or matter which should be brought to the attention of the court.

This action is unusual in that the FKAC was a nonprofit that is not currently operating. It is expected that the final activity of the FKAC will be the sale of the subject property. Once the property is sold, the FKAC is expected to dissolve. Pursuant to a Resolution passed by the FKAC Board, 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."

Regarding the property, there are two potential outcomes in this action: (1) the Court orders specific performance of the contract; or (2) the Court does not order specific performance of the contact. If the Court does not order specific performance, then it is expected that the FKAC would seek to sell the property. This could be done by the current Receiver, or another Receiver appointed

by the Court. At that time, notice would again be required to the Attorney General who would review any sale to ensure the property is sold for fair market value. It is expected that Mr. Royal could make an offer to purchase the property at that time.

(7) A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

Although mediation has been discussed among the parties, a mediation was never scheduled. The Attorney General's Office is not aware of any current settlement negotiations or discussions.

Respectfully submitted,

s/Mary Frances Jowers_____
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ELECTRONICALLY FILED - 2021 Dec 08 11:17 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
Michael D. Royal, Plaintiff, vs. Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District, Defendants.	Civil Action No. 2018-CP-10-05739 **PLAINTIFF MICHAEL D. ROYAL'S PRE-TRIAL BRIEF**

Plaintiff Michael D. Royal ("Plaintiff" or "Royal"), by and through his undersigned counsel, respectfully submits this brief in accordance with Rule 16 of the South Carolina Rules of Civil Procedure.

INTRODUCTION AND PROCEDURAL HISTORY

Plaintiff's Complaint was filed December 4, 2018, which alleged claims for specific performance and breach of a contract to purchase and sell real property located in Charleston County, South Carolina, brought on behalf of Plaintiff, the buyer under the contract, against Defendant Free Kindergarten Association of Charleston ("FKAC" or the "Association"), the seller under the contract. Complaint ¶¶ 26-35. FKAC filed its Answer on January 7, 2019, and therein also alleged claims for damages due to Plaintiff's filing of the Complaint and Lis Pendens on the Property, and reimbursement of its attorneys' fees and expenses incurred. FKAC's Answer ¶¶ 9-12.

Thereafter, The Attorney General of the State of South Carolina (the "AG") moved to intervene on January 28, 2019, and Charleston County School District's (CCSD") motion to intervene was filed on February 7, 2019. A Form 4 Order was entered June 7, 2019 granting both

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

motions to intervene, which was followed by formal Orders entered July 10, 2019, granting the AG's motion, and August 22, 2019 as to CCSD's. On June 24, 2019, CCSD filed its Answer, Counterclaim, Crossclaim and Request for Declaratory Judgment ("Counterclaim"), seeking therein a declaratory judgment that: a) CCSD is the legal, beneficial and/or equitable owner of all of FKAC's assets, and/or the proceeds of the sale of such assets; b) the PSA is null and void; and c) all of FKAC's assets and/or the proceeds of the sale of the same will transfer to CCSD upon FKAC's dissolution. *See* CCSD's Counterclaim, Prayer for Relief. CCSD also seeks an award of its costs and fees incurred in defending against Plaintiff's Complaint. *See id.* The AG filed its Answer to the Complaint, and Answer/Reply to CCSD's Request for Declaratory Judgment, on July 25, 2019, and Plaintiff filed his Reply to CCSD's Counterclaim on August 16, 2019.

UNDISPUTED FACTS AND LEGAL ISSUES INVOLVED

I. UNDISPUTED FACTS.

A. Contract Execution and Terms.

On April 23, 2013 (the "Effective Date"), Royal and FKAC entered into a real estate purchase and sale agreement for certain real property FKAC owned bearing the address of 34 Pitt Street, Charleston, Charleston County, South Carolina 29401, identified as TMS No. 457-04-01-129 (the "Property"). Complaint ¶ 5, Ex. A. A copy of this agreement is attached as Exhibit A to the Complaint (the "PSA" or "Agreement"). The purchase price for the Property pursuant to the PSA is three hundred fifteen thousand two hundred and 0/100 dollars ($315,200.00) (the "Purchase Price"). Complaint Ex. A. The Purchase Price was based on and matched the fair market value of the Property determined in an appraisal by an MAI-designated appraiser that valued the Property as of December 19, 2012. Complaint ¶ 6, Ex. B. This date of value was proximate to the time

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Royal and FKAC began negotiating the purchase and sale terms. *See* Transcript of Deposition of Michael D. Royal, Volume I,[1] at 37:21 – 38:3; 40:18 – 41:8.

Section 4 of the Agreement requires the Association to convey marketable title to the Property to Royal. Complaint Ex. A. 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), which was only refundable if FKAC could not convey marketable title or defaulted under the PSA. *Id.* at ¶ 8, Ex. A. The Association expressed to Royal a need for flexibility around the timing of its vacating of the Property. *Id.* at ¶ 9; *see also* Transcript of the Deposition of FKAC's Rule 30(b)(6), SCRCP, Designee, June Wells ("FKAC Dep."), attached hereto as **Exhibit 4**, at 93:11-20; Transcript of the May 25, 2021 Deposition of William Wells ("Bill Wells Dep."), attached hereto as **Exhibit 5**, at 40:24-25, 41:1-4, 42:22-25, 43:1-8.

As a result, section 7 of the Agreement allowed for the Association to choose its own closing date within the period from the Effective Date until April 9, 2018 (the "PSA Closing Date"), a period of almost five years. Complaint ¶ 9. The structuring of a flexible closing timeframe was created solely to suit and benefit the Association. *Id.* at ¶ 11; *see supra* cites to FKAC and Bill Wells Deps. Royal did not desire to wait for a closing and was ready, willing, and able to close on the Property by May 31, 2013. Complaint ¶ 11, Ex. D. Royal agreed to the possibility of an extended closing only to accommodate the Association's stated needs. *See supra* cites to FKAC and Bill Wells Deps.

[1] There are three (3) volumes of transcripts of Royal's deposition, one for each day of testimony. They are cited herein as "Royal Vol. I," "Royal Vol. II," and "Royal Vol. III," respectively, and the excerpts of and exhibits to those transcripts cited herein are attached hereto as **Exhibits 1**, **2**, and **3**, in order of volume number.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

B. Attempts to Close on the PSA.

Throughout the period from the Effective Date until the beginning of 2018, Royal politely but persistently sought a closing. Complaint ¶ 13, Exs. D and H; Royal Vol I at 111:1-9. Royal offered on multiple occasions to provide assistance to the Association to facilitate the closing, but the Association would not commit to a closing date. *Id.* As an example, on January 26, 2015, having waited over a year and a half to close, Royal sent a letter to FKAC proposing an arrangement that would enable him to close but still preserve FKAC's right to use the property up until April 9, 2018. *See* **Exhibit 6** attached hereto (copy of the January 26, 2015 letter). Effectively, this proposal amounted to seller financing, requiring Royal to make a $30,0000 down payment and assume responsibility for taxes and insurance while allowing FKAC to occupy the building rent-free. *See id.*; Bill Wells Dep., at 76:10-16, 85:1-24, 86:1-9. FKAC advised Royal that it did not wish to pursue this arrangement. *See* Royal Vol. III, at 374:1-3.

Thereafter, Royal met and began communicating with June Wells' son, William "Bill" Wells ("Mr. Wells"), regarding Royal's plans for the Property and potential closing dates. *See* Royal Vol. I, at 109:8-12; Bill Wells Dep., at 76:10-16. It was easier for Royal to communicate with Mr. Wells, because he, unlike his mother, corresponded via email, and Mr. Wells relayed these conversations to June Wells. *See id.*; *see also* January 11, 2018 Email from Royal to William Wells, attached hereto as **Exhibit 7**.

On March 29, 2018, eleven (11) days before the PSA Closing Date, FKAC's counsel assured Royal that FKAC was prepared to close on April 9, and that a deed for the closing had been prepared and a bank account opened for FKAC to receive the closing proceeds. *See* Plaintiff's Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, filed November 24, 2021 ("Plaintiff's MSJ Memo"), at Ex. 2 (copy of March 29, 2018 email). Yet

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

FKAC's counsel waited until April 4, 2018, five (5) days before closing, to give notice to the AG of the upcoming sale under S.C. Code Ann. § 33-31-1202. *See* Plaintiff's MSJ Memo Ex. 3 (FKAC's April 4, 2018 Notice of Sale to the AG). This statute requires a public benefit corporation to give notice to the AG twenty (20) days prior to any sale "of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities[.]" S.C. Code Ann. § 33-31-1202(f).

The delayed notice likely explains FKAC's counsel's request, on or around April 5, 2018, that Royal agree to extend the closing to April 26, 2018. Complaint ¶ 14. Royal assented, and the parties executed an addendum to this effect on April 11, 2018. *See* Complaint Ex. C (first addendum to the PSA). Even though the twenty (20) day notice period to the AG expired on April 25, 2018, FKAC was not willing to close by April 26. Royal agreed to FKAC's request for a second closing extension, but FKAC had not provided its executed second addendum by April 26, 2018, the amended closing date. Complaint ¶ 15, Exs. D and E.

Consequently, Royal sent the Association's counsel an e-mail that day, April 26, tendering performance, and stating that he had the necessary funds available to close. *See id.*. Royal further requested that the Association either provide the signed second addendum, which extended the closing date to May 25, 2018 (the "Extended Closing Date"), or advise Royal of the location for closing and to provide wiring instructions. *See id*. No response was received that day. On April 27, 2018, FKAC provided Royal with its executed copy of the PSA's second addendum, which it had signed April 24, 2018. *See* Complaint Ex. E (copy of the second addendum). May 25, 2018 was the latest possible closing date under the contract and its addenda.

Thereafter, FKAC sent a letter to Royal, dated May 11, 2018, refusing to close on the Property "without approval of the Attorney General." Complaint Ex. F. Approval by the AG was

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

not an express or implied condition to closing under the PSA (*see* Complaint Ex. A), and not required by the text of S.C. Code Ann. § 33-31-1202 (*see infra*).

Royal received FKAC's letter on May 14, 2018, and in response sent an e-mail to FKAC's counsel that day, stating that his May 11 letter amounted to an anticipatory breach of the Agreement. Complaint ¶ 18, Ex. G. Unbeknownst to Royal, the AG was in communication with FKAC's counsel in April and May of 2018 regarding the sale and prior litigation the AG was involved in relating to nonprofit entities. *See* **Exhibit 8** attached hereto (April 11 and May 23, 2018 emails from the AG's Office to FKAC's counsel).

Subsequently, on May 18, 2018, Jowers sent an e-mail to Royal, wherein she stated, in part, "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." Complaint Ex. H. Apparently, such review is not limited by § 33-31-1202's 20-day notice period. Additionally, it seems the AG only desired to include FKAC and CCSD in this review. *See* **Exhibit 9** attached hereto (emails exchanged between May 22 and June 28, 2018).

On May 18, 2018, Royal gave notice to the AG and the Association that the statute it cited did not provide a basis to require that a property sale must be approved by the AG. *See* Complaint Ex. I. S.C. Code Ann. § 33-31-1202(f), part of the South Carolina Nonprofit Corporation Act of 1994,[2] 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.

[2] Hereinafter the South Carolina Nonprofit Corporation Act of 1994, S.C. Code Ann. § 33-31-101, *et seq.*, is referred to as the "Nonprofit Corporation Act."

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

S.C. Code Ann. § 33-31-1202(f). Additionally, the text of the statute does not require any materials or an appraisal to be provided to the AG, other than a notice. *See id.*

C. FKAC Does Not Perform by the Extended Closing Date.

Although FKAC failed to close by the Extended Closing Date, Royal awaited word from FKAC, as well as the AG as to its position, in an effort to resolve the matter prior to incurring the costs of litigation. A week after the Extended Closing Date, on June 1, 2021, FKAC sent a letter to CCSD giving it notice of the PSA. *See* December 1, 2021 letter from Plaintiff's counsel to the Court, filed December 2, 2021 ("Dec. 1 Letter"),[3] attachment 1.

On June 28, 2018, more than a month after the Extended Closing Date, FKAC's counsel notified Royal via e-mail that FKAC refused to close on the Property under the terms of the Agreement. Complaint Ex. K. Therein, FKAC's counsel cited to an appraisal of the Property which the AG had provided to FKAC and CCSD a week prior. *See id.* Royal was not copied on the AG's email circulating the appraisal and was thus unaware of the same. *See* **Exhibit 10** attached hereto.

Royal replied to FKAC's counsel's email the same day, and put FKAC on notice that it was in default of the PSA and demanded that the parties close on the transaction. Complaint Ex. L (copy of Royal's June 28, 2018 email). CCSD's attorney responded to this email, claiming that CCSD was the beneficiary of FKAC's residual assets. *See* Transcript of November 22, 2021 Rule 30(b)(6), SCRCP, Deposition of CCSD ("CCSD Dep."), Ex. 12.[4] Therein, CCSD falsely claimed that FKAC was in the process of dissolving and that the Property was to be conveyed to CCSD.

[3] The Court's docket labels this filing event as "Letter in Re Documents Not Included with Pltff Memo," dated December 2, 2021, and attributed to Plaintiff Michael D. Royal.

[4] The excerpts of and exhibits to the transcript of the deposition of CCSD's Rule 30(b)(6) designee which are cited herein are attached hereto collectively as **Exhibit 11**.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

See id. CCSD's attorney advised Royal that she would be in touch following the July 2018 meeting of CCSD's board of trustees, at which it would discuss how to proceed. *See id.* CCSD's Board of Trustees never made a decision as to how to proceed with respect to the Property or the PSA, nor approved of CCSD's intervention in this lawsuit. *See* CCSD Dep., at 73:7-18. Due to FKAC's continued refusal to close, Royal filed his Complaint on December 4, 2018.

II. LEGAL ISSUES.

A. Plaintiff's Causes of Action.

Although Plaintiff's Complaint was styled as pleading one claim, it alleges two causes of action against Defendants, which are analyzed more fully below.

1. Breach of Agreement.

"The necessary elements of a contract are an offer, acceptance, and valuable consideration. A valid offer 'identifies the bargained for exchange and creates a power of acceptance in the offeree.'" *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406 (2003) (internal citation omitted). Royal and the Association entered into a valid and enforceable agreement, the PSA. Royal presented two offers to FKAC containing the transaction's terms for FKAC's review and potential acceptance, one on January 14, 2013 and one on April 23, 2013. *See* Royal Vol. II, at 270:15-24; 277:1-4; 278:11 – 279:19; 284:25 – 285:10. FKAC rejected the first and accepted the second offer by executing the PSA under its own free will in the presence of witnesses and a notary, and a mutual meeting of the minds on all terms contained in the Agreement. *See* Complaint Ex. A, p. 4; Plaintiff's MSJ Memo Ex. 4; Royal Vol. II, at 284:25 – 285:10; 292:2-17. The parties contracted to exchange valuable consideration – Royal via the purchase price and FKAC via title to the Property, and Royal's payment of the downpayment constituted partial consideration.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

CCSD alleges that June Wells, FKAC's signatory to the PSA, did not have authority to execute the instrument. Counterclaim ¶ 47; *see, e.g.,* CCSD Dep., at 50:3-10. This argument fails as a matter of law, as ample evidence exists to show her authority. *See* Plaintiff's MSJ Memo, at pp. 3-10 and exhibits cited therein; *see also* Dec. 1 Letter (cited *supra*); Royal Vol. I, at 71:11 – 74:2, 75:14-24, 92:14-95:6, 141:6-20, 146:6 – 147:6; Royal Vol. II, at 175:15-22, 184:24 – 188:15, 225:8 – 23, 226:12 – 227:15, 264:24 – 265:10, 266:13 – 267:12, 284:21-24, 288:8 – 289:9, 301:12; Royal Vol. III, at 350:17 – 356:14, 366:15-22, 409:17 – 411:4; FKAC Dep., at 50:12-15, 73:7-12, 83:23 – 84:1 ("Yes" in reply to the question, "Do you think you have a document that says you have the authority on behalf of Free Kindergarten to sell its real property), 126:6 – 127:5 (stating that she had been both a member of the FKAC and a director (on the board of directors), 129:23 – 130:4 (agreeing that "it was ordinary in your roles to act on behalf of the association and make important decisions").

As set forth in more detail in Plaintiff's MSJ Memo, Wells' position as a member is the essential inquiry as to the authority issue as it provides a basis for operating with actual or apparent authority. *See* Plaintiff's MSJ Brief, pp. 4-5, 6-8, and exhibits cited therein. Consistent with S.C. Code Ann. § 33-31-803(c), FKAC's governing documents, its Constitution and Bylaws, vests all of the powers which would otherwise be exercised by a board in the Association's members. *See* Plaintiff's MSJ Brief, Ex. 7.

FKAC's failure and refusal to convey marketable title to Royal constitutes a material breach of the PSA. Complaint Ex. A, at ¶ 4. As alleged in the Complaint, FKAC's actions evidence an intention to breach the PSA and constitute breaches of the covenant of good faith and fair dealing inherent in all contracts. Complaint ¶¶ 14-23, 30. Royal has suffered consequential and incidental damages as a result of the FKAC's breach of the PSA. Such damages include, but

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

are not limited to, lost rental income from parking spaces at the Property from the Extended Closing Date, May 25, 2018, through the date of judgment, plus interest. Additionally, South Carolina common law provides for a standard measure of general damages. *See Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472-73 (Ct. App. 1984) ("In an action for breach of a contract to purchase real estate, general damages may be measured by the difference between the contract price and the fair market value of the property at the time of the breach." (internal citation omitted)).

2. Specific Performance.

Royal's claim for specific performance sounds in equity, whereby the Court is to consider whether an adequate remedy at law exists. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) (internal citations omitted). To succeed on his claim, the Court must find the following:

> (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Ingram, 340 S.C. at 106, 531 S.E.2d at 291 (internal citations omitted). In deciding whether to enter a decree of specific performance, the Court is granted discretion which is "to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Miller v. Dillon*, 851 S.E.2d 462, 471, 432 S.C. 197, 213-14 (Ct. App. 2020) (internal quotation omitted).

a. *All Elements are Satisfied in the Instant Matter*.

Because of the unique nature of real property, Royal cannot be fully compensated monetarily for the Association's material breaches of the Agreement. *See Shirey v. Bishop*, 431 S.C. 412, 422, 848 S.E.2d 325, 330 (Ct. App. 2020) ("[w]hen land is the subject matter of an

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

agreement[,] the jurisdiction of equity to enforce specific performance is undisputed[] and does not depend on the inadequacy of the legal remedy in the particular case." (alterations in original)).

As set forth above, there is clear evidence of a valid agreement. *See supra*, Sec. II.A.1. 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. Such actions include Royal's issuance of the downpayment owed under the contract, which, prior to FKAC's breach, was nonrefundable. He also facilitated the issuance of a quitclaim deed for the Property from the City of Charleston to FKAC (*see* **Exhibits 12** and **13** attached hereto),[5] and engaged in a monthslong process to remove of the Property from the County's delinquent tax sale list due to a records error (*see* **Exhibit 15** attached hereto). Moreover, on March 29, 2018, FKAC confirmed its intentions to close on the PSA Closing Date. *See supra*, p. 4; Plaintiff's MSJ Memo Ex. 2.

Additionally, Royal has demonstrated his ability to satisfy the PSA's requirements and close, as he alleged in the Complaint (¶¶ 24-25, 28, 35) both "past and present ability and willingness to perform his obligations under the Contract. South Carolina does not require Plaintiff to have made actual tender of the funds necessary to close in order to obtain the remedy of specific performance. Plaintiff only need state in his pleading that he is ready, willing, and able to perform his obligations under the Contract." *Shay v. Austin*, 466 F. Supp. 2d 664, 669 (D.S.C. 2006) (citing

[5] On July 19, 1963, FKAC executed a Declaration of Trust which conveyed to the City of Charleston a reversionary one-half interest in the Property if it ceased to be used for kindergarten purposes. *See* **Exhibit 14** attached hereto. At some point FKAC extinguished this reversionary interest through payment of $15,000 to the City, but tax records showed the City as the Property owner prior to this quitclaim deed. *See* Royal Dec. Tr., at 238:6-19, 239:16 – 240:10, 255:13-25. June Wells signed the Affidavit for Taxable or Exempt Transfers as the "Authorized agent of the purchaser (Free Kindergarten Association of Charleston)." *See* Ex. 13, at p. 3 ¶ 8.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588, 593 (1948); *Maccaro v. Andrick Dev. Corp.,* 280 S.C. 96, 101, 311 S.E.2d 91, 94 (Ct. App. 1984)).

b. *Enforcement of the PSA is Equitable*.

Finally, the underlying circumstances of the case and the rules of equity support a decree of specific performance. The Association was and is a nonprofit corporation registered and in good standing with the South Carolina Secretary of State to conduct business. Plaintiff, in August of 2013, requested a Certificate of Existence for FKAC from the South Carolina Secretary of State, which provided conclusive evidence that FKAC could transact business in the State. *See* **Exhibit 16** attached hereto, August 23, 2013 Certificate of Existence; *see also* S.C. Code Ann. § 33-31-128(c) ("Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State ***may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this State***.").[6]

June Wells, FKAC's signatory, was intelligent and mentally sharp during the time relevant to the PSA's formation. Moreover, Royal, at every turn, made certain that Wells was fully informed of and understood all pertinent information and that she was comfortable with all contract terms. On multiple occasions Royal recommended to Wells that she retain legal counsel to review the PSA prior to execution. *See, e.g.,* Transcript of June 4, 2019 Hearing, at 32:18 – 33:6; Royal Vol. II, at 213:6-21; Royal Vol. III, 399:9 – 400:9. And although Royal drafted the PSA, a key term allowing a flexible closing date was added to alleviate Wells' concern as to adequate time to

[6] Every party to this litigation has admitted the fact that FKAC has not dissolved, denoting FKAC's ability to transact business at the date of closing. *See* **Exhibits 17**, **18**, and **19** attached hereto, CCSD's (at no. 6), FKAC's (at no. 7), and the AG's (at no. 6) respective Answers to Royal's First Requests for Admission.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

vacate the premises. Complaint ¶ 11; *see, e.g.,* Royal Vol. II, at 278:11 – 279:19. Under the terms of the first offer which FKAC rejected, the transaction would have closed in 2013. Wells indicated to Royal continuously that although FKAC desired to enter a sale agreement, she was afraid there would not be adequate time to remove all of the contents stored in the building. Royal believed, and he felt that Wells believed, that the Agreement would close soon after the Effective Date.

Allowing for FKAC's option period to close was a significant sacrifice for Royal – he was seeking a property for immediate use and discovered the Property during his search for the same. From the Effective Date through early 2018, Royal politely but persistently contacted the Association with requests to close the Agreement so that he could begin occupying and using the Property. Complaint ¶ 13; *see, e.g.*, Royal Vol. III, Ex. 26 (November 10, 2014 letter from Royal to FKAC). Wells consistent reply was that she was making progress transitioning contents out of the building and that she was close to being able to close the Agreement.

Additionally, the purchase price was a product of an appraisal by a local MAI-certified appraiser, Michael Robinson, a copy of which was presented to Wells prior to the PSA's execution. Complaint ¶ 6; *see* **Exhibit 20** attached hereto, January 14, 2013 letter from Royal to Wells enclosing said appraisal and an earlier draft of the Agreement (advising that the "proposed real estate contract . . . us[es] Mr. Robinson's appraised value as the purchase price"). In this January 14, 2013 letter, Royal asked Wells what date she would feel comfortable moving out of the Property, and explained that "while I greatly look forward to moving in at 34 Pitt Street, I want to accommodate your timeline[.]" *Id.* Royal, to avoid any surprise, made clear in his letter that the appraised value used for the purchase price was strictly a "land value" price based upon removal of the existing building on the Property. *See id.*

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Moreover, the PSA's terms were largely construed in the seller's, FKAC, favor: contrary to the custom of a seller paying a brokerage commission, no brokerage fees applied to the transaction; Royal was to pay all closing costs; Royal agreed to reimburse FKAC for its legal expenses up to $1,000; and Royal was not entitled to any "initial look" or "'due diligence' period" but rather was immediately obligated to purchase the Property, as it existed, upon signing the PSA. Complaint ¶ 12.a.-d.

In short, the Agreement was entered into at arm's length by a motivated seller and purchaser, the former of which was a corporation fully entitled to transact business and enter into contracts for the same. Its terms were fair and equitable to both parties, and in reality were skewed in favor of FKAC's interests. It was executed by a duly authorized agent of FKAC in the presence of a notary public and multiple witnesses. *See supra* Sec. II.A.1.; FKAC's Reply to CCSD's cross-claim, ¶ 2; Complaint Ex. A, p. 4; Plaintiff's MSJ Memo Ex. 4. Therefore, Plaintiff must prevail on this claim. "[S]pecific performance of a contract to sell real property will be ordered whe[n] the contract 'is fair and was entered into openly and aboveboard.'" *Shirey*, 431 S.C. at 422, 848 S.E.2d at 330 (internal citations omitted) (latter alteration in original).

B. CCSD's Counterclaim.

1. Declaratory Judgment.

CCSD has requested that the Court enter a declaratory judgment that: a) CCSD is the legal, beneficial, and/or equitable owner of FKAC's assets and/or the proceeds from the sale of the same; b) the PSA is null and void; and c) CCSD is entitled to FKAC's assets, and/or the proceeds from the sale of the same, upon FKAC's dissolution. *See* CCSD's Counterclaim, Prayer for Relief. CCSD's conflicting assertions in the first and third subparts — claiming both present ownership

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

of FKAC's assets and entitlement to the same upon FKAC's dissolution — was cleared up during its deposition, such that only parts b) and c) of its claim remain. *See infra*.

Claims for declaratory judgment may be brought under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.* (the "D.J. Act"), only if a justiciable controversy exists. *See, e.g.*, *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423-24, 593 S.E.2d 462, 465-66 (2004); *S.C. Lottery Comm'n v. Glassmeyer*, 428 S.C. 423, 431-33, 835 S.E.2d 524, 528 (Ct. App. 2019). The South Carolina Supreme Court has set forth the following elements required to establish a justiciable controversy: "Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of a declaratory judgment action." *Power v. McNair*, 255 S.C. 150, 153-54 (1970) (internal quotations and citations omitted). To maintain a declaratory judgment claim as to a contract, the party must have a cognizable interest in, or demonstrate its rights or legal relations are affected by, the contract at issue. *See* S.C. Code Ann. § 15-53-30.

Royal asserts that no justiciable controversy exists involving CCSD, as it is not a party to the valid PSA and it is not the named beneficiary of the residual assets of FKAC following its dissolution. Evidence exists which casts doubt upon CCSD's claim to FKAC's residual assets as, essentially, the "successor" to Charleston School District #20. *See* Plaintiff's MSJ Memo, Ex. 8; CCSD Dep, 114:4 – 115:23, Ex. 22. Moreover, the AG has not formed a final opinion as to the entity entitled to receive FKAC's residual assets upon dissolution. *See* AG's Responses to Royal's First Set of Interrogatories, attached hereto as **Exhibit 21**, no. 17.

Regardless, CCSD's allegation that the PSA is null and void is patently false, and its claim to FKAC's residual assets, the proceeds of the sale to Royal, has not matured, prior to FKAC's

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

dissolution. CCSD's attempt to nullify the PSA is based on two arguments: 1) June Wells lacked authority to execute the PSA; and 2) the PSA's purchase price did not represent the Property's fair market value, which is allegedly to be determined by the AG. *See* CCSD Dep., at 76:20 – 78:6.

a. *June Wells Had Authority to Execute the PSA*.

As to CCSD's first argument, the evidence shows that June Wells without a doubt had authority to execute the Agreement on behalf of FKAC. *See supra* Sec. II.A.1. Moreover, CCSD has offered no evidence of its own to refute June Wells' authority. *See* CCSD's memoranda opposing Plaintiff's Motion for Partial Summary Judgment.[7] In these memoranda, CCSD merely attempts to attack evidence proffered by Royal or makes assertions that are refuted by the existing evidence – absent are any citations to documents showing that June Wells did not have authority. It attempts to proffer a May 2018 letter from FKAC's counsel as support, but this letter actually cuts against CCSD's position. *See* Nov. Memo, p. 10, Ex. C. In the letter, FKAC's counsel states that June Wells was FKAC's sole surviving member (*see id.*), a fact that was recently stipulated to,[8] and FKAC's July 1, 2019 Reply to CCSD's cross-claim states that Wells was "the duly authorized director and last surviving member of [FKAC] and that as such **she has authority and had authority since approximately 1990 to represent [FKAC]**" (*see* ¶ 2). CCSD's fixation on PSA terms regarding Wells' authority (Nov. Memo p. 9) ignores deposition testimony on the topic. *See, e.g.*, Royal Vol. II, at 264:17 – 265:10, 266:4-16.

[7] CCSD's Motion [sic] in Opposition to Plaintiff's Motion for Partial Summary Judgment, filed November 29, 2021 ("Nov. Memo"), and CCSD's Supplemental Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, filed December 3, 2021 ("Dec. Memo").

[8] *See* Plaintiff's MSJ Memo Ex. 10, and Plaintiff's Dec. 1 Letter. As set forth in Plaintiff's MSJ Memo and *supra*, Wells' position as a member is the essential inquiry as to the authority issue.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

And apparently, CCSD does not intend to offer any evidence disproving June Wells' authority. *See* CCSD Dep., at 79:20 – 80:5, 97:6-10 ("We're not going to prove that Ms. Wells didn't have the authority. We believe that somebody has to prove that Ms. Wells has the authority[.]").

b. *Fair Market Value Assertions*.

Regarding CCSD's second argument as to PSA validity, CCSD has no ability or standing to assert any challenge to, interfere with, or alter the terms of, a private contract to which it is not a party or has any current interest in. CCSD's testimony fully acknowledges this fact:

a. **CCSD testified that it has no authority or control over FKAC's assets**. (CCSD Dep. at 67:14-23);

b. **CCSD testified that it does not have authority to determine a fair purchase price for the Property under the PSA** (*Id.* at 67:24 – 68:13); and

c. CCSD has no such authority or control because **CCSD does not own FKAC's assets**, including the Property, and is **not claiming any interest in FKAC's assets until FKAC is dissolved** (*Id.* at 63:10-25, 64:19-22, 73:19 – 74:4).[9]

Even if CCSD had some form of authority over FKAC or the PSA, CCSD testified its consent to the PSA was not necessary because it (falsely) believes the PSA is null and void due to its execution by June Wells. *Id.* at 68:25 – 69:10. Additionally, the facts that the provision of FKAC's charter designating its residual beneficiary was subject to change, and that CCSD had no financial oversight over FKAC, or any means to know if FKAC's assets were being jeopardized, misapplied, devalued, or wasted, shows that CCSD has no authority to affirmatively seek revision, or in essence rescission, of the PSA. *Id.* at 70:7 – 71:16.

[9] This testimony eliminates CCSD's request for a declaratory judgment that it is the legal, beneficial, and/or equitable owner of FKAC's assets. *See* CCSD's Counterclaim, Prayer for Relief subpart a. CCSD has admitted that FKAC is not dissolved. *See* Ex. 17, at no. 6.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Perhaps the conclusive fact that defeats CCSD's quest to invalidate the PSA, though, is that it believes the AG, not itself, is the party to determine fair market value. CCSD Dep., at 77:5-10. Therefore, CCSD admits it has no standing to object to or present evidence regarding the PSA's purchase price.

2. Request for Costs and Attorneys' Fees.

In its Counterclaim, CCSD requests "that the Court award Charleston County School District their [sic] costs, including reasonable attorneys' fees, incurred in defending Plaintiff's Complaint in this action[.]" Its pleading does not allege any basis for this request.[10] Its Rule 30(b)(6) deposition designee was likewise flummoxed and made vague assertions that paragraph 3 of the PSA supported its request. *See* CCSD Dep., at 84:7 – 85:12.

The PSA provides no ground for CCSD's request. Paragraph 3 states that Royal "agrees to reimburse *Seller* for any of *Seller's* attorney fees up to One Thousand and 00/100 Dollars ($1,000.00)." Complaint Ex. A. FKAC was the Seller under the PSA, and more importantly, CCSD testified that it is not a party to the PSA. *See* CCSD Dep., at 85:17-24. Finally, there is no statute which could be construed to provide for CCSD's fees incurred in defending against Royal's breach of contract and specific performance claims (both of which are directed against FKAC).

Clearly, there is no basis for CCSD's request for costs and fees.

C. The AG's Interference with the PSA.

The Attorney General has made sweeping claims that his parens patriae authority allows him to invalidate a binding real estate contract freely entered into by FKAC and Royal. *See* AG's

[10] On December 8, 2021, a week overdue, CCSD provided an answer to Royal's interrogatory on this topic. *See* **Exhibit 22** attached hereto. Therein, it asserts that the PSA is null and void and unenforceable. As such, it alleges that it's only entitled to fees if Plaintiff prevails on his claim – which makes no logical sense. *See id.*

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Motion to Intervene and Memorandum in Support, p. 3; Ex. 21, at no. 12. Such a claim, in actuality, is detrimental to the public benefit. Should the AG succeed in his efforts, the public will never be able to rely upon or attempt to enforce any real estate contract entered into with a nonprofit corporation. Additionally, the authority cited by the AG as providing it control over the PSA is either unsupportive or not applicable to the facts and circumstances of this case. *See* Ex. 21, at no. 9.

D. FKAC's Counterclaims.

It is not entirely clear from its pleading the nature of FKAC's counterclaims as they are not ascribed a title therein. It appears that FKAC is seeking consequential and other damages because it is allegedly unable to sell the Property due to the Complaint and Lis Pendens. This claim is perplexing as FKAC refused to sell the Property even though it was contractually obligated to do so. Additionally, FKAC has proffered no evidence to support any such claim, such as evidence of any offers or interested buyers since this litigation was commenced.

Additionally, FKAC, citing paragraph 6 of the PSA, seeks to recover its attorneys' fees and expenses incurred "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." It thus appears that FKAC's claim for fees should be directed toward the AG. Regardless, paragraph 6 of the PSA only contemplates the payment of FKAC's expenses incurred in taking "any actions and execut[ing] and deliver[ing] such further documents as may be reasonably required in good faith to consummate the transaction contemplated by this Agreement[.]" Complaint Ex. A, ¶ 6. As such, the PSA does not provide a basis for FKAC to recover its expenses incurred in this litigation. It specifically advised Royal that it refused to close on the PSA, and in this litigation it seeks to prevent closing on the transaction

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

contracted for. *See, e.g.*, FKAC's Answer ¶ 2 (denying therein Plaintiff's claim for specific performance).

FACTS IN CONTROVERSY

The parties are not in complete agreement on the following facts:

1. The parties, at least Royal and CCSD, disagree as to whether June Wells had authority to execute the PSA on behalf of FKAC.

2. The parties disagree as to whether the PSA contained a fair purchase price for the Property.

3. The parties disagree as to whether the AG has authority to review and disapprove of the PSA and the sale contemplated therein.

4. The parties disagree as to whether CCSD has standing to assert its counterclaim.

LISTING OF EXHIBITS AND WITNESSES

Royal's Exhibits.

A list of exhibits that Plaintiff may introduce at trial are set forth below. Pursuant to the Court's email of December 6, 2021, Plaintiff reserves the right to identify additional exhibits on or before the stated deadline of December 13, 2021.

1. FKAC's 1901 Constitution and Charter;
2. FKAC Resolution Adopted January 14, 1931;
3. FKAC's January 16, 1971 Application for Amendment of Charter;
4. Secretary of State's Certification of Amendment of FKAC's Charter, Executed February 5, 1971;
5. November 12, 2010 Letter from the AG's Office to June Wells;
6. November 23, 2010 Affidavit of June Wells;
7. December 7, 2010 Order of the Charleston County Probate Court in Case No. 2010-GC-10-90;
8. Appraisal of the Property, as of December 19, 2012, by Charleston Appraisal Services, Inc.;
9. The PSA, executed April 23, 2013;
10. Memorandum of PSA executed and recorded on April 23, 2013;
11. Certificate of Existence of FKAC, signed by the South Carolina Secretary of State on August 23, 2013;
12. Addenda to the PSA, executed on or about April 11 and 24, 2018;
13. Plaintiff's and FKAC's Stipulation of Fact, dated on or about October 1, 2021;

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Royal's Witnesses.

A list of persons Plaintiff may call as witnesses at trial are set forth below. Pursuant to the Court's email of December 6, 2021, Plaintiff reserves the right to amend or supplement this list prior to trial.

1. Michael D. Royal, care of undersigned counsel;
2. FKAC, via excerpts of the video and/or written transcript of its Rule 30(b)(6), SCRCP, deposition;
3. CCSD, via excerpts of the transcript of its Rule 30(b)(6), SCRCP, deposition;
4. Pledger M. "Jody" Bishop, III, MAI, SRA, AI-GRS, CRE, Valbridge Property Advisors, 1250 Fairmont Avenue, Mount Pleasant, SC 29464, (843) 884-1266; and
5. Michael Robinson, MAI, SRA, Charleston Appraisal Services, Inc., 304 Meeting Street, Suite 201, Charleston, SC 29401, (843) 723-6256.

UNUSUAL PROBLEMS RELATING TO EVIDENCE

As the Court is aware, there is no living person, to the parties' knowledge, who is a member, board member, officer, employee, or agent of the Association. Testimony of the Association will be introduced via the transcript of its Rule 30(b)(6), SCRCP, deposition. The unavailability of a witness will presumptively lead to many objections to evidence on hearsay grounds. On a related note, the case necessarily involves older documents relating to FKAC's formation, charter, and corporate resolutions.

Another issue is CCSD's December 3, 2021 motion to strike Royal's December 1, 2021 designation, via supplemental interrogatory answers, of himself as an expert to testify on the damages sustained due to FKAC's breach of the PSA. Similar to CCSD's designation of its expert,[11] Royal produced his designation one (1) business day before his deposition. This designation is consistent with the Court's June 21, 2021 Order encompassing Royal's damages

[11] Although CCSD retained its expert in April 2021, it refused to answer Royal's valid interrogatory requesting identification of any non-testifying consulting expert, and waited until November 19, 2021 to identify its testifying expert appraiser.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

claims, as said Order does not limit the persons Royal may call to testify at trial as an expert. Additionally, and as distinguished from CCSD's hide-the-ball tactics, Royal produced his damages formula and statement on August 26, 2021, 99 days before CCSD's motion to strike, and this formula has not changed. Yet CCSD's counsel refused to depose Royal about his claimed damages or in his expert capacity during the second and third days of his deposition that took place on December 2 and 3, 2021.

UNUSUAL MATTER TO BE BROUGHT TO THE ATTENTION OF THE COURT

The trial of this case is currently scheduled for one day, December 15, 2021. Due to multiple motions filed by CCSD since the pre-trial hearing, and the number of witnesses likely to be called at trial, it seems that additional time will be required to conclude the trial. One suggestion to ensure all of the evidence and arguments are fully heard is to bifurcate the trial. In that scenario, Plaintiff would propose the following:

i. Day 1, or first part, of trial: evidence is heard relating to the issues of: a) June Wells' authority; and b) validity and enforceability of the PSA.

ii. Day 2, or second part, of trial: evidence is heard relating to the issues of: a) any objections to the PSA or the sale contemplated therein; and b) the parties' claimed damages and remedies (including CCSD's requested declaratory judgment pertaining to FKAC's assets).

SETTLEMENT NEGOTIATIONS

After Plaintiff's counsel appeared of record, it wrote a letter to all counsel on October 21, 2021 attempting to schedule mediation of the case. Following responses from counsel for the AG and FKAC, it contacted four (4) potential mediators and obtained their availability. After relaying this availability to the parties, CCSD's counsel advised that it would not participate in mediation

until after the deposition of Plaintiff (on December 2 and 3, 2021). Plaintiff's counsel replied, stating that one of the potential mediators had already provided four (4) available dates after Plaintiff's deposition, and asked that CCSD advise as to its availability and willingness to participate in mediation. No response was received to that communication.

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MICHAEL D. ROYAL

December 8, 2021
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 1

Excerpts of and Exhibits to Volume I of the Transcript of the Deposition of Michael D. Royal

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

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 Deposition of MICHAEL ROYAL May 5, 2021

Deposition on oral examination of MICHAEL ROYAL, reported by Michelle A. Manni, Registered Professional Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to notice and/or by agreement, in accordance with the South Carolina Rules of Civil Procedure, via video conference, on Wednesday, May 5, 2021, and commencing at the hour of 10:36 a.m.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. Was it just a fortuitous meeting, or did you seek her out? How did that occur?

A. It was not fortuitous. It was intentional. I was trying to find her.

Q. All right. So you found out her home address and went there? Is that what happened?

A. Yes, ma'am.

Q. All right. And what -- tell me about that conversation. Did you knock on the door? Did you have a conversation?

A. She was actually on the street. I think she was --

(Brief interruption.)

THE WITNESS: Sorry. I got my car back here talking to me. Sorry about that. Excuse me one second. Let me turn this off. Sorry about the interruption.

MS. ARIAIL: It's all right.

THE WITNESS: Can you repeat the question?

BY MS. ARIAIL:

Q. We were talking about your meeting with Ms. Wells and how -- how you approached her and what -- how that conversation went.

A. Yes. I was prepared to go knock on the door of Ms. Wells to ask her about the property at 34 Pitt Street,

and I found her on the street in her neighborhood. I believe she was talking with some neighbors, and I began a conversation with her.

Q. How did you know that was her?

A. I believe that by that point I may have seen her face in a news article.

Q. That makes sense. Okay. What was your conversation with her then?

A. I told Ms. Wells that I was very interested in the 34 Pitt Street property, that I noticed that it appeared not to be in use, that it appeared vacant, and I wanted to find out if it would be available for sale.

Q. What was her response?

A. I can't remember what her response was at the time except that I did not get the response saying that she was willing to sell it to me right then and there, or I didn't have in my mind a sense that we were moving quickly towards a sale transaction by the end of that conversation. But we did have a friendly conversation, and I believe that I indicated that I would like to stay in touch with her about it.

Q. And did you stay in touch with her?

A. Yes, ma'am.

Q. All right. And did she give you her number at that point?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

you go to her house each time? Did you call her on the phone?

A. No, ma'am. I believe that first meeting with her was the only time I saw her at her house. There may have been one other occasion, but generally, I met her at the Confederate Museum or spoke with her on the phone and on certain occasions met with her at the 34 Pitt Street property.

Q. So at the time she was still working at the Confederate Museum?

A. Yes, ma'am.

Q. Did you know Ms. Wells before that meeting in her neighborhood?

A. No, ma'am.

Q. Do you know if any of your family members knew Ms. Wells prior to that date?

A. Not to my knowledge.

Q. I might have already asked this, but did you -- do you recall when you first went to her home and met her on the street to discuss 34 Pitt Street? Do you know when that occurred?

A. That meeting would have been, to the best of my knowledge, sometime in 2012.

Q. Okay. When was the first time you actually visited the property, not just riding by, but actually go

on the property itself and inside the building?

A. That date -- I'm going to refer to my reference list of dates to see if that might be helpful here. I believe that the first time that I entered the property, the building at 34 Pitt Street, was November 4, 2012.

Q. Was that before you met her or after?

A. That would have been after I met her. I didn't have a key to the property.

Q. So did she go with you for that visit?

A. Yes, ma'am.

Q. All right. And what was the condition of the building and the grounds at that point?

A. Deteriorated.

Q. Were the grounds maintained at all?

A. Ma'am, the grounds were maintained from time to time, not consistently. Sometimes I drove by the property, and I could see that the grass had been mowed. Other times it looked like there was weeds growing everywhere.

Q. All right. How about the building itself? Let's talk specifically -- was the -- was the waterproof integrity of the building compromised?

THE WITNESS: Ma'am, I object. You're asking for an improper opinion. I don't have the expertise to answer that.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

blessing to try to get the title worked out on behalf of the association.

Q. You believe you did, or you have an independent recollection of it?

A. I believe I did.

Q. I haven't seen any documents where you and Ms. Wells had any type of correspondence related to the quitclaim deed. Do you have any of documents that might exist where she asked you to do that?

A. I don't recall any.

Q. So what efforts did you take to determine Ms. Wells' authority related to Free Kindergarten?

A. The answer to that question could be quite extensive, so I want to go ahead and reserve the right to supplement whatever I'm going to say here, but I will tell you what first comes to mind when you asked that question.

One of the most important ways that I under- -- that I found about out about Ms. Wells' authority with respect to the owner of the property was her simply telling me that she was a director and the last living director of the association on the property.

I also have a recollection of seeing a -- at least one newspaper article, maybe more than one newspaper article, discussing her role as a director and also having other roles with respect to the kindergarten. And then

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

over time, Ms. Wells gave me documents which seem to confirm her role as a person of the authority for the association.

And finally, I noticed that she was the only person that I could determine who had a key to the property and who had the ability to enter the building and seemed to have full control.

I think, also, at some point in my discussions with city staff, I was also pointed in her direction as the person who managed and controlled the property. And I can't remember which person at city staff gave me her name, but -- so it was also in discussion with other persons. But she certainly held herself out as a person who had authority with respect to the association of the property.

Q. Did Ms. Wells ever give you documentation of her authority to dispose of the property on behalf of Free Kindergarten?

A. Yes, ma'am. In my opinion, she gave me plenty of documentation that was evidence of her authority to dispose of the property. If you're asking for a specific authority, I don't recall a document which -- actually, I take that back. I do recall seeing, at some point, a document which was a -- I believe I remember seeing a document which was a resolution to allow Ms. Wells --

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

I might be getting confused. So let me -- let me just retract this part of the answer. I'm not sure if the resolution specifically authorized her in the way of real estate transactions. So since I'm not certain of that, I want to retract that part of my answer.

Q. All right. What do you think this resolution did do?

A. The resolution that I just had in mind, I believe it was actually a resolution related to a bank account, so I don't think it was directly related to real estate transactions.

I do remember seeing -- I believe it was a letter from an attorney addressed to Ms. Wells that related to a lease of a portion of the property. I took that as further evidence. If this letter had been addressed to her by, apparently, an attorney for the association, then I took that as further evidence of her authority to engage in real estate transactions.

Q. This is an attorney for Free Kindergarten?

A. I believe so.

Q. So the documents that you're relying on, anything that you're relying on that you think shows her authority to dispose of the property is contained in the documents that you've produced; is that right?

A. To the best of my knowledge, yes.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. Okay.

A. As far as documents go, yes.

Q. You said that Ms. Wells held herself out to be the director and the last living director of Free Kindergarten. Ms. Wells held a position, a paid position, with the kindergarten and signed a number of documents -- it appears in a number of newspapers -- as the director of the kindergarten itself. Are you equating that to being a director on the board of directors?

A. Ma'am, can you tell me what you're citing that from?

Q. We can look at documents in the future, but let's put it this way. When Ms. Wells told you she was the director and the last living of Free Kindergarten, was that a director of the kindergarten or a director on the board of directors?

THE WITNESS: I'm going to object. The question assumes facts not in evidence. You just quoted a line to me that you're asserting I've made in the past. I've ask where you source that statement from, and you are, apparently, not willing to tell me. So in order to --

MS. ARIAIL: Mr. Royal, I get to ask the questions here. I've been very patient with you in trying to clarify things for you, but I get to ask

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

the questions, and you are required to answer them.

THE WITNESS: I will answer them. I want my objection on the record, though, and I will make my answer.

BY MS. ARIAIL:

Q. All right. What's the answer?

A. Can you repeat the question?

MS. ARIAIL: Ms. Court Reporter, will you repeat the question, the last question, please?

(The record was read by the court reporter.)

THE WITNESS: I don't understand the question. I'm sorry.

BY MS. ARIAIL:

Q. So Ms. Wells -- when I asked about Ms. Wells' authority, the first thing that you testified to was that she held herself out as being the director and the last living director of Free Kindergarten.

A. Yes, ma'am.

Q. Was your understanding that that was the director of the kindergarten, in other words, an administrator of the kindergarten, or was that a director on the board of directors?

A. Yes, ma'am. I understood that it was most likely both of those meetings.

Q. Did you specifically ask her about that?

motivated, for some reason, to bring his attention to the sale agreement in spite my encouragement to do so.

Q. Do you know what her reason was?

A. I do not know.

MS. ARIAIL: Why don't we take a five-minute break? It's 1:43. I guess we can just leave everything up. Does that make sense, come back at maybe 1:50? Does that work for everybody?

MR. STRINGER: Yeah.

MS. JOWERS: Sure.

(Pause in the proceedings from 1:44 p.m. to 1:53 p.m.)

BY MS. ARIAIL:

Q. All right. I want to talk about Ms. Wells and Free Kindergarten and her authority to bind the organization, and I want to ask you what your understanding -- just in generalities, what your understanding of the difference between an administrative director and board of directors director is.

A. I take the word "director" to be used oftentimes in two different senses, and a director in the administrative or officeholder position might be a sub breakdown of two categories of how a director might be used. There's a board of directors, and then there can be a director of a kindergarten, for example. And the

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

director of a kindergarten may be a management role in the kindergarten, or it could be an officer role as well. It could be a title similar to president, vice president, treasurer, et cetera.

So I think there are at least three ways in which the term "director" might have been applied to Ms. Wells, and none of them are exclusive of the others.

Q. Okay. So. I didn't understand that. You said there are three different -- my question was based -- was director versus board of directors. What's the third category or third term you're referring to?

A. What I was just saying is, I can -- as I sit here right now, I can think of at least three ways that the term "director" might be applied to someone who is associated with the Free Kindergarten of Charleston. I'll go through it again.

Q. Okay.

A. A director may be a person who has a position on the board of directors of a corporation. A director could also mean an officeholder within the corporate organization, similar to president or CEO. A director could also be a management position within an organization, which is not an officeholder.

Q. Okay. Now I understand. Which of those three classifications would you typically think of at least for

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

a kindergarten-type organization, a nonprofit organization? Which of those one, two, or all three would you think would receive a salary?

THE WITNESS: I'm going to object. The question calls for information outside of personal knowledge of the deponent.

And I would say that a salary is, as far as I understand, generally associated with an employee, and an employee can be an officeholder. It can also be a management position. And again, I would just want to reiterate that none of these roles are mutually exclusive.

And I believe that there's evidence that in the case of Ms. Wells, they certainly were not mutually exclusive but that she inhabited more than one of those roles in her directorship.

BY MS. ARIAIL:

Q. And that evidence, again, is the documentation that you've contained within the documents that you produced, right?

A. Yes.

Q. And --

A. I'm sorry. If I could just add to that.

Q. Go ahead.

A. That would be a documentary evidence, and I

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

believe I mentioned today other types of evidence.

Q. And that other evidence being what?

A. My conversations with Ms. Wells and my conversations with other people, for example, city staff who seemed to indicate to me that Ms. Wells had complete control and authority over the property owner.

Q. Do you know if Ms. Wells was paid as the director of the kindergarten management, slash, administrative-type position?

A. Not aware of that, no.

Q. Do you know if Ms. Wells was paid as a teacher for the kindergarten?

A. I know that I've seen check copies or other evidence of Ms. Wells being paid. I don't recall off the top of my head here in what role she was being paid. I don't believe that I've seen evidence that she was paid in her role as director, but I couldn't promise. I do believe that she had been paid, though.

Q. Have you seen any evidence where any of the board of directors members have been paid for being on the board of directors for Free Kindergarten?

A. I'm not aware of any evidence or can't recall any evidence.

Q. Have you seen any evidence that indicates that any of the officers of the board of directors were paid

wanted to let go of the property before just mentioning it to you that if I, in fact, found out that I would not have been able to do with it what I intended that, you know, it certainly would have been one of the options. But I have never spoken with anyone about wanting to sell the property. I've always had my mind get it to work the way I wanted it to work.

Q. Okay. When did you first meet Bill Wells?

A. I do believe I can point you to a date and answer that question. I'm going to refer to my summary if you can give me a moment. I don't see it right here. I believe it might have been 2014 or '15.

Q. So it was after execution of the purchase and sale agreement?

A. It definitely was after that point.

Q. What were the circumstances in which you met Mr. Bill Wells?

A. The first occasion that I met him, I'm not sure what the circumstances were. If it helps, I can tell you what typical circumstances might have been for our meeting and communication.

Q. Let me back up. I'm referring to Bill Wells -- I want to make sure we're clear on this -- as Ms. Wells' son. I'm not sure what her husband's name was. Did you ever meet her husband? I know he passed.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

felt that it was important for my case. I would have probably scanned them.

Q. There was some conversation about records of Free Kindergarten that were lost in a fire. What's your understanding of that?

A. At some point early in the process when I was speaking with Ms. Wells about the potential for purchasing the property, I was, of course, concerned with being able to demonstrate an agency or authority to bind the owner in a purchase and sale contract. And I remember asking her if there were documents, official documents, corporate documents, which would evidence her role as director or any other authority that she may have had.

And I remember her telling me that there was a fire in the home of one of the either officers or directors or somebody who was authorized in the organization to keep corporate documents. I believe she told me that this person went mentally insane, and there was a house fire, and most of the corporate records for the association went away in the fire.

Q. Do you remember who that was?

A. I don't.

Q. Do you have any documentation other than your conversation with Ms. Wells related to that fire or the loss of corporate records?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

the title and advising me on legal matters that I felt might ultimately need to be resolved in a court of law, for example, Ms. Wells' authority on behalf of the association, and also acted as the ended closing attorney for purchase and sale agreement.

Q. In November of 2012, did you have concerns there about Ms. Wells' authority to sell this property on behalf of Free Kindergarten?

A. I had concerns about the documentation. I was firmly convinced -- or I had no reason to disbelieve that she held the role that she purported to hold, or roles, but I certainly did have a concern about getting good documentation or evidence for that authority.

Q. And at what point did you no longer have that concern?

A. At what point did I not have a concern about the documentation of her authority?

Q. Yes.

A. Over -- I wouldn't say that there was a single point in time, but as I received more and more documents from Ms. Wells, that certainly helped give me comfort.

And then, of course, you know, when I saw the order from Judge Condon, that also gave me further comfort. But I wouldn't, you know, pin a single date on which I lost any -- or when I no longer had any concern

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

about documentation.

Q. Do you have concerns today?

A. No. I think that the documents that I've already provided to opposing counsel are replete with evidence of her authority. I have absolutely no concern today.

Q. All right. And I understand your testimony. If not, correct me. At the point that this initial draft, Exhibit 1, was prepared in November of 2012, you had no plans for an escrow agent to be involved with this purchase and sale; is that right?

A. No, ma'am. That's not what I testified to.

Q. Okay. Help me understand.

A. I testified a moment ago by saying that I don't recall drafting that provision, and I don't even recall if I simply filled in the blank with something that was already existing there or not. So my answer to your question earlier is, I don't recall what mental process might have been in my mind at the moment when I was typing the letters "Buist Byars & Taylor."

Q. Okay. All right. On the second page, let's look at paragraph 2a, and there's a line -- it says "down payment, the sum of twenty-five thousand and no dollars" [sic], and then there's another line that indicates how much the down payment will be. And then there's a later

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 2

Excerpts of and Exhibits to Volume II of the Transcript of the Deposition of Michael D. Royal

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF MICHAEL D. ROYAL
Volume 2
DECEMBER 2, 2021

MICHAEL D. ROYAL,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA AND THE CHARLESTON COUNTY SCHOOL DISTRICT,

Defendants.

TIME: 10:01 A.M.

LOCATION: BYBEE & TIBBALS
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: TERI L. KENNELLY, RPR, CRR
NCRA CERTIFIED REALTIME REPORTER
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. As I previously testified, Ms. Wells gave me documents over a period of time in 2012 and certainly '13, and they didn't all come at one time. They came over time. I know that I received a lot of documents in 2013. Some of them may have been received in 2012 as well. I'm not sure.

Q. And what was the purpose of her giving you those documents?

A. She thought that I should have them. I can't remember how that conversation started, but as she was removing personal property from the building at 34 Pitt Street, she was also going through documents that she found.

Also, I had asked her questions related to her authority vis-à-vis the association and, therefore, was looking for information related to her capacity to sign a sale agreement. And I believe that part of the reason that she was giving me these documents was to give me evidence of corporate actions and so forth from the association.

Q. And why did you not think it was necessary to turn those documents over in this litigation pursuant to discovery requests?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

which I have produced that I received from Ms. Wells that describe her that way. Third, she wrote an affidavit in 2018 in which she described herself as I believe the last surviving member.

Fourth, the association has stipulated that during the period in question, she was the sole surviving member of the association. Those are the facts that I can think of here.

Q. Okay. Let's talk about that 2018 affidavit. Do you know why that affidavit was executed?

A. No.

Q. Did you ask her to execute that affidavit?

A. No.

Q. When did you receive that affidavit?

A. I received that affidavit -- if it wasn't after the final closing date that was possible under the contract, then it was within that time frame. I didn't receive that affidavit until I think well after she had written it -- or I should say signed it. I'm not sure if she authored it.

Q. Do you contend that Ms. Wells had authority to execute or enter into the purchase

and sale agreement on behalf of Free Kindergarten?

A. Yes.

Q. What material facts support that contention?

A. All of the ones that we've just discussed.

Q. Any other documents that we have not discussed?

A. Not that I can think of as I sit here. But I will just submit that I have produced hundreds of documents, and many of those will support the contention that Ms. Wells had authority.

Q. Do you contend that Ms. Wells acted within the scope of her authority in executing the purchase and sale agreement on behalf of Free Kindergarten?

A. Yes.

Q. What material facts support that?

A. All of the ones that we've just been talking about.

Q. Any other documents to support that?

A. Not that I can think of as I sit here now. But, you know --

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. I know you've produced hundreds of documents.

A. Including many checks that she's written, including bank resolutions other than the 1997 bank resolution, including a lease transaction that she was associated with, including an attorney cover letter transmitting that lease to her, indicating that she was the person in authority to manage real estate transactions on behalf of the association. And there are many other documents. I don't have them in front of me right now.

Q. Okay. Talk to me about that lease. What's the lease?

A. This was a lease in the 1990s in which The Confederate Museum was to lease two rooms at the building at 34 Pitt Street, as I understand it. It was a five-year lease.

Q. And it was between which parties?

A. Confederate Museum and Free Kindergarten Association of Charleston.

Q. And Ms. Wells -- you said Ms. Wells executed that agreement?

A. She executed the agreement on behalf of the Confederate Museum.

Q. And how does that give her authority related to Free Kindergarten?

A. I didn't say that it gave her authority. I said that she was associated with this transaction, and then I mentioned that the attorney was communicating with her directly about this transaction. I, of course, have a theory why she didn't sign on behalf of the kindergarten association.

Q. What you said was that there's a lease transaction she was associated with including an attorney cover letter, transmitting that lease to her, indicating that she was a person in authority to manage real estate transactions on behalf of the association.

A. Yes, ma'am.

Q. But she signed on behalf of the Confederate Museum; is that what you said?

A. Okay. I'm going to use the same language. I'm standing with my language.

Q. Okay. Let me ask a new question then.

MR. WILLIAMS: Object for interrupting the witness.

A. Ma'am, I said that she was associated with a lease, and the cover letter from the

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

attorney and these documents together indicate that she was a person of authority. The reason I believe she was not signing on behalf of the association is that she would have been signing on behalf of two parties, and there could have been a conflict in that situation.

I believe that she was the person in authority for the association and was communicating with the attorney on its behalf, and the attorney recommended even to her in his cover letter that she make any modifications to the agreement that she deemed necessary, but ultimately it appears she did not sign on behalf of the association because she was an authority person for both of these organizations.

Q. What evidence do you have that says that she considered signing on behalf of both parties?

A. I don't have evidence of that. That's why I said that's my theory.

Q. Okay. So this is a theory you have?

A. Yes, ma'am.

Q. Who did sign on behalf of Free Kindergarten? Do you remember?

A. I don't remember.

Q. Do you know what their positions were?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. No, I don't.

Q. And the first $10,000 was contingent on Ms. Wells being able to provide authority to sell the property, correct?

A. That's the way I read it.

Q. And then paragraph 4, it indicates that, The purchaser agrees to reimburse seller for seller's attorneys fees up to $5,000.

What were those attorney's fees for there?

A. I had spoken with Ms. Wells and on several occasions had encouraged her to get legal representation, just because I thought it would be prudent for the association and the purchase and sale of this property to have legal representation, and this was intended to give her assurance that there would be reimbursement. $5,000 is a very, very large number I would say, but I wanted her to have comfort that her costs -- or the association's costs, I'm sorry, would be covered.

Q. And this is related to the closing?

A. Let me see.

Purchaser agrees to reimburse seller for seller's attorney's fees up to $5,000.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. What was your intent when writing this paragraph?

A. To find documents conferring -- specifically conferring agency to Ms. Wells for the sale of the property.

Q. Did she ever do that?

A. Yes.

Q. So you believe she had the authority, this agency authorization?

A. Well, she didn't have something called an agency authorization, you know, on the title of a document that she gave me. She did give me plenty of documents that I believe well established her authority. And she never, to my knowledge, delivered me an instrument that specifically conferred authority to her, as in the document itself conferred authority to her.

Q. Okay.

A. But I received from her plenty of documents that represented her authority.

Q. And those are the ones we discussed first thing this morning?

A. Yes, ma'am.

Q. Anything else you can think of at this time?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. Not at this time.

Q. That parenthetical, agency authorization, what exactly did you mean by that?

A. It appears that that was a term that I created. I can see that it's capitalized and called out, so it appeared that agency authorization means instruments conferring authority on June M. Wells.

Q. And a minute ago you said that she gave you -- she did give me plenty of documents that I believe well established her authority.

When did you receive documents that well established her authority?

A. Certainly in 2013 and maybe as early as 2012 and maybe some after 2013 as well. But I'm pretty sure that I received a lot of documents in 2013.

Q. So at the time that Exhibit 4, which is the executed purchase and sale agreement was executed, you believe that you had documents that established her authority?

A. I believe that I had some documents but maybe not all of them at that point.

Q. Okay.

A. Yeah. It's hard to say right now

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

exactly when those documents came across.

Q. So when you executed Exhibit 4, did you have documents -- did you believe at that time that Ms. Wells had authority on behalf of Free Kindergarten to execute that document?

A. Yes. Based on her representations to me, I believed that she had authority, and I was also eager to further establish that authority.

Q. What did you do to further establish that authority?

A. I believe that I kept receiving documents from her in 2013. At some point -- and I believe this was after the execution of the purchase and sale agreement -- I found Judge Condon's ruling from 2010.

Q. The magic bullet?

A. I'll let you describe it the way that you like.

Q. You don't remember using that language?

A. I don't recall off the top of my head using that language.

Q. Did the language from paragraph 7 in Exhibit 1 make it into the executed agreement, Exhibit 4?

A. Not in that form. It appears not to

A. I don't recall any specific conversations. I just remember a number of conversations in general where she was expressing her, I think, anxiety around being pressured to move out in any near-term date.

Q. You had visited the site and seen the condition of the inside of the building by this date, correct?

A. I believe so.

Q. Did you think it was possible to get everything that was in there out by -- in a three-month period?

A. Absolutely. It would take me 48 hours if I had been in charge of it.

Q. Is that just a dumpster?

A. No. Well --

Q. The next page is the first time that we see title blocks with notaries on it. And it starts -- this is page 4. In witness whereof, the parties hereto have caused this agreement to be executed under proper authority.

What authority did you understand Free Kindergarten was operating under?

A. Well, I understood Ms. Wells to be operating under authority for the association,

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

and I viewed her authority to be coming from, you know, any one of several sources, including a member of the board of directors, as an officer, and she had also said that she was the last member of the association.

So here in the signature block, it says director and authorized agent. I included the term authorized agent to try to capture each and every source of potential authority that she may have.

Q. We've talked about that terminology, authorized agent. I think there was some type of language in a prior version -- here it goes. I'm looking at Exhibit 6, paragraph 6.

Agreement is contingent upon the seller's ability to provide the purchaser with instruments conferring authority on its agent (June M. Wells) to sell and convey the property on seller's behalf, the agency authorization.

We talked about that earlier and you said that was definitely a term that you coined with the capital letters and the quotes around it.

Is there anything that happened between version 3, dated November 28th of 2012, and

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

version 5, which is Exhibit 8, that caused you to add this "and authorized agent" after Ms. Wells?

A. Not to my memory.

Q. Do you recall why you did add -- and it shows up a couple of places. Under the signature line it shows, June M. Wells, director and authorized agent. And then in the notarized statement, it indicates, by June Wells as the authorized agent of the Free Kindergarten Association of Charleston. Do you recall why you added that language to this version of the document?

A. Yes. As I testified just a moment ago, I was eager to tap into each and every source of authority that she had. And this somewhat generic term, for my mind, did that.

Q. And what facts did you base that on, naming her --

A. I didn't base it on facts.

Q. What did you base it on then?

A. I based it on my intention to capture every source of authority that she may have.

Q. And what facts support her being an authorized agent at this period of time?

A. Well, during the beginning of this

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

morning's deposition, we went through lists of those, so if I may just refer us back to all of the language from the first part of today's deposition.

Q. So you think all of that had occurred by January 13th of 2013?

A. To the extent that we discussed documents this morning that I received after the date of the drafting of this document, no. But certainly representations that Ms. Wells had made to me directly in our conversations and other records that I had by this point.

Q. And if you look at the bottom when we get to red -- you got red?

A. I do.

Q. Okay. When we get to the red language, there's that language again about the agency authorization. We've talked about that.

The third kind of paragraph, The parties shall work together in good faith to complete the transfer of ownership of the property to Royal should Royal decide to exercise his option to purchase the property.

What option are you talking about there?

A. I don't know. I don't recall drafting

A. I'm not sure why that was placed here, but there was eventually a memorandum of agreement.

Q. For good and valuable consideration, Michael D. Royal has purchased from FKAC an exclusive option to purchase the property, known as, dot, dot, dot, legal description.

What's the purpose of that?

A. I don't recall drafting that, and I would be sort of speculating to try to reinvent my intentions behind that sentence from 2021.

(A recess was taken.)

(Exhibit No. 9 marked for identification.)

Q. All right. We've marked as Exhibit 9 plaintiffs document 103, pages 1 through 4. According to the designations on your file names, this is version 6, and it's dated 1/14/2013, and it also indicates that this is the version that was delivered January 14th, 2013. Do you agree that this is the first written document version of the real estate purchase and sale agreement that you presented to Ms. Wells?

A. Yes, ma'am.

Q. Again, you authored this in its

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

So I think we established that version 6 was the first version actually provided to Ms. Wells, correct?

A. Correct.

Q. And, again, version 7, any changes to this document would have been made by you; is that right?

A. Correct.

Q. Do you recall why you made changes from version 6 to version 7?

A. No. And I'm not aware of what those changes might have been.

Q. Let's look at paragraph 7. This is the closing paragraph. Why don't you just go ahead and read that in.

A. The closing of this agreement, the closing, shall be held at the location of the property or at other location mutually agreed to by the parties on April 6th, 2018, or on such prior date chosen by the seller upon reasonable notice to the purchaser of the closing date.

If for any reason the seller's authorized agent changes to a person other than June M. Wells, the closing date shall be within 60 days of such change unless otherwise agreed by

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

the parties.

Q. Let's dissect that a little bit. Is it unusual to have the closing at the location of the property?

A. Yeah, that would probably be unusual.

Q. What was the thought there?

A. It seemed like a mutually convenient location.

Q. And you've got the date for closing is April 6th, 2018. How was that date established?

A. This draft, I believe you said, was in April of 2013; is that correct?

Q. Yes, sir, April 7th.

A. And the prior draft, which I delivered to her on January 14, right, version 6?

Q. Yes.

A. The reason for this change was that, notwithstanding all of my attempts, my hopes, and everything that I had dreamed of, Ms. Wells was not willing to enter into an agreement on behalf of the association for the sale of the property, even though she didn't seem to me to have any specific criticism of the terms of the contract or the price of the contract.

It was, in my opinion, an anxiety about

being under pressure to lose possession of the property itself that was the problem.

And I continued to have contact with her in early 2013 and finally came to a decision that perhaps there was only one way of having Ms. Wells agree to a contract, which would be to create for the association an almost absurdly extreme amount of flexibility, such that we could completely remove that anxiety of pressure about losing possession of the property before she was ready to move her personal property out or the association's personal property out of the building.

That's the reason for the change to a date in 2018 or a period of time that would include up to almost five years.

Q. And do you believe that that removed that anxiety?

A. Yes, it did, as far as I could tell.

Q. And at that period of time, what did you believe -- do you remember how old Ms. Wells was then?

A. I believe that when I met her, she was 79, and I believe that I was aware of her age.

Q. And did you have any concerns at that

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ultimately deleted in the final, so I believe this is the only version of this document this appears in.

A. Okay.

Q. Do you recall why you put that in there?

A. No.

Q. The next paragraph is a severability clause. Did you have concerns about any specific clauses in this contract?

A. No.

Q. This version actually deleted in the title block that Ms. Wells was the director. It changed the title after her name from director and authorized agent to only authorized agent. Why did you delete director?

A. I don't remember a specific intention behind that, but as you can see, the page has been reformatted, and there's not much space. It doesn't look like there's room to have added the words director and authorized agent.

But, again, my sense was Ms. Wells most likely has several sources of authority, and the term authorized agent for me captured each and every source.

Q. Let's look at Exhibit 4. Exhibit 4 we

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put in the record previously. It's plaintiffs document 109, page 1 to 8. This is the executed real estate purchase and sale agreement, correct?

A. Yes, it appears to be so.

Q. And what is the effective date?

A. The signature date is April 23rd, so the effective date under the first paragraph, Shall become binding upon the parties hereto or their assigns on the date signed by both parties' effective date, so April 23, 2013.

Q. And this agreement identifies you as the purchaser; is that correct?

A. Yes, ma'am.

Q. And the Free Kindergarten Association of Charleston is the seller; is that right?

A. Yes, ma'am.

Q. And it's got their address as, care of June Wells, Post Office Box 547, Folly Beach, correct?

A. Yes.

Q. And then we've got a property description that describes 34 Pitt Street, and the next paragraph, 2, is the identification of the purchase price. How much was the purchase price?

problem has been solved that it was written for.

Q. And your preference is to own it with fee simple --

A. Yes.

Q. -- full and clear, it's all yours, right?

A. Yes, ma'am.

Q. And again, this is the executed agreement, purchase and sale agreement, and it includes this language under further assurances that says, 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 Ms. Wells agree to petition the Court of Common Pleas of Charleston County to establish her authority, and purchaser shall bear any court costs.

A. Uh-huh.

Q. Was there still a concern about the documentation related to Ms. Wells' authority at the date of execution of this agreement?

A. I still wanted more documentation of her authority. I have a sense that this is sort of legacy language from earlier drafts, but by this time, I probably had more assurance of her

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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authority. But the more, the better, so I feel I probably left this language in the document in case I wanted to exercise this.

Q. And why haven't you exercised this?

A. As time went on, I felt less and less need to seek further authority because I had further assurances through other documents and information that she was indeed the person who had full authority.

Q. And those were the -- that was the information and the documentation that we talked about at the beginning, this morning?

A. Yes. And reserving for myself the ability to add to that list in the future. I don't know if I'm thinking of everything right now.

Q. That's fine. And if you think of something during the day, just let me know.

A. Okay.

Q. And this final, executed agreement actually still -- paragraph 7 includes the language talking about, if there's another authorized agent, the closing will be within 60 days after the change to another authorized agent; is that right?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. No.
Q. Were you present when she signed it?
A. I was.
Q. And where did that occur?
A. That occurred in the Confederate Museum.
Q. And the lady that notarized it, that's your assistant, correct?
A. Correct.
Q. Was she there with you when Ms. Wells signed this document?
A. Yes, ma'am.
Q. So you took her with you?
A. Yes, ma'am.
Q. For that purpose?
A. Yes, ma'am.
Q. And you signed it there also?
A. Yes.
Q. Let's look at the next page, page 5. So this is a recorder's receipt that indicates on April 13th, two thousand -- no, April 23rd, 2013, that this document was recorded; is that right?
A. I don't think so. I believe what was recorded was a memorandum of real estate purchase and sale agreement.
Q. I believe you're correct. So this is

not a bank account for the association.

Q. So this check was for Ms. Wells, not for Free Kindergarten?

A. No. It was for Free Kindergarten, but I didn't know how to make it out to -- in a way that the Free Kindergarten Association could accept it in a bank account.

Q. Did you think that was risky?

A. In what sense would it be risky?

Q. Making it out to her personally and you didn't know if she had authority or not?

A. I felt that she did have authority.

Q. Do you recall -- I know you were present during Ms. Wells' deposition. Do you recall what she said happened to the money?

A. I believe that she did not recall what happened to it, if I remember correctly.

Q. Do you recall what her son said happened to the money?

A. I don't recall.

Q. Do you have any expectations of getting this money back?

A. No, because I'm hoping to close on the contract.

Q. So you believe that this is an adequate

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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Exhibit 3

Excerpts of and Exhibits to Volume III of the Transcript of the Deposition of Michael D. Royal

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF MICHAEL D. ROYAL
Volume 3
DECEMBER 3, 2021

MICHAEL D. ROYAL,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA AND THE CHARLESTON COUNTY SCHOOL DISTRICT,

Defendants.

TIME: 10:07 A.M.

LOCATION: BYBEE & TIBBALS
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: TERI L. KENNELLY, RPR, CRR
NCRA CERTIFIED REALTIME REPORTER
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM

my head.

Q. You don't know what due diligence is?

A. I do know what due diligence is.

Q. Tell me what it is.

A. My understanding of due diligence is the inspection of a property to ensure that it is suitable for the purchase of a buyer.

Q. So it's only an inspection of the property; it has nothing to do with anything else related to the property?

A. Well, when I say inspection of the property, that would include the inspection of zoning related to the property, restrictions on use, title, and other matters that would be relevant to the purchaser and the purchase of the property.

Q. And what due diligence did you perform related to Ms. Wells' authority to purchase the -- or to execute the purchase and sale agreement?

A. Well, I spoke with Ms. Wells. I asked her if there were corporate records related to her authority. She told me that there had been a fire at the home of someone associated with the association who had kept corporate documents and

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

that there -- a lot of the corporate documents had been lost in that fire.

And I looked over the documents that she gave me through a period of time and spoke with, for example, City staff -- I can't remember if it was Colleen Carducci or others -- who told me that, to their best knowledge and understanding, she controlled the association. And then, over time, after executing the agreement, I spoke with others.

For example, Mr. Bill Wells, her son, in the deposition not long ago, who assured me that she had held herself out as a member of the board of directors and as a person of authority.

Q. Did you have other people -- not including your attorneys, did you have others help you perform due diligence related to Ms. Wells' authority?

A. Not to my memory.

(Exhibit No. 20 marked for identification.)

Q. Are you familiar with this document?

A. No, I don't remember seeing this document.

Q. Do you know whose handwriting this is?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. No, I don't.

Q. Do you know why this document was in the box of documents that you possessed and turned over to the receiver?

A. No, I don't.

MR. WILLIAMS: Sorry. What's the Bates label on that?

MS. ARIAIL: FK docs from receiver 6152021 00209.

MR. WILLIAMS: Thank you.

Q. Did you ever ask if Ms. June Murray Wells went by any other name?

A. I don't remember ever asking that question.

Q. Do you know who Ms. Wade Murray is?

A. I do know who Ms. Wade Murray is.

Q. Who is that?

A. My understanding is that is the mother of June Wells.

Q. Do you know who Ethel Murray is?

A. I believe that's the same person.

Q. And this notation, 1970, first occurrence of June Wells in quotation marks, do you know what that represents?

A. No, I don't. I know that there is a

document that I have produced, which I believe around 1970 -- might have been 1970 -- seems to indicate that she was an employee of the association. But I'm speculating because I don't know the purpose of this document, who authored it, et cetera.

Q. And you don't recognize this handwriting?

A. No, I don't.

Q. Could it be your assistant's handwriting?

A. It's possible.

Q. Did you ever ask your assistant to help you perform due diligence on Ms. Wells' authority?

A. I remember asking my assistant to make contact with the State of South Carolina in relation to the association and its good standing, et cetera. But I don't remember asking my assistant to do research on the authority of Ms. Wells.

Q. Did you have anybody do an inventory or review the documents that you turned over to the receiver in the spring of 2021?

A. No. I don't believe I did.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. Did you go through all those documents yourself?

A. No, I did not.

Q. Did you go through all the documents that you -- that were scanned by Pro Copy -- I don't even remember the date of that.

A. I don't believe I ever received those scans.

Q. No, I don't think you have. But did you ever go through the documents? You had the original documents for a number of years.

A. Yes, ma'am.

Q. Did you ever go through those documents?

A. Yes. On occasion, I looked through that box, but there are hundreds of documents in there, and I certainly did not set my eyes on every single one.

Q. But the ones that were later turned over to the receiver, you never looked at those; you never reviewed those?

A. No. That's not what I said.

Q. Did you review them?

A. I reviewed some of them carefully. Others, I probably glanced at. And there may have been any number of documents that I never

even looked at.

Q. And you don't know how this document got in that box?

A. I don't.

Q. Do you know what 1995, dash, June Wells, dash, director of FKA refers to?

A. I don't.

Q. Do you know what document that may have been taken from?

A. No, I don't. And I don't know that it was taken from a document.

MR. WILLIAMS: Bright, was this document contained in the scans that you paid for from Pro Copy?

MS. ARIAIL: No. So do you want to go off the record?

MR. WILLIAMS: Sure.

(Off-the-record discussion.)

(Exhibit No. 21 marked for identification.)

Q. All right. I marked as Exhibit 21 a document that's labeled as plaintiffs document 122, pages 1 through 29. Are you familiar with this document, Mr. Royal?

A. Yes, ma'am.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

MR. WILLIAMS: It's Exhibit 21, Bright?

MS. ARIAIL: Exhibit 21, yes.

Q. Did you write this letter?

A. Yes, ma'am.

Q. Tell me what your purpose for writing this letter was.

A. Let me refresh myself on it.

Q. Sure. Take a minute.

A. Yes. The second paragraph -- or, sorry, the first full paragraph says, You requested that I write a summary of the status of the property at 34 Pitt Street, to the best of my understanding, and of my intention to acquire it.

So this letter would have been in response to an earlier discussion with Ms. Carducci. The second-to-last paragraph of this letter further expresses, Before I get ahead of myself with planning and neighborhood meetings, I would like to ensure that title to the property is clear.

My hope in contacting you is to resolve the matter of a deed of trust signed July 19, 1963, by Ethel M. Murray as president of the association, and recorded on October 16, 1963.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. The second paragraph starts out, We believe that there is a real issue as to the authority of the sole surviving member of this nonprofit to sell the remaining asset, 34 Pitt Street. Did you have any conversations with Mr. Stringer regarding that statement?

A. Yes, I did.

Q. What was that?

A. I sent him an e-mail saying that it was completely obvious that she had always had authority and had authority at the effective date of the contract.

Q. Did you provide any documentation to support that contention?

A. I don't recall right now providing specific documentation, but I assume that the attorneys -- the attorney for the association had notice that his client had authority vis-à-vis the association. I didn't feel that I needed to provide him documentation for something that, at every point prior to this document, he had acknowledged her authority with.

Q. The fourth paragraph says, My feeling is the only way to handle all of this is with a Common Pleas action to establish the validity of

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Q. And did this go any further?
A. No. They -- it was not accepted.
Q. Okay.
A. I don't know that there was -- there was no explicit rejection of this from Ms. Wells that I can remember, but she didn't accept it, unless at that later conversation with Mr. Wells, maybe he had conveyed to me at that point that the association was explicitly rejecting it. I can't remember that communication very well.
Q. When you talk about Mr. Wells, you're talking about Bill Wells, her son, correct?
A. Yes, ma'am.
Q. Did you have any communications with her husband ever?
A. Never.
(Exhibit No. 28 marked for identification.)
Q. I marked as Exhibit 28 plaintiff document 192, pages 1 through 6. Are you familiar with this document?
A. Yes, ma'am.
Q. All six pages?
A. Yes, ma'am.
Q. I know at some point there was some

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q. And then you mentioned an organization called Elm Group. Can you tell me what that is?

A. That is a subsidiary of Waymark Foundation.

Q. And what is its purpose? I may have already asked you this. Bear with me.

A. It's an entity that holds real estate investment interests.

Q. Do you have any documentation where you advised Ms. Wells to consult with an attorney regarding the purchase and sale agreement?

A. Not directly. I would say indirectly. The versions of the contract that were offered to her at least suggested or were evidence of my attempts to encourage Ms. Wells to get legal advice around the association's sale of the property. Other than that, I can't think of any written document that I have in my possession that gives evidence of that.

Q. And there's nothing in any of those versions that says on the face of the document: Take this to your attorney, is there?

A. No, ma'am.

(Exhibit No. 39 marked for identification.)

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. May I go back to our discussion a moment ago when we were talking about my advising Ms. Wells relative to attorney?

Q. Sure.

A. I can't remember if your question was at the time of the agreement or any point in time. Because certainly as we approached the closing, I certainly would have made it known that she needed to have an attorney.

Q. No, I think my question was actually related to a review of the purchase and sales agreement.

A. Okay. Thank you.

Q. And I think that's how you answered it, correct?

A. I believe so, yes.

Q. Ready?

A. Ready.

Q. Exhibit 39 has been marked. It's plaintiff document 340, page 1. It's a couple of e-mails between you and Bill Wells; is that correct?

A. Yes.

Q. And at the bottom, it says, On January 11th, 2018, Michael Royal wrote, Hello,

attend a BZA meeting to make this sort of presentation to them?

A. Well, to the extent that I had met with employees within that department to discuss it, you could describe that as planning, but I never put forward an application.

Q. Did you ever intend to attend a BZA meeting and put in an oral request for a variance?

A. No. I think that I had the idea of attending some BZA meetings to familiarize myself with how those applications were handled, but I never had the intention at any specific date to go before the BZA.

Q. Have you ever done business with Mr. Rowson?

A. I don't believe so.

Q. At the hearing on Monday, there was discussion about Ms. Wells' authority to act on behalf of Free Kindergarten. And there was -- I'm trying to understand plaintiff's position on that. I believe there was an argument that there was actual authority and implied authority.

So I want you to explain both of those to me.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A. Are you asking me for a legal analysis?
Q. I'm asking you for what your understanding is.
MR. WILLIAMS: Object on the basis it's a legal argument.
A. My understanding is that there are various ways to obtain authority on behalf of an organization. A person can have both direct authority and implied authority. And Ms. Wells had both.
Q. And how was that?
A. Direct authority in the sense that she comprised within her person 100 percent of the membership of a membership corporation organized in the state of South Carolina and, therefore, had the authority to designate agents that could operate on behalf of the organization.
And by all of her actions, words, and evidence that she had given me and I'd gathered from other places, she as a principal effectively gave herself agency authority.
She also was entitled to operate through implied authority, in that, also in the role of herself as 100 percent of the membership interest of a membership corporation, she had made

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

representations to me, which I reasonably did and should have understood to have authorized her as an agent to do business on behalf of the corporation.

Q. Anything else?

A. I think that sums it up.

(Exhibit No. 44 marked for identification.)

Q. I've marked as Exhibit 44 -- I'm going to call it a flowchart. Is that okay? Diagram? Is diagram better?

A. Let's call it illustration.

Q. Illustration. We'll call it an illustration. I've marked as Exhibit 44 an illustration that has several boxes within boxes. Off to the right, it has a flow that shows implied authority via representations to Michael Royal upon which he relied to his detriment.

This document was provided to me in discovery this week. It was also used as an illustration in the hearing on Monday. Are you familiar with this document?

A. Yes, ma'am.

Q. Did you prepare it?

A. Yes, ma'am.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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MICHAEL D. ROYAL

59-A King Street
Charleston, SC 29401

(843) 202-0604 O
(407) 284-9258 M
michael@royal.sc E

Mrs. June Murray Wells
Director
Free Kindergarten Association of Charleston
PO Box 547
Folly Beach, SC 29439



November 10, 2014

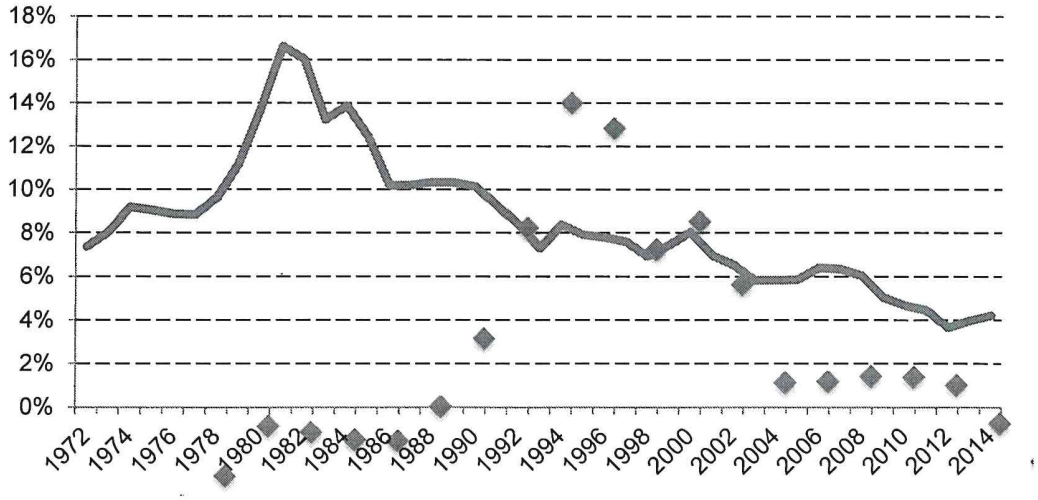
RE: 34 Pitt Street Property

Dear June,

I hope you are doing well. I've been out of town a lot in the past few months, but hope to stop by and say hello soon.

I wanted to write and see how your moving is going, and see if there's any way that I can be helpful. I noted last month that the Federal Reserve ended its quantitative easing program, begun in late 2008, in which the federal government was purchasing U.S. Treasury bonds and mortgage-backed securities. The program had helped to lower mortgage rates significantly. The graphic below illustrates average rates on 30-Year Fixed-Rate Mortgages from 1972 through October 2014. As you can see, we've been at historically low mortgage rates for several years.

Average Rates for 30-Year Fixed-Rate Mortgages
(Source: Federal Home Loan Mortgage Corporation, "Freddie Mac", http://www.freddiemac.com/pmms/pmms30.htm)



PL DOC 0170, PG 0001

R. p. 1257

Most economists are predicting that with the end of the quantitative easing and a strengthening GPD, 2015 and beyond will see increased interest rates across the board, and in particular, increased mortgage rates (for example, see the enclosed article from The Hill published October 31, 2014).

If there's any way we can move forward soon with the closing on the 34 Pitt Street property, it would help me immensely because I would be able, not only to begin improving and moving into the property, but also to secure good financing while mortgage rates are still relatively low. Each small increase in the mortgage rate on a 30-year fixed-rate mortgage translates into a great deal of mortgage interest expense over the life of the loan. For example, on a loan of $700,000 (financing the purchase and improvements at 34 Pitt Street), the difference between a 4% and 6% rate would translate into over $300,000 of additional interest payments over the life of the loan.

If it's not possible to move forward soon with the closing, of course, that's okay too, and I don't mean to put pressure on you, but really wanted to let you know my interest and see if there's something I can do to help in the process. Thanks for reading this note.

Best regards,

Michael D. Royal

Michael D. Royal

Enclosure

PL DOC 0170, PG 0002

R. p. 1258

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 4

Excerpts of and Exhibits to the Transcript of the Deposition of FKAC's Rule 30(b)(6), SCRCP, Designee, June Wells

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF JUNE MURRAY WELLS
30(b)(6) FREE KINDERGARTEN
ASSOCIATION OF CHARLESTON
JANUARY 9, 2020

MICHAEL D. ROYAL,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA AND THE CHARLESTON COUNTY SCHOOL DISTRICT,

Defendants.

TIME: 10:00 AM

LOCATION: CLARK & ASSOCIATES
CHARLESTON, SOUTH CAROLINA

REPORTED BY: J. LYNN CLARK, RPR, CSR(IA)
NCRA CERTIFIED MERIT REPORTER
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Lynn@clark-associates.com

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A. No, I was always the board of directors.
Q. When were you elected to the board of directors?
A. Oh, I don't know.
Q. Okay. Who elected you?
A. The other members of the board.
Q. Earlier you told me that you inherited that position.
A. Because the lady who had it before me died, and I had to do it instantly.
Q. On Exhibit 9 it indicates that closing's going to be almost five years after the date of execution. Why was there that big a delay between execution of the purchase agreement and the closing? This is paragraph 7 on page 3 of Exhibit 9.
A. It was basically so we could clear out everything in the building that had some kindergarten things, furniture and that kind of thing, furniture and books and whatever.
Q. What was left in there? The reason I'm asking is before -- earlier you told me it was empty. So help me understand what was still there.
A. When Hurricane Hugo came, a lot of my

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 5

Excerpts of and Exhibits to the Transcript of the May 25, 2021 Deposition of William Wells

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF WILLIAM WELLS

MICHAEL D. ROYAL,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, ET AL.,

Defendants.

DEPONENT: WILLIAM WELLS

DATE: MAY 25, 2021

TIME: 10:05 A.M.

LOCATION: CLARK & ASSOCIATION
NORTH CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. BOX 12189
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ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

11:42:04 A. I do.
11:42:04 Q. -- then I would like to bring your
11:42:08 attention to the provision that seems to have
11:42:12 caused so much consternation. If you will go to
11:42:19 page three of the PDF and paragraph 7 and please
11:42:31 read that paragraph aloud, if you would.
11:42:34 A. Paragraph 7?
11:42:36 MS. ARIAIL: Objection.
11:42:43 THE WITNESS: Continue?
11:42:44 Q. Yes, go ahead, starting with closing,
11:42:47 mm-hmm.
11:42:48 A. Closing. The closing of this agreement
11:42:50 (the closing), shall be held at the location of
11:42:54 the property, or at such other location mutually
11:42:57 agreed by the parties, on April 9, 2018, or on
11:43:03 such prior date chosen by the seller upon
11:43:09 reasonable notice to the purchaser (the closing
11:43:12 date). If for any reason the seller's authorized
11:43:18 agent changed -- changes to a person other than
11:43:21 June M. Wells, the seller shall notify the
11:43:25 purchaser, and the closing date shall be within
11:43:28 60 days after such a change unless otherwise
11:43:31 agreed by the parties.
11:43:35 Q. All right. Thank you. Do you recall
11:43:54 ever speaking with Ms. Wells about this unusual

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provision of, you know, up to five-year period for the closing?

A. Yes. She mentioned to me that there was a term of five years before it closed.

Q. Okay. Did she ever mention to you a prior version of this contract that she received with a 2013 closing date?

A. Excuse me?

Q. Did she ever mention to you a prior version of this contract which she received from me that had a 2013 closing date?

A. She may have. I don't remember.

Q. Okay. That's fair. Bear with me one moment. I'm just looking for one other provision here.

Okay. It's right next to the paragraph you just read. If you would go down one paragraph and read Paragraph No. 8.

A. Read it out loud?

Q. Yes, please.

A. Conditions to closing. If the seller chooses the 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,

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

11:46:15 1 he shall not have an obligation to close the
11:46:19 2 agreement, and the agreement shall terminate.
11:46:24 3 Q. Okay. Did Ms. Wells ever speak to you
11:46:31 4 about that provision, that if she chose a closing
11:46:40 5 date after May 31, 2013, then the purchaser would
11:46:47 6 have essentially an option not to close?
11:46:49 7 A. I don't remember discussing that
11:46:55 8 particular condition with her.
11:46:58 9 Q. Okay. Fair enough. Did you ever get
11:47:07 10 the impression from your mother that she felt
11:47:13 11 that the terms of the contract were not fair to
11:47:18 12 her or to, I should say, to the association?
11:47:22 13 A. No.
11:47:24 14 MS. ARIAIL: Object to the form.
11:47:32 15 Q. Was there ever a discussion where -- I
11:47:32 16 think someone was objecting so let me restate the
11:47:35 17 question. Did you ever have any conversations
11:47:37 18 with your mother in which she indicated that she
11:47:39 19 felt that the terms of the contract were unfair
11:47:43 20 in any way?
11:47:44 21 A. No.
11:47:44 22 Q. Okay. Let me ask, do you have any sense
11:48:06 23 from the conversations that you did have with
11:48:10 24 your mother about why this provision in -- the
11:48:19 25 provision of Paragraph No. 8 was added to the

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

11:48:22 1 contract, this up to five-year closing based on
11:48:29 2 seller's discretion? Do you have any sense from
11:48:32 3 your conversations with your mother why that was
11:48:33 4 added to the contract?
11:48:34 5 A. Yes. She said that it was added to the
11:48:41 6 contract to give her enough time to remove items
11:48:49 7 that belonged to her and my family from that
11:48:52 8 building.
11:48:54 9 Q. Okay. Would you say that the reason
11:49:08 10 that the contract, in fact, didn't close as the
11:49:13 11 years passed by was that your mother suffered
11:49:20 12 from some difficulty of discarding or parting
11:49:27 13 with possessions that she had in her control?
11:49:33 14 I'm sorry. This is a difficult question.
11:49:35 15 A. Yes. The extension on the closing was
11:49:42 16 directly related to her inability to discard
11:49:48 17 items and to correctly delegate placement of
11:49:53 18 these items.
11:49:54 19 Q. I'm not going to ask you to be a doctor,
11:50:03 20 Bill, but do you feel this is a condition that
11:50:07 21 she had suffered from for quite a while?
11:50:10 22 A. I know it has been --
11:50:11 23 MS. ARIAIL: Object to the form.
11:50:12 24 A. -- a condition that she has suffered
11:50:17 25 from for quite a while.

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13:40:39 1 diagnosed with dementia; is that correct?
13:40:41 2 A. That's correct.
13:40:41 3 Q. Or any other form of issues?
13:40:46 4 A. That's correct.
13:40:47 5 Q. Okay. What was your -- did you have any
13:40:54 6 involvement with Mr. Royal before the sales
13:40:56 7 agreement was executed? And again, that was
13:40:59 8 April of 2013.
13:41:00 9 A. No, ma'am.
13:41:01 10 Q. Do you know when the first time you did
13:41:08 11 have contact with Mr. Royal was? And we can look
13:41:10 12 at some documents in a minute that may help, but
13:41:13 13 just do you have an opinion recollection?
13:41:15 14 A. It was, I want to say, a few years after
13:41:21 15 my mother and Michael had started discussing this
13:41:29 16 transition, this transfer of the property.
13:41:33 17 Q. Okay. Did she ever discuss --
13:41:33 18 A. I --
13:41:39 19 Q. Go ahead. I'm sorry.
13:41:39 20 A. I've heard her make mention of Michael
13:41:43 21 numerous times prior to my meeting with him, and
13:41:48 22 that was a couple years, I would say, prior to me
13:41:51 23 meeting him.
13:41:52 24 Q. Okay. Did you have conversations with
13:41:54 25 your mother about what she thought he was going

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13:59:55 1 Q. Go ahead.
13:59:55 2 A. I'm sorry. I did not mean to interrupt
13:59:57 3 you. I do recall some sort of agreement proposed
14:00:03 4 such as that.
14:00:05 5 Q. Okay. And was that discussed -- did
14:00:08 6 your mother discuss that with you?
14:00:09 7 A. Yes. Yes, I think she did.
14:00:16 8 Q. Did Mr. Royal discuss that with you?
14:00:19 9 A. Yes.
14:00:20 10 Q. What do you remember about those
14:00:24 11 conversations?
14:00:24 12 A. Just that he -- about the moving of the
14:00:35 13 stuff, was it? I kind of lost my train of
14:00:39 14 thought here. Can you please --
14:00:40 15 Q. It's fine. Let's do this. Let's pull
14:00:43 16 another exhibit. Let's look at Plaintiff 0173.
14:01:36 17 (Exhibit No. 20 marked for
10:12:23 18 identification.)
14:01:37 19 A. Oh, I remember this document here.
14:01:39 20 Q. Okay. There you go.
14:01:41 21 A. And I found it confusing.
14:01:45 22 Q. Okay. Did you have a conversation with
14:01:49 23 your mom about this proposal?
14:01:52 24 A. Yes, and I said it -- I think I remember
14:01:57 25 discussing with her that it was a little goofy.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

14:02:02 1 Q. Okay.
14:02:02 2 A. And I didn't -- I don't think I agreed
14:02:05 3 with it.
14:02:12 4 Q. Okay. And to your knowledge, did she
14:02:16 5 ever attempt to go through with this?
14:02:18 6 A. Not as far as I know. I think I
14:02:24 7 actually -- I think I actually advised her to not
14:02:30 8 when we discussed this, just because it was a
14:02:34 9 little confusing.
14:02:42 10 Q. All right. Let's look at -- let's pull
14:03:09 11 Plaintiff 201?
14:03:09 12 (Exhibit No. 21 marked for
10:12:23 13 identification.)
14:03:53 14 Q. This is an email chain between you and
14:04:04 15 Mr. Royal.
14:04:05 16 A. Yes.
14:04:05 17 Q. And in the middle of the page it says,
14:04:09 18 "Hello, Bill, good seeing you and Mrs. Wells
14:04:13 19 today. Thanks again for having me over. Here's
14:04:16 20 my contact info." And then at the top -- and
14:04:20 21 then he -- there's some more language talking
14:04:22 22 about helping move, and then your reply is,
14:04:26 23 Please do. It's great meeting you as well.
14:04:29 24 Thanks. Do you believe that this is the first
14:04:31 25 time that you would have met Mr. Royal?

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Exhibit 6

Letter from Michael Royal to FKAC dated January 26, 2015

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

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MICHAEL D. ROYAL

59-A King Street
Charleston, SC 29401

(843) 202-0604 O
(407) 284-9258 M
michael@royal.sc E

Mrs. June Murray Wells
Director
Free Kindergarten Association of Charleston
PO Box 547
Folly Beach, SC 29439

January 26, 2015

RE: 34 Pitt Street Property – An Idea

Dear June,

Happy New Year. I hope you'll have some time in 2015 to relax – I know how busy you've been!

I was thinking about our phone conversation in November, in which you had suggested the idea that we could close the contract on 34 Pitt Street, and I would lease the building back to you. My response at the time (and still) was that I wouldn't even consider charging you rent and that, therefore, it probably wouldn't make sense for me to take out a loan in order to close on the purchase since I would then have to start paying interest to a lender without having the use of the property.

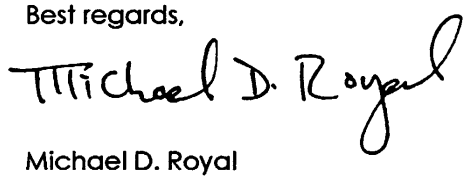
I did think of an alternative idea, though, and I wonder if you would consider it. The idea would be to close on the property with "seller financing" and then lease the property back to you in such a way that the rent amount and interest amount would cancel each other out. In other words, at closing, I would go ahead and pay some amount of cash to the Seller, the Free Kindergarten Association of Charleston (for example, $30,000). For the remainder of the purchase price ($285,200 in this example), I would issue a loan to the Seller. Under the loan contract, we could say that the interest payment on the loan that I owe you would equal the rent payment that you would owe me, and therefore, no cash would be paid by either party.

Further, we would say in the contract that you would determine the date that the loan would mature (with 60 days notice to me so that I can arrange new financing). That way, whenever you are ready to leave the property, you would give me notice that you are terminating the lease and calling the loan, and I would pay you the principal on the loan (the $285,200). The property itself would act as the security for the loan.

I believe that such an arrangement would be about economically equivalent for the Seller as our current arrangement and would still allow you to remain in the property until April 9, 2018 (or before that date, at your option), but the advantage to me is peace of mind that the purchase and sale agreement will have been completed and the deed recorded.

Thanks for thinking about it. If it sounds like something you'd be willing to do, perhaps you'd like to discuss it with your son. I did have the chance to speak with him, by the way, when he called and very much enjoyed the conversation. He seems like good person to consult with on such things.

Best regards,



Michael D. Royal

PS Let me know if you'd ever like to meet up for lunch. I'd love to catch up in person!

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Exhibit 7

January 11, 2018 Email from Royal to William Wells

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Michael D. Royal
To: Bill Wells
Subject: RE: Preparing for Closing on Pitt Street Property
Date: Thursday, January 11, 2018 9:07:00 PM

Okay, thanks Bill.

Michael

Michael Royal
Managing Member | Pareto Group LLC
1941 Savage Road, Suite 100A, PMB 615 | Charleston, SC 29407
o: (843) 202-0604 | m: (407) 284-9258 | e: michael@pareto.gr

From: Bill Wells [mailto:billwellspainting@yahoo.com]
Sent: Thursday, January 11, 2018 8:50 PM
To: Michael D. Royal <michael@pareto.gr>
Subject: Re: Preparing for Closing on Pitt Street Property

Ok, I'll call you next week

Sent from my iPhone

On Jan 11, 2018, at 4:55 PM, Michael D. Royal <michael@pareto.gr> wrote:

> Hello Bill,
>
> Happy new year. I hope you and June are doing well.
>
> I wanted to touch base to prepare for the April closing on the 34 Pitt St. property. One item which may take a little bit of time and I want to make sure it's on yall's radar is that you will want to have an active bank checking account in the name of the trust that owns the building so that the wire can go into the account.
>
> Do you have some time in the next week or so when we could talk on the phone to discuss any steps that need to be taken between now and closing?
>
> Thanks,
>
> Michael
>
> ---
> Michael Royal
> **Managing Member | Pareto Group LLC**
> 1941 Savage Road, Suite 100A, PMB 615 | Charleston, SC 29407
> o: (843) 202-0604 | m: (407) 284-9258 | e: michael@pareto.gr

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Exhibit 8

Emails from the AG's Office to FKAC's Counsel, dated April 11 and May 23, 2018

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Mary Frances Jowers
To: "pfstringer@yahoo.com"; "gretchen@stringerlaw.us"
Subject: Free Kingergarten - Wells Fargo/Hanckel Trust
Date: Wednesday, April 11, 2018 9:26:00 AM
Attachments: Columbia-1355152-v1-Ltr. to Charleston County Probate Court w Summons and Petition.PDF
Columbia-1444581-v1-Consent Order - executed.PDF

Attached is the 2010 Petition in the Charleston Free Kindergarten matter, as well as the Order of the Court (this is unsigned but I believe the court signed this version). My recollection is that the School District had some type of reverter interest in the property, but I don't see that in the attached.

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

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Mary Frances Jowers
To: pfstringer@yahoo.com; gretchen@stringerlaw.us
Subject: FW: Aiken County/Dibble
Date: Wednesday, April 11, 2018 9:31:00 AM
Attachments: SKM_364e16010517160.pdf
SKM_364e15112009580.pdf

Please find attached the Complaint and the Final Order in connection with the Dibble Library matter. I believe Mr. Maurice was appointed special fiduciary, in an abundance of caution to be sure he had authority, and I will send you those materials in a separate email. I'm sure there are many ways to do this, and all of these filings may not be needed in the Free Kindergarten matter, but I wanted to go ahead and forward.

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

Gretchen Stringer-Robinson

From: Mary Frances Jowers <mfjowers@scag.gov>
Sent: Wednesday, April 11, 2018 9:33 AM
To: pfstringer@yahoo.com; Gretchen Stringer-Robinson
Subject: FW: Dibble Memorial Library
Attachments: Affidavit of StewartMaurice.doc; SKM_364e15101609430.pdf; SKM_364e15111710530.pdf; Petition - Special Fiduciary.doc

Here are the other materials for the Dibble Library, including the petition for appointment of Mr. Maurice.

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ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Mary Frances Jowers
To: pfstringer@yahoo.com; gretchen@stringerlaw.us
Subject: FW: Knights of Columbus [IWOV-NPCOL1.FID1456394]
Date: Wednesday, April 11, 2018 9:35:00 AM
Attachments: Proposed Order Knights of Columbus.DOCX

This is the proposed order in the Knights of Columbia mater. Based on my notes, it appears that the Knights of Columbus had not followed all of the non-profit corporate "formalities" that it should have and was trying to straighten out title to some property in downtown Charleston that it had used since 1905 – so this may not be on point with the Free Kindergarten situation. I can't track down the filed documents at this point, but the attached was filed in Charleston County, so you should be able to get the summons and complaint from the Clerk's website, as well as a copy of the Final Order, if you need them.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From:	rick stringer
To:	Michael D. Royal
Subject:	Fw: Sale of Assets of Nonprofit
Date:	Thursday, June 28, 2018 11:06:32 AM
Attachments:	2016CP4000087_ORDER_1109810.pdf 2016_01_08 Ltr to Richland County Probate Court with Summons and Complaint_Petition - Sisters of Cha.PDF

----- Forwarded Message -----
From: Mary Frances Jowers <mfjowers@scag.gov>
To: gretchen@stringerlaw.us <gretchen@stringerlaw.us>; pfstringer@yahoo.com <pfstringer@yahoo.com>
Sent: Wednesday, May 23, 2018, 10:31:18 AM EDT
Subject: Sale of Assets of Nonprofit

Attached is a copy of the Summons and Complaint, and Order, in connection with the sale of assets of a non-profit under section 33-31-1202.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 9

Emails between the AG's Office, CCSD, and FKAC, dated between May 22 and June 28, 2018

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From:	Mary Frances Jowers
To:	rick stringer
Cc:	gretchen@stringerlaw.us; Chantelle Neese; Annemarie Mathews
Subject:	RE: Free Kindergarten
Date:	Tuesday, May 22, 2018 2:10:00 PM

We will call you then, thanks.

From: rick stringer [mailto:pfstringer@yahoo.com]
Sent: Tuesday, May 22, 2018 2:10 PM
To: Mary Frances Jowers
Cc: gretchen@stringerlaw.us; Chantelle Neese; Annemarie Mathews
Subject: Re: Free Kindergarten
Tomorrow at ten would be great, Mary Frances.

Sent from my iPhone

On May 22, 2018, at 11:09 AM, Mary Frances Jowers <mfjowers@scag.gov> wrote:

> Rick,
> Do you have time for a brief all about the Free Kindergarten Association later this week? Would 10 am tomorrow, Thursday or Friday work? We wanted to find out more background about the proposed sale.
> Also, do you have a copy of the deed when the Free Kindergarten would have been the grantee of the property?
> Thank you!
> Mary Frances
> Mary Frances Jowers
> Assistant Deputy Attorney General
> 803-734-3996

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Mary Frances Jowers
To: pfstringer@yahoo.com; gretchen@stringerlaw.us
Subject: FW: Knights of Columbus [IWOV-NPCOL1.FID1456394]
Date: Wednesday, April 11, 2018 9:35:00 AM
Attachments: Proposed Order Knights of Columbus.DOCX

This is the proposed order in the Knights of Columbia mater. Based on my notes, it appears that the Knights of Columbus had not followed all of the non-profit corporate "formalities" that it should have and was trying to straighten out title to some property in downtown Charleston that it had used since 1905 – so this may not be on point with the Free Kindergarten situation. I can't track down the filed documents at this point, but the attached was filed in Charleston County, so you should be able to get the summons and complaint from the Clerk's website, as well as a copy of the Final Order, if you need them.

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Exhibit 10

June 22, 2018 Email from the AG's Office to FKAC and CCSD, forwarded by FKAC's counsel to Michael Royal on June 28, 2018

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: rick stringer
To: Michael D. Royal
Subject: Fw: Real Estate Appraisal - 34 Pitt Street
Date: Thursday, June 28, 2018 10:56:26 AM
Attachments: Appraisal of 34 Pitt Street (01709261xD2C78).pdf

---

----- Forwarded Message -----
From: Mary Frances Jowers <mfjowers@scag.gov>
To: gretchen@stringerlaw.us <gretchen@stringerlaw.us>; pfstringer@yahoo.com <pfstringer@yahoo.com>; lcrooks@crookslaw.net <lcrooks@crookslaw.net>; natalie_ham@charleston.k12.sc.us <natalie_ham@charleston.k12.sc.us>
Cc: Sonny Jones <SJones@scag.gov>; Chantelle Neese <CNeese@scag.gov>; Annemarie Mathews <AMathews@scag.gov>
Sent: Friday, June 22, 2018, 10:28:03 AM EDT
Subject: Real Estate Appraisal - 34 Pitt Street

Good morning,

Please find attached the summary appraisal report of the property owned by the Free Kindergarten Association and located at 34 Pitt Street in downtown Charleston.

Rick, this is following-up from our conversation this morning.

Lynn and Natalie, I am sending this to you as counsel for the Charleston County School District.

Thanks.

Mary Frances

Mary Frances Jowers

Assistant Deputy Attorney General

803-734-3996

File No. 18-064



SUMMARY APPRAISAL REPORT OF THE PROPERTY LOCATED AT

34 Pitt Street

Charleston, SC 29401

as of

June 7, 2018

for

C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

by

Charleston Appraisal Service, Inc.

304 Meeting Street, Suite 201
Charleston, SC 29401

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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

June 11, 2018

C. Havird Jones, Jr., Sr. Asst.Dep.Atty Gen.
Office of the S. C. Attorney General
1000 Assembly Street
Columbia, SC29201

Property -	34 Pitt Street Charleston, SC 29401
Borrower -	C. Havird Jones, Jr.
File No. -	18-064
Case No. -	

Dear .Mr. Jones:

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 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 June 7, 2018 is

$522,500

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

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Client File #:		Appraisal File #:	18-064

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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:

Appraiser: Michael C. Robinson, MAI, SRA	Co-Appraiser:
AI Membership: X SRA X MAI SRPA Associate member None	AI Membership: SRA MAI SRPA Associate member None
E-mail: mrobinson@charlestonappraisal.com	E-mail:

Client: C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen. Contact: Mr. Havird Jones
Address: Office of the S. C. Attorney General, 1000 Assembly Street Columbia, SC29201
Phone: 803-734-3654 Fax: Email: s.jones@scag.gov

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: 2017

SUBJECT PROPERTY HISTORY

Owner of Record City of Charleston (Per Tax Records)

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 $ 522,500

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 from 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: June 7, 2018 **$**522,500

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

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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).

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Client:	C. Haviird Jones, Jr., Sr. Asst.Dep.Atty Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

ASSIGNMENT PARAMETERS

Intended User(s): Haviird Jones, Office of the Attorney General

Intended Use: Assistance in proceedings by S.C.Attorney General

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: June 7, 2018

Interest Appraised [X] 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.) Existing structure on site does not contribute to value. It is assumed to be demolished, and that cost has been deducted from the land value estimate as vacant

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.

Inspection of Subject:

Appraiser:
[ ] None [X] Interior [X] Exterior
[X] Date of Inspection 6/7/2018

Co-Appraiser:
[X] None [ ] Interior [ ] Exterior
[ ] Date of Inspection _____

Living Area Measured:
[X] Yes [ ] No
[ ] Other: _____

Data Sources Used:

[X] MLS
[X] Public Records
[X] Office Files
[X] Owner
[ ] Plans & Specifications
[ ] Purchase Agreement
[X] Other: Tax Map

Approaches to Value Developed:

Cost Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Sales Comparison Approach:
[X] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[ ] Is not applicable or necessary and omitted in this analysis

Income Approach:
[ ] Is necessary and developed in this analysis
[ ] Is applicable but not necessary and omitted in this analysis
[X] Is not applicable or necessary and omitted in this analysis

Additional Scope of Work Comments: NONE

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

PL DOC 0384, PG 0005

R. p. 1290

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Client:	C. Havird Jones, Jr., Sr. Asst Dep Atty Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

MARKET AREA ANALYSIS

Location	Built Up	Growth	Supply & Demand	Value Trend	Typical Marketing Time
[X] Urban	[ ] Under 25%	[ ] Rapid	[ ] Shortage	[X] Increasing	[ ] Under 3 Months
[ ] Suburban	[ ] 25-75%	[X] Stable	[X] In Balance	[ ] Stable	[ ] 3-6 Months
[ ] Rural	[X] Over 75%	[ ] Slow	[ ] Over Supply	[ ] Decreasing	[X] Over 6 Months

Neighborhood Single Family Profile

Price		Age
300,000	Low	100
3,000,000	High	250
750,000	Predominant	150

Neighborhood Land Use

1 Family	80.0%	Commercial	5.0%
Condo	5.0%	Vacant	%
Multifamily	10.0%	Other	%

Neighborhood Name: Harleston Village

PUD [ ] Condo [ ] HOA: $ N/A /

Amenities: None

Market area description and characteristics: Neighborhood stores 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: 56' x 170' x 55' x 170'

Area: 9,435 Square Feet (per tax map)

View: Interior

Shape: Rectangular

Drainage: Appears Adequate

Utility: Good/Average

Site Similarity/Conformity To Neighborhood

Size:	View:
[ ] Smaller than Typical	[ ] Favorable
[X] Typical	[X] Typical
[ ] Larger than Typical	[ ] Less than Favorable

Zoning/Deed Restriction

Zoning: Residential DR-1F

[ ] Legal [ ] No Zoning

[ ] Legal, non-conforming

[X] Illegal

Covenants, Condition & Restrictions: [ ] Yes [X] No [ ] Unknown

Documents Reviewed [ ] Yes [X] No

Ground Rent: $ N/A /

Utilities

Electric	[X] Public	[ ] Other	
Gas	[X] Public	[ ] Other	
Water	[X] Public	[ ] Other	
Sewer	[X] Public	[ ] Other	

Off Site Improvements

Street	[X] Public	[ ] Private	
Alley	[ ] Public	[ ] Private	None
Sidewalk	[X] Public	[ ] Private	
Street Lights	[X] Public	[ ] 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 to poor condition and has not been occupied in more than 15 years. Mold and mildew appear present on the inside. There are vines climbing on the sides and roof of the building. The roof has several very large holes allowing rain freely. Schools are prohibited in residentially zoned districts (was legal, non-conforming, but that status has been lost). 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, now on ground level, 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 the value of the property.

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PL DOC 0384, PG 0006

R. p. 1291

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

SITE VALUATION

Site Valuation Methodology

[X] **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	SALE NO. 1		SALE NO. 2		SALE NO. 3	
Address	34 Pitt Street Charleston	15 Smith Street 457-08-03-074		61 Gadsden Street 457-02-04-006		126 Beaufain Street 457-03-03-108	
Proximity to Subject		4 Blocks		8 Blocks		6 Blocks	
Sales Price	N/A	499,000		600,000		350,000	
Price / SF	N/A	47.01		40.51		67.31	
Data Source/ Verification	Inspection	Office Files		Office Files		Office Files	
Sale Date	6/18	12/13/15	+12.5%	8/4/14	+19%	6/8/15	+15%
Location	Harleston Village	Harleston Village		Harleston Village		Harleston Village	
Site Size	9,435 SF	10,614 SF		14,810 SF	+10%	5,200 SF	-25%
Site View	Interior	Interior (-)	+10%	Interior		Interior	
Site Improvements	Building/no value	Building/no value		None		None	
Corner	No	No		No		No	
Zoning	Residential	Residential		Residential		Residential	
Net Adjustment			+23		+29		-10
Indicated Value			$ 58.17/SF		$ 53.03/SF		$ 58.05/SF
Net Adjustment			%		%		%
Gross Adjustment			%		%		%

Site Valuation Comments: The subject site is located in the Old and Historic District of downtown Charleston where there are very few vacant lots; consequently, such sales are very infrequent. In order to recognize price increases occur in this market over the past three years, all sales have been adjusted by 5% per annum. The sales were adjusted for improving market conditions prior to making other adjustments. Sale 1 is across from a low income housing project. Sales 2 and 3 are larger and smaller than the subject site requiring positive and negative adjustments, respectively.

Site Valuation Reconciliation: Sales 1 and 3 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 $57.50 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. For an exact cost, I recommend a proposal from a demolition contractor be obtained.

9,435 SF x $57.50/SF minus $20,000 Estimated Demolition Cost = $522,513

Opinion of Site Value	$ 522,500

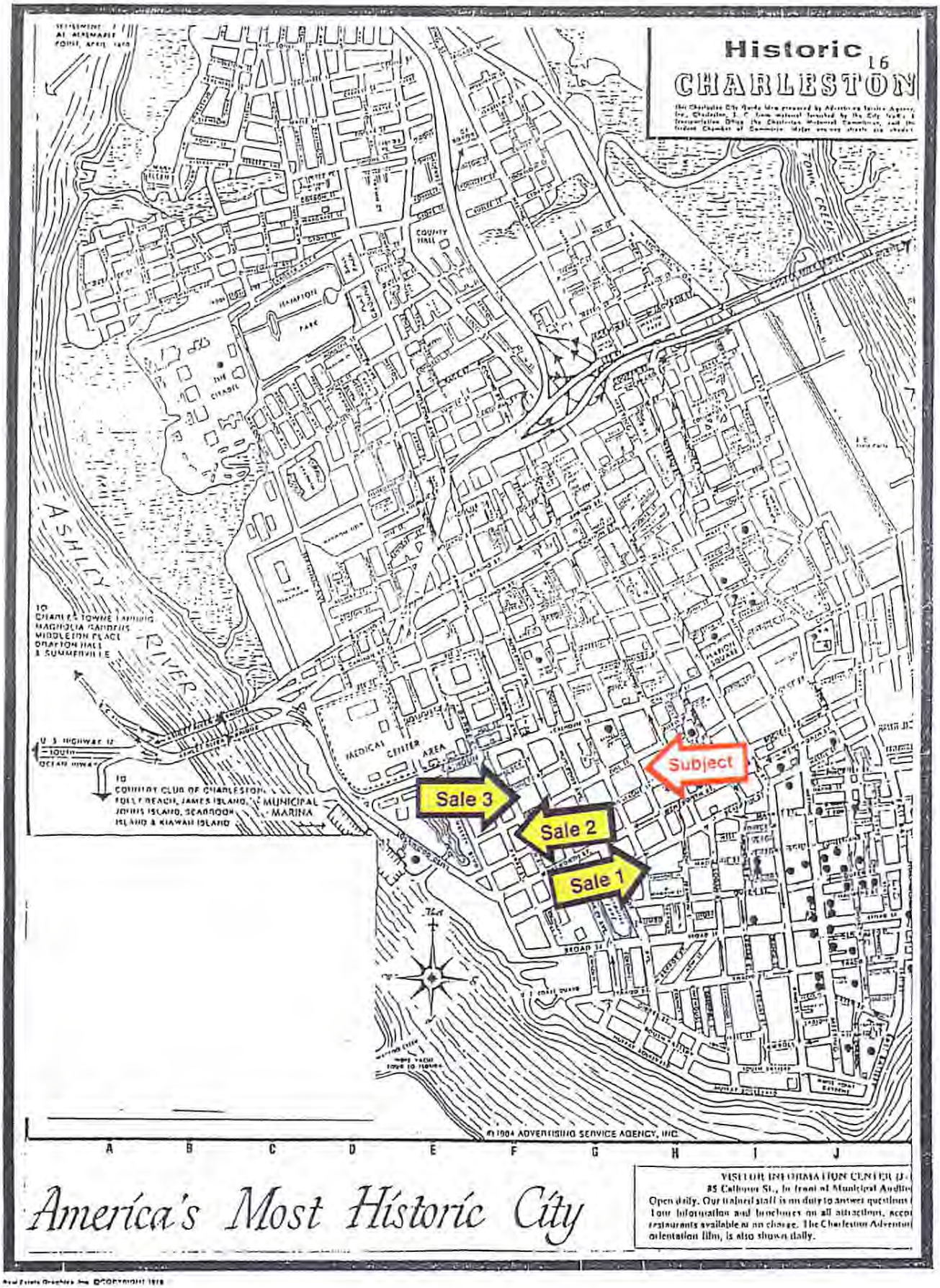
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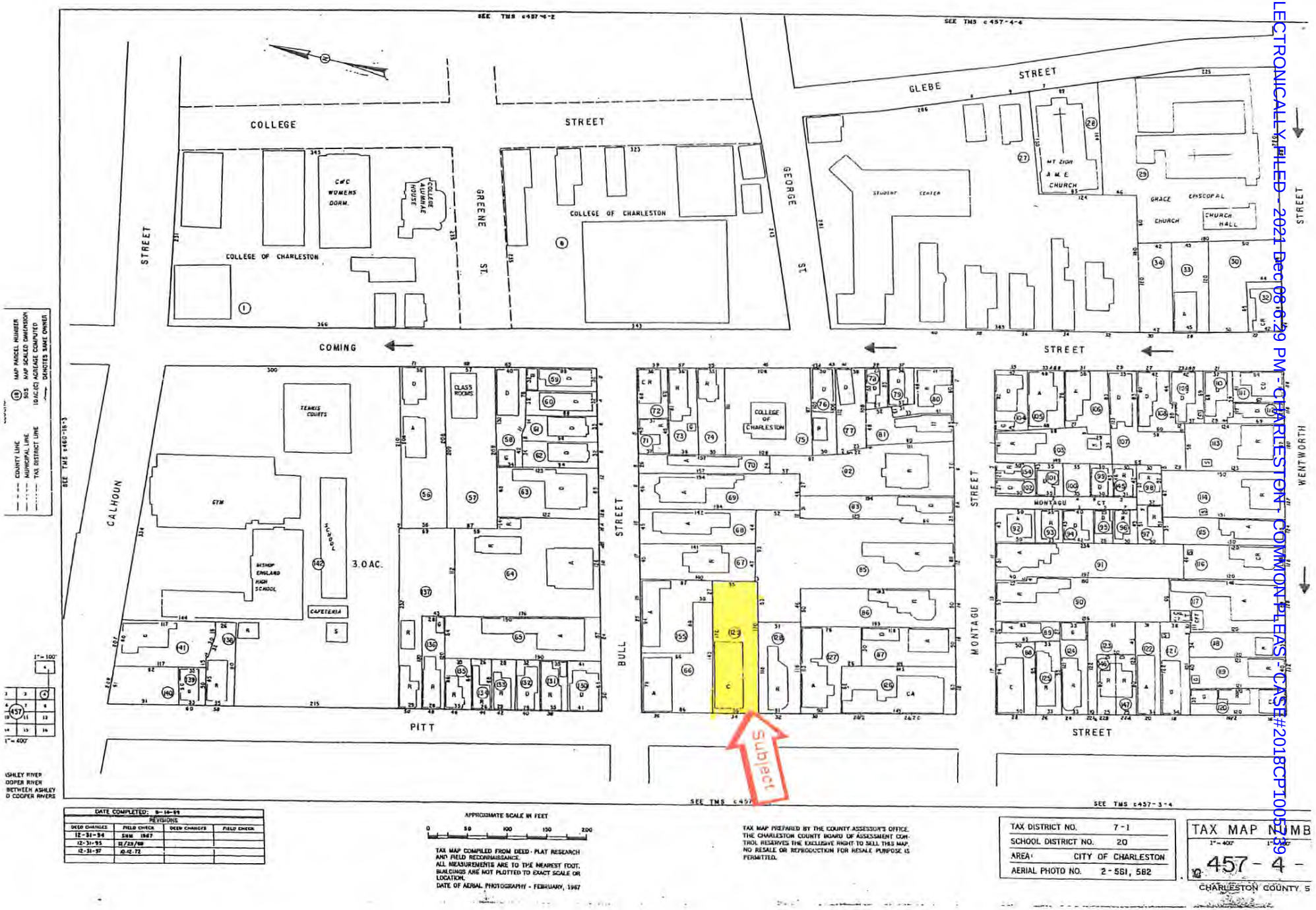
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R. p. 1292

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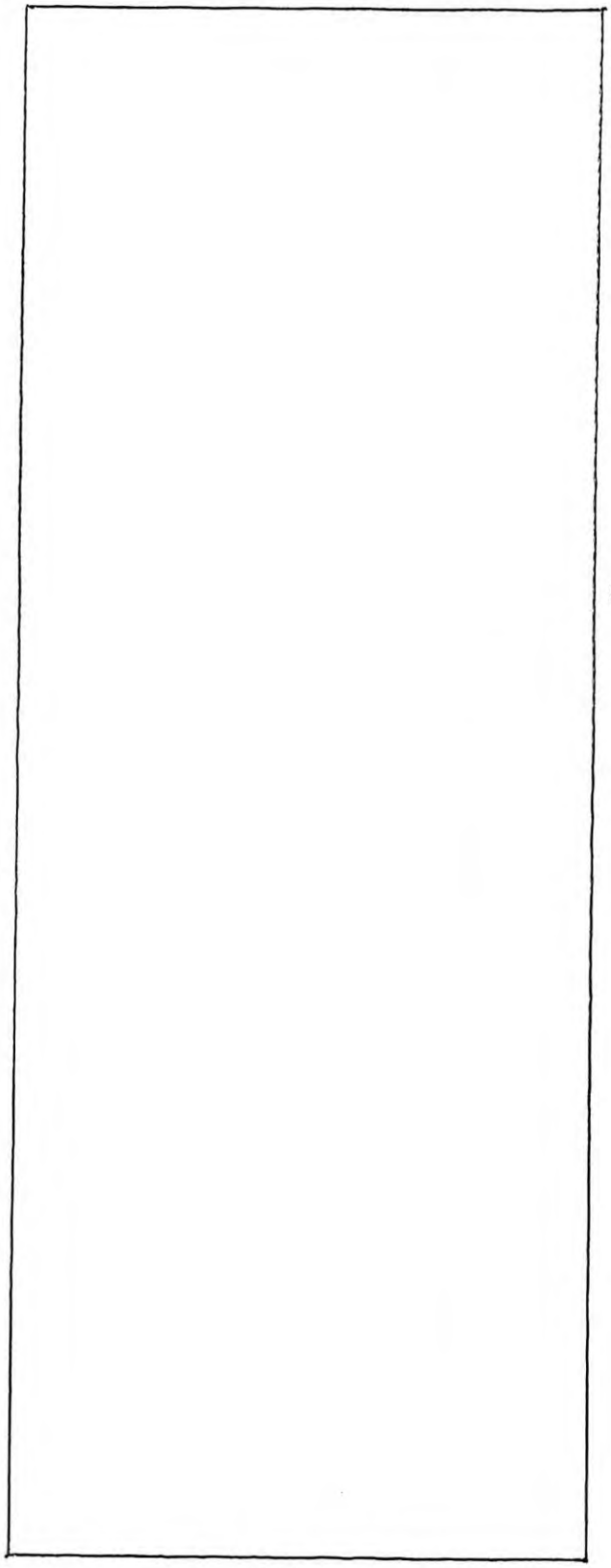


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File No. 18-064

Borrower or Owner	C. Havird Jones, Jr.
Property Address	34 Pitt Street
City Charleston	County Charleston State SC Zip Code 29401
Lender or Client	C. Havird Jones, Jr., Sr. Asst. Deputy Atty.

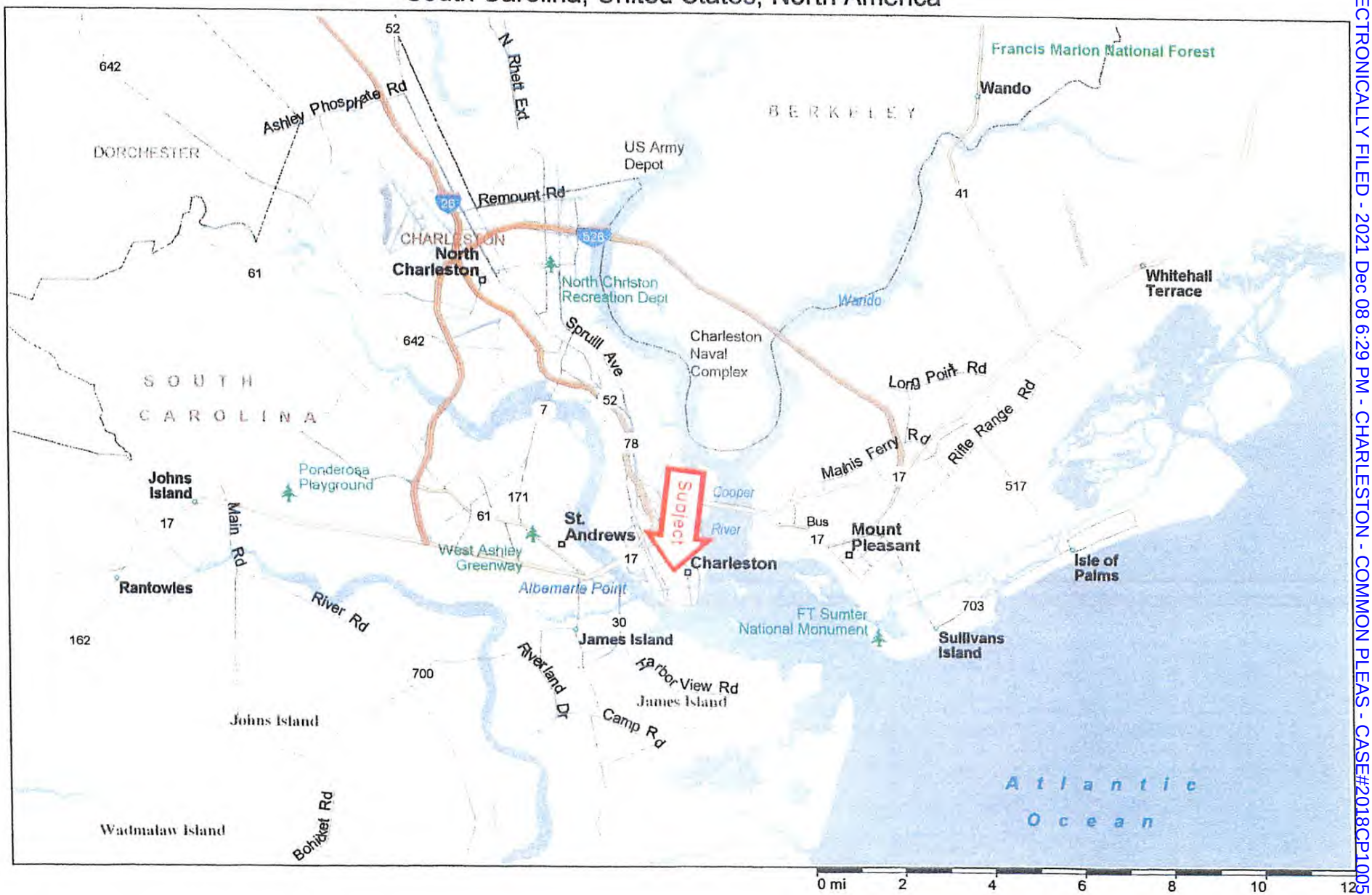
34 PITT STREET



Charleston Appraisal Service, Inc.

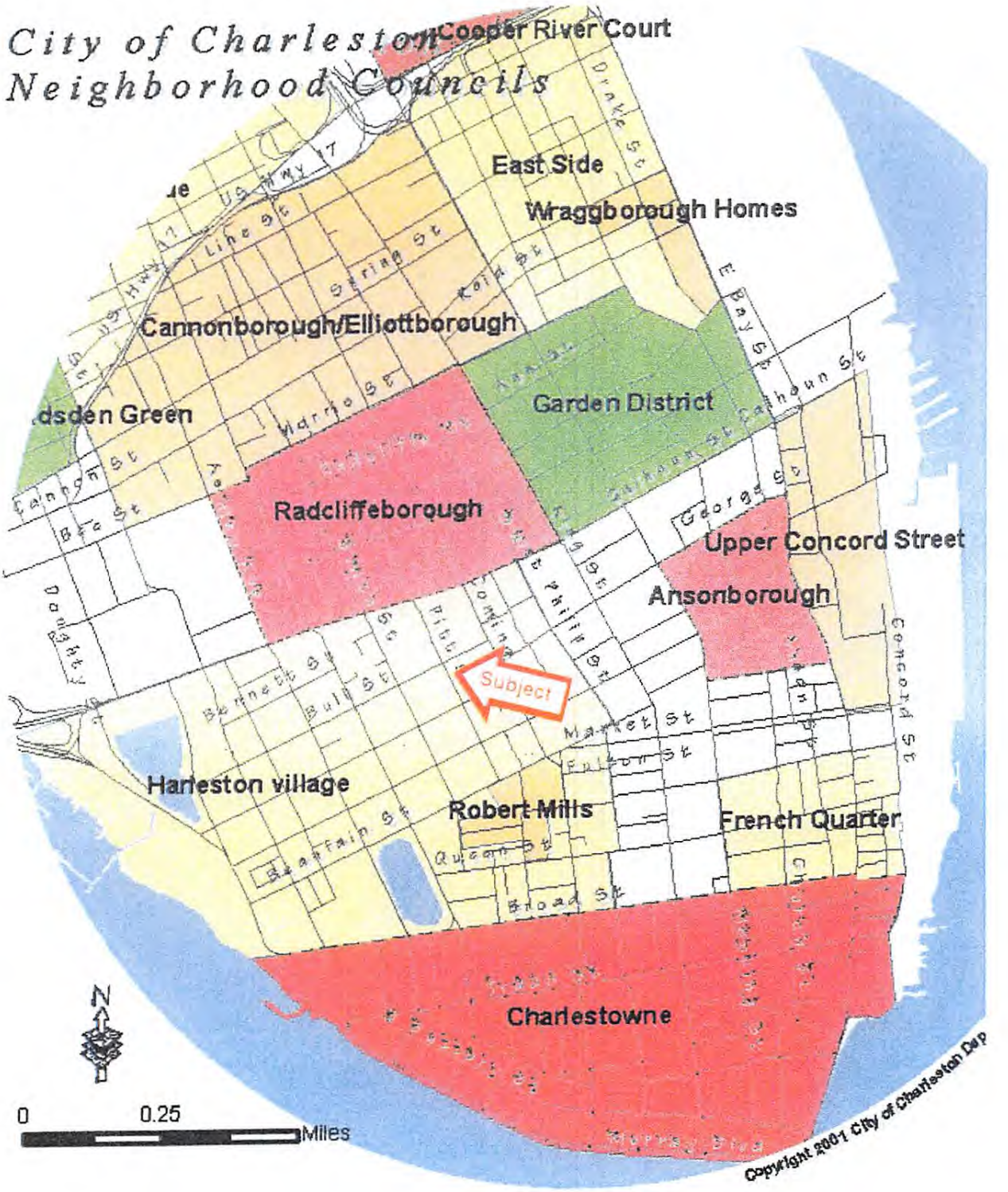
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South Carolina, United States, North America



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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 made a personal inspection of the property that is the subject of this report.

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, 2018 to December 31, 2019 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 even.

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 continuing education program for designated members of the Appraisal Institute and also the continuing education program of the South Carolina Real Estate Appraiser's Board.

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Client:	C. Havird Jones, Jr., Sr. Asst Dep Atty Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 indented 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 14 pages including exhibits which are considered an integral part of the report. The appraisal report may not be property 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 form seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parites 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 create financing or sales concessions granted by anyone associated with the sale.

Source: *Appraisal Institute Dictionary of Real Estate Appraisal*

Client:	C. Havird Jones, Jr., Sr. Asst.Dep.Atty.Gen.	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	18-064

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 Appriasal Institute relating to review by its duly authorized representatives.

Designated Appraisal Institute Member Certify:

- As of the date of this report, I [X] 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 Michael C. Robinson

Name Michael C. Robinson, MAI, SRA Report Date 06/11/2018

or Certification # CG-76 ST SC

or License # _____ ST _____

Expiration Date 6/30/2018

CO-APPRAISER:

Signature _____

Name _____ Report Date _____

or Certification # _____ ST _____

or License # _____ ST _____

Expiration Date _____

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Exhibit 11

Excerpts of and Exhibits to the Transcript of the November 22, 2021 Rule 30(b)(6), SCRCP, Deposition of CCSD

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

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STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	9TH JUDICIAL CIRCUIT

- - -

MICHAEL D. ROYAL,	
Plaintiff,	
vs.	CASE NO. 2018-CP-10-05739
FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, and CHARLESTON COUNTY SCHOOL DISTRICT,	
Defendants.	

30(b)(6) DEPOSITION OF CHARLESTON COUNTY SCHOOL DISTRICT through its designated representative

JEFFREY THOMAS BOROWY

DATE TAKEN:	Monday, November 22, 2021
TIME BEGAN:	9:37 a.m.
TIME ENDED:	12:57 p.m.
LOCATION:	Charleston County School District Office 75 Calhoun Street Charleston, South Carolina
REPORTED BY:	Marie H. Bruegger, RPR, CRR EveryWord, Inc. P.O. Box 1459 Columbia, South Carolina 29202 803-212-0012

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A Yes.

Q Why is that?

A Because we do not believe that the person who signed the contract, that purchased the sale agreement, had the authority to sign that document, so we do not believe Ms. Wells had the authority to sell the property. And she's no longer here, so if a contract was signed today, obviously, she's no longer with us, but if she was, we do not believe she had the authority to do such.

Q At the risk of posing too many hypotheticals, if the contract had contained a price -- if a person separate from Mr. Royal had contracted to buy the property for what the school district believed to be a fair price, the contract was signed by a person with authority to bind Free Kindergarten Association, would the school district object to that sale under that contract?

A I don't know. I don't know.

Q In 2013, what price should have been set forth in the PSA?

A I don't know because we didn't -- I don't have an appraisal from 2013.

And I would also add that from my recollection in looking through this, is that it's

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A Yes.

MS. ARIAIL: Objection. Outside the 30(b)(6) designation. Go ahead.

BY MR. WILLIAMS:

Q Mr. Borowy, you testified earlier that you're prepared to testify on behalf of the school district about its discovery responses in this case. Is that correct?

A Yes, sir.

Q When did the school district become the owner of Free Kindergarten Association's assets, including the property?

A I don't believe we become the owner at this point. As I mentioned earlier, we have a beneficial interest in the property, but we don't own it right now.

Q Well, you claim to be the legal owner of all assets, correct?

A Of Charleston County School District, correct.

Q No, Free Kindergarten Association. Doesn't your counterclaim state you're the legal, beneficial, and/or equitable owner of all the assets?

A Yes, upon dissolution of the association.

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(Plaintiff's Exhibit 11, Defendant CCSD's Responses to Plaintiff's First Requests for Admission to Defendant CCSD, was marked for identification.)

BY MR. WILLIAMS:

Q So this is the school district's responses to Plaintiff Michael D. Royal's first requests for admission to Defendant Charleston County School District. Do you see that at the top there?

A Yes, sir.

Q And Number 9, on the second page. You just testified that the school district does not own Free Kindergarten Association's assets, correct?

A I said that we -- I'm looking at the response here. Beneficial and/or equitable owner of the equitable interest.

Q But does the school district own the property?

A I don't think we own the -- we do not own the property.

Q Is it proper, then, for the school district to deny that request?

A I don't know.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

assets?

A If the board of directors -- if the board from Free Kindergarten Association had changed that resolution, that's what we were to abide by, if they changed that resolution.

Q So if some other entity, not being the school district or a constituent district, was given the right to residual assets by an amendment to its resolution, the school district wouldn't have any right to intervene in this case?

A I do not believe so if it was done legally, just like they did -- like they did back in '71.

Q When did the school district gain authority or control over Free Kindergarten Association's assets?

A We haven't gained control yet because the organization has not been dissolved yet.

Q Does the school district have authority over the Kindergarten Association's assets?

A Just -- we just have the interest in it right now, so we're not controlling those assets at this point.

Q What gives it the authority to claim to be able to set a fair price to purchase the

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

property owned by Free Kindergarten Association?

A It's my understanding that we didn't -- it was the attorney general's office. Based on the fact that Free Kindergarten is a nonprofit, they have to review to determine that it's at a fair market value, the sale is. And my understanding is they've not granted that authority at this point because at the time, the agreement was not -- at the time as it stands right now, it's not at fair market value.

Q Right, but what if --

A So that determination was made by the attorney general, not by the school district.

Q So the school district is not allowed to object to the price of the contract?

A I think we -- I think we can object to the fair market price of a contract because of the fact that if, indeed, the Free Kindergarten is dissolved, we have a vested interest again in doing what's best for the taxpayers.

Q Is it the school district's position that the school district had to approve of the contract and the terms prior to the closing?

A Could you say the question one more time?

Q Is it the school district's position that

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

it had to approve or give consent to the purchase and sale agreement and the terms contained therein?

A So I would just say that -- I'll answer a little differently. I would say that we believe the contract is null and void because Ms. Wells didn't have authority, so we -- I don't know if we necessarily disagree because the -- directly because of the value, but we just believe that it's a null and void contract because Ms. Wells did not have the authority to sell the property.

Q If you'd turn to Exhibit 3, which is, again, the answer and counterclaim, Paragraph 35.

MS. ARIAIL: Which exhibit is it?

THE WITNESS: Three.

MR. WILLIAMS: Number 3.

THE WITNESS: What paragraph, sir?

BY MR. WILLIAMS:

Q 35. Looking at the second sentence of Paragraph 35. So is that allegation in your counterclaim alleging that the district had to consent to the agreement?

A Based on what I know, it's the statement that's in there: At no time did the district consent to the agreement. I'm not saying that we had to consent to the agreement. I'm just saying

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

we did not consent to the agreement, nor the terms of the sale of the property.

Q And the authority it has to object to the agreement is based upon its claim to and interest in the residual assets. Is that correct?

A Yes, sir.

Q What if Free Kindergarten Association had previously decided to sell the property for fair market value and use the proceeds to continue operations, would the school district or the AG have authority to intervene, object, approve, do whatever with the contract?

A I would think not if the Free Kindergarten wasn't dissolved. If the Free Kindergarten was intact -- because our interest is based on the dissolution of that organization, so if they were still active, they would have the right to sell the property, subject to the AG's requirements, obviously.

Q So I take it that the school district never gave Free Kindergarten Association approval to purchase the property?

A To my knowledge, no.

Q Did the school district ever approve of Free Kindergarten Association's purchase of any

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

materials or items they used to provide kindergarten education?

A Not to my knowledge.

Q Did the school district ever set a monthly or any type of annual budget for Free Kindergarten Association?

A Not to my knowledge.

Q Has the school district ever performed an accounting or inventory of the association's assets?

A Not to my knowledge.

Q How would the school district know if Free Kindergarten Association's assets were being jeopardized, misapplied, devalued, or wasted?

A I don't think we would know, unless we were told.

Q Did the school district ever give notice to Free Kindergarten Association that Charleston County School District, and not District Number 20, was to receive Free Kindergarten's residual assets?

A Not to my knowledge.

(Plaintiff's Exhibit 12, Email Chain ending in a 6/28/18 Email to Royal from Crooks [Royal 1219-1221], was marked for identification.)

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A It's my understanding it would be conveyed as part of the dissolution of the organization, and that is represented by Mr. Stringer, and that's who I believe Mr. -- I mean, Ms. Crooks had conversations with related to this matter from Free Kindergarten.

Q Going back to that email, before we put it away, in that second paragraph, she says that the Board of Trustees for the school district has been apprised of the situation and will be meeting in July to discuss how best to proceed.

So they're going to meet in July of 2018. Is that correct?

A Yes, sir.

Q Did they take -- did the board take any formal action with regard to the property or this transaction?

A No, they did not.

Q So I think to recapture your earlier testimony, does the school district claim that Free Kindergarten Association's assets transfer to the school district only when Free Kindergarten Association is dissolved?

A Yes, sir.

Q So then until Free Kindergarten

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Association is dissolved, the school district does not own the property or any other assets of the association?

A Correct.

Q And knowing you're not testifying as a financial expert, or anything of that matter, is there a difference between an organization's assets and residual assets?

A I don't know.

Q Do you have Exhibit 3 still available?

A I do.

Q If we could turn to Paragraph 49. I know it's a longer paragraph, but would you mind reading Paragraph 49 on the record, please?

A Certainly. 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, 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.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

there, it says that it may have been subjected to potential misapplication, correct? So if you take the rest of that paragraph, and then it says: May have been subjected to potential misapplication.

A I don't know.

Q So is there any basis for which the school district claims the property or the sale -- the proceeds of the sale would have been misapplied if the property was sold to Michael Royal? In other words, if Free Kindergarten Association had received the proceeds of the sale to Michael Royal, is the school district claiming then that those proceeds would have been misapplied?

A I think it goes all the way back to the fact that we do not believe the sales agreement is valid, so that's where the misapplication is is that it's -- the agreement wasn't valid to start with. I think that's the intent of this paragraph is to point that out.

Q So you said earlier the contract -- the school district believes the contract between Michael Royal and Free Kindergarten Association be null and void, correct?

A Yes, sir.

Q What are the problems with the contract?

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

A First and foremost, the fact that it was signed and sold essentially by an individual that didn't have the authority to sell on behalf of the Free Kindergarten.

Q Were there any other issues with the contract?

A The other issue is related to the value of the sale as it relates to the requirements of the attorney general, the sale of a nonprofit asset.

Q And what were the issues with the price set forth in the contract?

A That it wasn't at -- it needs to be at fair market value at the time of closing, and we do not believe it to be at fair market value based on current valuations of the property.

Q Were there any other issues with the contract besides the authority of the person signing and the purchase price?

A Not that I recall.

Q Does the school district contend that Free Kindergarten Association did not accept Michael Royal's offer to purchase the property as contained in the contract?

A Correct.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Q So Free Kindergarten Association did not accept the offer to purchase?

A Correct.

Q Is that because the contract wasn't signed by someone with authority?

A Yes, sir.

Q What should Mr. Royal have done differently to have or create or enter into a valid contract?

A I don't know.

Q If the delay in closing from the time of the contract execution, if the delay to the closing date was caused by Free Kindergarten Association, when should fair market value be determined?

A My understanding is it should be determined at closing.

Q So determination of purchase price, I think you said subject to AG approval, determination of a fair purchase price does not take into account any delay caused by the nonprofit corporation?

A I don't -- I'm not aware of it -- of that being an issue to be considered.

Q Who was June Wells?

A It's my understanding that June Wells was

a director of the school, so she was in the building and operated it with the kids. That's my understanding. And obviously, over the course of time, it probably changed. She was there a long time as part of the organization.

Q Do you know if she held any other positions at or within Free Kindergarten Association?

A I am not aware of any other position she held.

Q Did the school district have any interactions with June Wells about the property or the contract?

A So it's my understanding that we did take a deposition from her before she passed.

Q I guess prior to litigation, did the school --

A Oh, prior. Not that I'm aware of, sir, no.

Q And the school district is contending that June Wells did not have authority to sign the purchase and sale agreement on behalf of Free Kindergarten Association. Is that correct?

A Yes, sir.

Q What documents or information support

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

that?

A We have not -- we have not identified any documents from the Free Kindergarten that identify her as an elected member of the board, of their board.

Q And I guess the school district is contending that the purchase and sale agreement had to be approved by the board of directors of Free Kindergarten Association?

A Yes, sir.

Q If the full board of directors of Free Kindergarten Association was not alive such that -- I can't remember. I think -- let's say there were five members on the board, and there were only four, and two approve the sale, could the sale go forward?

A If they are the acting -- official acting board, I would say yes.

Q If no members of the board of directors of Free Kindergarten Association are alive, how does the association convey any of its assets?

A I think it -- I don't think it does. I think at that point, you have a dissolution of the organization in some form or fashion, unless there is something in writing that designates an

know that in great detail, but either by statute or by statements within the purchase agreement, we have the ability to pursue costs associated with that. And again, going back to the reason why we would do that, it's related to looking out for the taxpayers' dollars.

Q And so one of the deposition topics you testified you're prepared to testify about was claims for attorneys' fees, which I'd like to probe a little more.

Is the school district claiming that the purchase and sale agreement provides a basis for its claim to costs and fees?

A It might. There might be provisions in there that we could look at.

Q So we're going to look at the purchase and sale agreement, which I believe is Exhibit 7. Do you still have it?

A I do, somewhere.

Q And feel free to take your time to review it, but could you identify any portions of the contract that provide a basis for the school district's request for costs and fees?

MS. ARIAIL: Let's find it first.

THE WITNESS: There it is.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

So I would say to your question that we would look at Paragraph Number 3 as far as closing costs, tax assessments, and other fees as a potential basis. Again, we haven't reviewed it in great detail at this point, but that's where it could possibly fall.

BY MR. WILLIAMS:

Q Any other portions that the school district claims to provide a basis for fees?

A None that I'm aware of at this time, but again, I haven't looked at this in great detail, but that would be the primary paragraph.

Q Is the school district a party to this contract?

A We have a beneficial interest in it at this point.

Q But was the school district an executing party of this contract? Did it enter into/negotiate the terms with either Free Kindergarten Association or Michael Royal?

A Not at the time the agreement was signed.

Q Did the school district sign this agreement?

A No, we did not.

Q What's the total amount of costs and

market value of a nonprofit. So it's the same basis I discussed earlier.

Q Does the school district believe that it has the evidence and documents to prove all of what you just said?

A I don't know. I would say we looked at it from the opposite perspective. We're not going to prove that Ms. Wells didn't have the authority. We believe that somebody has to prove that Ms. Wells has the authority, as an example.

Q Are you familiar with a gentleman by the name of Carter Rowson?

A I'm aware of him by name. I don't know him personally.

Q The school district identified him as a fact witness in its answers to interrogatories. Are you aware of any interactions or communications the school district has had with him about I guess the property?

A So it's my understanding that when we requested Ms. Wells' documents that were in the possession of Mr. Royal, one of the documents that was in that information that was provided by Mr. Rowson was a proposal for the property, and that proposal was about the same time that

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

all communications with District Number 20 are protected by attorney-client privilege?

MS. ARIAIL: Same objection.

THE WITNESS: No. I don't -- I don't contend that all of the documents or discussion between Constituent District 20 and us are attorney-client privilege or protected. I don't agree with that.

(Plaintiff's Exhibit 22, Order in Marvin Stewart v. CCSD Case, was marked for identification.)

BY MR. WILLIAMS:

Q And Exhibit 22 is an order from the Charleston County Court of Common Pleas dated February 22nd, 2008. Have you seen this document before?

A No, I have not.

MS. ARIAIL: I'm going to object to any testimony related to this document pursuant to the designation under the 30(b)(6) notice.

MR. WILLIAMS: And I would state that it is included within the discovery request and responses of Charleston County School District that is a topic of the 30(b)(6) deposition not objected to by the school district.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

MS. ARIAIL: Objection stands.

BY MR. WILLIAMS:

Q Based on this document, Constituent School District Number 20 is a separate party from Charleston County School District in this lawsuit, correct?

A I don't -- I don't know. I'd have to read through it.

Q Well, at the top, the caption, is Constituent School District Number 20 one of the petitioners listed?

A Yes.

Q And it says: Versus Charleston County School District, correct?

A Yes, it does.

Q How is District Number 20 related to Charleston County School District?

MS. ARIAIL: Same objection for this entire line of questioning related to the document marked as Exhibit 22.

MR. WILLIAMS: And same response stated with respect to the document.

THE WITNESS: I don't know.

BY MR. WILLIAMS:

Q Do you know if School District 20 and

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Lynn Crooks
To: Michael D. Royal
Cc: rick stringer; Mary Frances Jowers; Gretchen Stringer-Robinson; Treadwell Josey; Natalie Ham
Subject: Re: 34 Pitt St.
Date: Thursday, June 28, 2018 11:07:44 AM

Mr. Royal, please be advised that I represent the Charleston County School District which is the beneficiary of all residual assets of the non profit organization known as Free Kindergarten Association of Charleston pursuant to a resolution signed in 1971 as evidenced by an amendment to its charter filed with the Secretary of State of South Carolina. The non profit has not operated for many years and, as we understand it, is in the process of dissolving. As part of that process, 34 Pitt Street is to be conveyed to the School District.

The board of trustees for the school district has been apprised of the situation and will be meeting in July to discuss how best to proceed. I will be in touch with you and Rick shortly thereafter.

Thank you.

On Thu, Jun 28, 2018 at 10:36 AM, Michael D. Royal <michael@pareto.gr> wrote:

> 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 not legal basis, as we've discussed before.
>
> Regards,
>
> Michael

Michael Royal
Managing Member | Pareto Group LLC
1941 Savage Road, Suite 100A PMB 615 | Charleston, SC 29407



ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

o: (843) 202-0604 | m: (407) 284-9258 | 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>; 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.

Sincerely, Rick Stringer

--

NOTE: OUR OFFICE HAS MOVED TO A NEW LOCATION AS OF JULY 1, 2017. OUR NEW ADDRESS IS: 3 LOCKWOOD DR., SUITE 204, CHARLESTON, SC 29401 (LOCATED NEAR THE CITY MARINA). THE TELEPHONE NUMBER FOR OUR LAW FIRM REMAINS 843-345-9376.

Lynn L. Crooks, Esquire
LYNN LAWANDALES CROOKS, LLC
3 Lockwood Drive, Suite 204
Charleston, SC 29401
Telephone: 843-345-9376
email: lcrooks@crookslaw.net

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ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	~~07-CP-10-4573 and 06-CP-10-3307~~ 06-CP-10-3307
MARVIN STEWART, individually and in his capacity as the chairman of, and as a duly elected member of the Constituent School District 20; PAM KUSMIDER, Individually and as a duly elected member of the Constituent District Number 20; and TARA LOWRY, as an individual; and CONSTITUENT SCHOOL DISTRICT NUMBER 20,	
Petitioners,	
Vs.	
CHARLESTON COUNTY SCHOOL DISTRICT,	
Respondent.	

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CLERK OF COURT
BY

ORDER

This matter involves two different cases, which have the same parties and involve the same issues. With the consent of the parties, I have consolidated both matters into Case No. 07-CP-10-4573, which came to this Court as an appeal from an Order of the Charleston County School District, dated October 8, 2007.

The issue before the Court in both proceedings concerns the admissions policy at Buist Academy for Advanced Studies, a countywide magnet school which is operated by the Charleston County School District ("CCSD") to serve intellectually gifted children in grades Kindergarten through 8. The Petitioners have raised a number of issues on appeal, including what entity, the City of Charleston Constituent School District Number 20 ("District 20") Board or the CCSD Board, has the power to set the admissions policy for this school.



ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Having considered the record on appeal, the additional exhibits presented by Petitioners' counsel and the briefs and arguments of counsel for both parties, I find that the CCSD Board has the authority to set the admissions policy for this particular school and affirm the decision of the CCSD Board of Trustees.[1]

FACTS

In 1967, the General Assembly of the State of South Carolina enacted Act 340 to create the Charleston County School District. Prior to 1967, there had been eight school districts in Charleston County. Act 340 (1967), Section 1, retained the eight former school districts as administrative or constituent districts with certain limited powers including assignment of students residing in the constituent district to schools within the constituent district. Section 7 of Act 340 states, in pertinent part:

> **Section 7 - Power of trustees in constituent districts.** – The trustees in each of the constituent districts shall have the power in their respective districts, ***subject to the appeal to the Board of Trustees of the Charleston County School District in the manner provided in Sections [59-19-510] et seq. of the [S.C.Code Ann.]:***
>
> (1) To transfer any pupil from one school to another within the same constituent district so as to promote the best interest of education, and determine the school within such constituent district in which any pupil shall enroll… [Emphasis added.]

Section 7(1) is the source for the constituent school districts' duties and responsibilities regarding the assignment of students to schools within their respective constituent district. All decisions of the trustees of constituent districts regarding assignment of students to schools are

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[1] Petitioners also raised a number of due process concerns about the hearing that was held. Although, based on my ruling, no hearing was necessary as the District 20 Board did not have the power to determine admissions to this countywide magnet school for intellectually gifted students, I will address these concerns in this order.

Pursuant to SC Code § 59-19-560, this appeal was heard based upon the record below and the additional documentation submitted by the parties in their respective briefs and as supplemented by the record as requested by me following the hearing. I received additional and very helpful information pertaining to the creation of the Buist Academy from both counsel in supplemental briefs submitted on February 18 and 19, 2008.

The court wishes to thank counsel for the courteous and prompt presentation of this significant local matter.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

"subject to the appeal to the Board of Trustees of the Charleston County School District..." as stated in Section 7(1). This procedure follows state law as set forth in Code §59-63-490.

In 1981, the United States Department of Justice initiated an action against the CCSD seeking to find that Act 340, Section 7(1), the provision at issue in this proceeding, was unconstitutional, because it was enacted with intent to racially segregate the schools in Charleston County and/or had the impact of racially segregating schools in Charleston County. *See United States v. Charleston County School District*, 738 F. Supp. 1513 (D.S.C. 1990).[2]

During the ten years that action was pending, the CCSD began exploring the opening of magnet schools as a settlement option with the Justice Department. In 1984 in support of these discussions, the CCSD began developing an academic plan and educational curriculum for a countywide magnet elementary and middle school to serve intellectually gifted children.[3]

Act 340, Section 5(8), specifically provides that the CCSD Board "provide for intellectually gifted children a program which shall challenge their talents." The CCSD selected as the facility for this countywide magnet school an abandoned school building which was located within District 20 - Buist School, which had been a historically white school, then became black, and then was closed prior to its reopening as a countywide magnet school. 738 F.Supp. at 1538.

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[2] The federal court case sought to require the county school district to transfer students across constituent district lines in order to achieve more desegregated schools throughout the county. Judge Blatt ultimately denied the relief sought on the basis that the districts were not drawn with a discriminatory purpose but reflected the composition of the districts based, in large part, upon geographic lines and therefore comported with federal law. This decision was affirmed by the Fourth Circuit at 960 F.2d 1227 (1992) which ruled that the statutory scheme establishing the school district, as constituted, was not unconstitutionally invalid just because it could have gone further than it did. Goesaert v. Cleary, 335 US 464 (1948).

[3] Interestingly, the initial response of the Constituent District #20 Board to the US Justice Dept lawsuit was to send a Memorandum to its Superintendent and attorney requesting that the Consolidated Board seek a settlement which would "change existing laws to clearly provide that, when the (CCSD) has established a Special School or Program, it can provide for pupil and teacher transfer into such School or Program across constituent district lines without requiring approval from constitutent boards for such transfer." Attachment to minutes of January 7, 1981 special meeting of the Constituent District #20 Board. Ex. To Plaintiff's Supplemental Brief of February 18, 2008.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

The Mission Statement from the Magnet School Community Committee[4] provides:

"Our mission is to create, define and implement the first in a series of programs of excellence within the Charleston County School District which together will raise dramatically the quality of education throughout Charleston County School District." Bates Stamp #39

Under the Entrance Requirements the report stated:
"The school program will attract children who are capable and highly motivated and who seek a specific direction to their education." It recommended that students be a "resident of Charleston County." Bates Stamp #40

Under the Charleston County School District Enrollment the report stated:
"Students will be admitted from throughout Charleston County with cooperative student releases from constituent districts." Bates Stamp #41

The initial report of the committee contemplated both an elementary and middle school at Buist and a high school at Charleston High School. The report stated:
"This first series of magnet schools for advanced studies, located in District #20, must be the first in a series of schools to eventually cover a broad range of educational opportunities, …." Bates Stamp #37

The CCSD Board and the District 20 Board have never agreed on which board has the power to set the admissions policy for Buist. See Plaintiff-Appellants' Brief, Exhibit H (directives of District 20 attempting to change the Buist Academy admissions policy); and *United States v. Charleston County School District*, 738 F. Supp. 1513, 1541 (D.S.C. 1990) ("[I]n the matter of Buist Academy, the CCSD Board strived, often at odds with a Constituent District Board which zealously protected its authority to make student assignments in its district…")

From at least 1989 until 2003, the admissions policy of Buist remained the same: one-third of students admitted were siblings; one-third of students admitted were District 20 residents; one-third of students admitted were countywide; and each of these thirds were divided

[4] Memoranda captioned "Magnet School Proposal" submitted to Dr. Ron McWhirt dated March 12, 1984 and January 12, 1984. Provided from the Respondent on February 19, 2008.

into minority and non-minority. Transcript, p. 89. The admissions policy changed in 2003 after a lawsuit was brought challenging the racial quota following the US Supreme Court opinions in Gratz v. Bollinger, 539 US 244 (2003) and Grutter v. Bollinger, 539 US 306 (2003).

The CCSD Board and the District 20 Board agreed to change the admissions policy to have four lists: siblings, District 20, county-wide and students living in attendance zones for low performing schools. Transcript, p. 89. Although the Plaintiffs-Appellants submitted as an attachment to their Exhibit H a memorandum showing that the District 20 Board "amended" the admissions policy for the 1997-98 school year, the admissions policy did not change in accordance with that "amendment," because the CCSD Board did not approve it.[5]

In 2006, the District 20 Board voted to change the admissions policy again to give priority "to District 20 residents first" with "[r]emaining seats … given to siblings of current Buist students." Transcript, Ex. 1, p. 2. Principal Sallie Ballard filed a petition with the CCSD Board to appeal the action of the District 20 Board in accordance with §§ 59-19-510 *et seq.* Transcript, p. 90.

Buist Academy for Advanced Studies was founded as a countywide magnet school with academic qualifications for eligibility for admission. Transcript, pp. 90 and 95. It is not a school for every student; it is a school for the academically gifted. *Id.*, p. 95. There is no other elementary school in Charleston County providing the curriculum that Buist offers. *Id.*, p. 96. Buist Academy is an excellent rated school serving students in grades Kindergarten through 8. There are several constituent districts which do not have any excellent rated elementary and/or middle schools. *Id.*, Ex. B.

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[5] The memorandum states that, if the policy is not put into force, "the Board will take the legal action to put its policy into force, including, if necessary, seeking an injunction and/or a writ of mandamus to put its policy into effect." See Exhibit H to Plaintiffs-Appellants' Brief, Memorandum to Dr. Mullins from the Chair of the District 20 Board. However, no legal action was taken.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

If Buist became a District 20 only school, parents with academically gifted children in other constituent districts would have no public school alternatives that would give them the educational curriculum offered at Buist. Buist Academy is the only elementary and middle school in the CCSD that has academic admission requirements and provides a course of study for intellectually gifted students.[6] Consequently, there is both a strong demand and competitive applicaton process for admission to Buist.

The applications for Buist Academy have always exceeded the available seats. A lottery is used at the Kindergarten level to select students who will be tested to determine if they meet the academic requirements for admission. When vacancies occur, they are filled from the waiting lists which exist at each grade level.

On June 13, 2006, the CCSD Board began hearing Ms. Ballard's petition but had to adjourn the hearing prior to its completion. At the conclusion of that hearing, the Board chair stated: "So we are going to adjourn and Larry will get a date and get with Alice and the five of us for the most convenient quick time to get back. This meeting is adjourned."[7] The hearing was never reconvened. Mr. Stewart, Board Chair of District 20, never asked the CCSD Board to reconvene. Transcript, p. 209. However, the CCSD Board did appoint a committee of its members and District 20 Board members to attempt to reach a compromise. Although changes were made to the lottery process through the work of the committee, the committee was unsuccessful in reaching a compromise on the admissions policy and, in fact, voted not to change the policy in accordance with the decision of the District 20 Board. Transcript, pp. 141-42, 146-47 and 209-10.

---

[6] Academic Magnet High School is another excellent rated county-wide magnet school. It is located in Constituent District #4 and is not subject to this court challenge. Both Buist and Academic Magnet, unlike the District #10 Magnet, Ashley River Creative Arts Elementary School, were established as county wide magnet schools and not a district wide magnet school like Ashley River. Plaintiff's Exhibit "M".

[7] See Exhibit C to Appellant's Brief, at page 65.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

On September 27, 2007, the CCSD Board heard, *de novo*, the Petition of Sallie Ballard requesting that the prior admissions policy remain in place. After hearing the evidence presented and the arguments of Appellant's counsel, the CCSD Board held that

> Decisions concerning the operation of schools and the use of resources for schools are decisions about political questions that are reserved to the CCSD Board by Act 340, Section 5; all constituent board decisions are subject to appeal to the CCSD Board; a CCSD Board committee, with District 20 representatives, studied and reaffirmed the admissions policy of one-fourth to District 20 students, one-fourth to siblings, one-fourth to students zoned to attend low performing schools and one-fourth countywide; and Constituent Boards have no authority to overturn any decision of the CCSD Board.

The CCSD Board then ordered "that the District 20 Board's attempted action to change the Buist Admissions Policy is declared null and void and the previous policy remains in place." The Order was adopted by the CCSD Board by a 5-0 vote.

CONCLUSIONS OF LAW

I. The CCSD Board has the power to set the admissions policy for countywide magnet schools that serve intellectually gifted students.

Act 340, Section 5, vests the CCSD Board with all of the powers and duties "provided by law for county boards of education and for school district trustees other than those devolved upon the constituent trustees in Sections 6 and 7 of this act"[8] and a number of other specific powers, including the power to: "(7) Determine and evaluate the educational program in the schools in the constituent districts and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county; (8) … provide for intellectually gifted children a program which shall challenge their talents."

[8] By amendment effective in 2007, Section 6, which gave employment powers to the Constituent District Boards, was repealed so that the CCSD Board now has the power to employ all school and district employees without any input from the Constituent District Boards. See R. 166 of 2007 session of General Assembly.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Although the District 20 Board has maintained that it should have the power to make assignments of students to Buist Academy, the CCSD Board has taken and continues to take the position that the CCSD Board determines the admissions policies for its countywide magnet schools, including Buist. In particular, the admissions policy of Buist is important to the diversity and success of the school as testified to by Principal Sallie Ballard during the hearing. Transcript, pp. 97-98. As set forth in Act 340, the CCSD Board is charged with the responsibility of setting the educational program in the schools, including providing a challenging program for intellectually gifted children. The CCSD developed Buist Academy for Advanced Studies as the only school in Charleston County that provides an advanced curriculum of study for intellectually gifted children in grades Kindergarten through 8. Transcript, pp. 90-92. Buist was developed as a countywide magnet school with the only tie to Constituent District No. 20 being that it was located in a formerly abandoned school in that constituent district.

As the Court stated in *United States v. Charleston County School District*, 738 F.Supp. 1513, 1541 (D.S.C. 1990), "[t]he CCSD has consistently interpreted Section 7 of Act 340 as vesting the Constituent District Boards of Trustees with the authority to determine the schools within their respective districts **which the children residing in such districts should attend.**" [Emphasis added.] The Constituent Boards have the power to set attendance zones within each Constituent District so as "to determine the schools within their respective districts which the children residing in such districts should attend." Even that power remains subject to appeal to the CCSD Board under Section 7 of Act 340. Section 7 does not provide any exceptions to matters that are subject to appeal to the CCSD Board.

Senior United States District Court Judge Sol Blatt, Jr., in *U.S. v. CCSD*, specifically construed Section 7(1) of Act 340 to only give to Constituent District Boards the power to assign

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

students **who resided in their respective districts** to schools within their districts. [Emphasis added.] In that case, the Plaintiffs asked the Court to interpret that section so as to allow Constituent District Boards to assign students who resided in other Constituent Districts to schools within their districts in order to further integrate the schools:

> The CCSD has consistently interpreted Section 7 of Act 340 as vesting the Constituent District Boards of Trustees with the authority to determine the schools within their respective districts which the children residing in such districts should attend. Such interpretation was in accordance with an opinion obtained by the CCSD from the South Carolina Attorney General's Office shortly after the passage of Act 340.
>
> However, the plaintiffs contend that this is a restrictive interpretation not required by the literal terms of Act 340 and that such interpretation is intended to preserve racial imbalances between the Constituent Districts. However, while the court agrees that the actual words of Section 7 of Act 340 do not expressly refer to children residing in the Constituent District when it confers upon the Constituent District Board the authority to "determine the school … in which any pupil shall enroll," that is unquestionably the intent of Section 7. Indeed, even the plaintiffs contend that the intent of the General Assembly in enacting Section 7 was to require assignment of children to schools in the Constituent District in which they lived. Therefore, consistent with such legislative intent, the court concludes that Section 7 of Act 340 should be interpreted to confer on the Boards of Trustees of the Constituent Districts the authority to assign students residing within their respective Constituent Districts.

738 F.Supp. at 1541-42.

Thus the Constituent District Boards do not have the authority to assign students who do not reside in their district to countywide specialty schools, and the Constituent District Boards do not have the authority to designate a countywide specialty school as a school solely for District 20 students. The CCSD Board has those powers, because it has all powers not given to the Constituent District Boards. See Section 5 of Act 340. The extent of the Constituent District Boards' power is with students who reside in or seek to enroll in a school in their district.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Plaintiffs' Appellants' Brief claims that the CCSD Board is taking a different position in this matter than it took in *U.S. v. Charleston County School District*.[9] To the contrary, the CCSD Board took the precise position in that matter that it is taking in this case, *i.e.*, that Constituent District Boards have the power, subject to appeal to the CCSD Board, to assign students residing in their respective constituent districts to neighborhood schools. As the CCSD stated in its brief to the 4th Circuit in that case:

> The assignment of students in the CCSD who are handicapped is handled on a countywide basis in order to comply with the mandates of federal law, [citations deleted]. Section 5(8) of Act 340 specifically acknowledges the CCSD's authority to "provide for physically and mentally handicapped children educational programs..." **Thus, the fact that the CCSD transports children across Constituent District lines to special programs is consistent with the express language and intent of Act 340.**

See Exhibit A to Appellants' Brief, p. 15, footnote at bottom of page. [Emphasis added.]

Section 5(8) of Act 340 is the same section that empowers the CCSD Board to "provide for intellectually gifted children a program which shall challenge their talents." Thus, the CCSD's argument in its brief that it is empowered to assign disabled students across constituent district lines without the approval of the Constituent Boards should equally apply to its being empowered to assign qualifying, intellectually gifted children across constituent district lines without the approval of the Constituent Boards. The CCSD's position asserted in its brief was that the constituent district boards had the power, subject to appeal to the CCSD Board, to set attendance zones for students residing within the constituent district.

Buist Academy's only tie to District 20 is that it is located within the geographic boundaries of District 20. The District 20 Board has never set an attendance zone for Buist,

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[9] Plaintiffs-Appellants cite *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 SE2d 472 (1997), for the proposition that the CCSD is judicially estopped from taking a different legal position than the position that it took in the prior case. Although CCSD asserts that it is not taking a different legal position, the doctrine of judicial estoppel, as adopted by the *Hayne* Court, only applies "to matters of fact (not law)." 489 SE2d at 477.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

because it is not one of District 20's neighborhood schools. The attendance zone for Buist Academy is Charleston County. It is a countywide magnet school with certain admissions criteria that have to be met as set by the CCSD Board. If Buist were given an attendance zone, it would no longer be a school that served the intellectually gifted students of the county. The CCSD Board is empowered with, and, in establishing Buist, has exercised its power to, "provide for intellectually gifted children a program which shall challenge their talents." The District 20 Board has no such power and has **no right to set admissions criteria** for the sole elementary and middle school in the CCSD that has been established to "provide for intellectually gifted children a program which shall challenge their talents." (emphasis supplied).

As stated in 1977 S.C. Op. Atty. Gen. No. 77-272, "None of the duties and responsibilities enumerated in Section 5 deal specifically with inter-district student transfers within Charleston County." However, under the general law, the board of trustees of any school district has the broad power "to transfer any pupil from one school to another so as to promote the best interest of education."

The opinion states the statutes need to be construed in harmony with one another so as not to do violence to the legislative intent. "Statues *in pari materia* have to be construed together and reconciled, if possible, so as to render both operative." Citing Lewis v. Gaddy, 254 SC 66, 173 SE2d 376 (1978). Where the "person is so situated as to be better accomodated at the school of an adjoining school district" there is no reason that the CCSD cannot create a school which exists for a group of persons (here, intellectually gifted, rather than handicapped) to be furnished an excellent education.

The authority remaining with the constituent board, as posited in the Attorney General's Opinion, is the procedural mechanism for approval or disapproval of the transfers between

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

constitutent districts in Charleston County that conforms with state law. SC Code § 59-63-490. While the law provides that the transferring student must have the approval of both the sending and receiving district, this authority **does not empower the constitutent district to set the admission criteria** for the county-wide magnet school. While this process may prove cumbersome, any transfer which is denied may still be appealed to the School Board for a determination as to whether or not the denial was "unreasonable or capricious." 1976 SC Code §§ 59-63-490 and 59-63-510 and Act 340, § 7.

Therefore, because the District 20 Board has no authority to set the admission criteria for Buist Academy for Advanced Studies, the District 20 Board is not entitled to any relief as requested in either of the actions that it brought, and the decision of the CCSD Board should be affirmed.

II. There were no due process violations in the hearing before the CCSD Board.

Even if the District 20 Board had authority to determine the admissions policy for Buist, its determination is subject to appeal to the CCSD Board under Section 7 of Act 340 (1967). The CCSD Board did give a hearing, and the Plaintiffs-Appellants have asserted that the hearing did not comport with the requirements of due process.

First, Plaintiffs-Appellants assert that, because the CCSD Board first started hearing the appeal on June 6, 2006 and did not finally hear the matter until September 27,2007, the CCSD Board waived its right to hear the appeal. Legal precedent on this issue is to the contrary. In *Andrews v. Dorchester County Sch. Dist.*, 292 S.C. 392, 356 S.E.2d 439 (Ct. App. 1987), the South Carolina Court of Appeals held that when an appeal was taken and the Board failed to act, "Mrs. Andrews's remedy is to mandamus the county board to act by exercising its judgment or discretion." *See, also, Adamson v. Richland County School District One*, 332 S.C. 121, 503

S.E.2d 752 (S.C.App. 1998). Thus, by failing to act, the CCSD Board did not waive its right to hear the matter pending before it. Therefore, there is no basis for setting aside the Order of the CCSD Board because Plaintiffs-Appellants assert that the hearing was not "prompt."

Second, Plaintiffs-Appellants assert that the hearing tribunal was biased, because one of the members had previously been represented in an unrelated proceeding by the attorney representing Ms. Ballard. The case law is clear that, for Plaintiffs-Appellants to succeed in overturning a decision, they must present substantial evidence of bias or prejudice. *See Doe v. Howe*, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 489 S.E.2d 191 (1997); *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 552, 340 S.E.2d 144, 148 (1986); and *Lyvers v. Lyvers*, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984). Plaintiffs-Appellants have presented no evidence of impartiality or bias, so there is no basis for setting aside the Order of the CCSD Board.

Third, Plaintiffs-Appellants assert that they were denied due process, because Alice Paylor, the attorney for Sallie Ballard in the appeal, also represents the CCSD in the litigation brought by Plaintiffs-Appellants. SCACR, Rule 407, Rule 1.8(l) expressly allows an attorney who represents a governmental body to appear in front of that body to prosecute or defend matters on which the body is the trier of fact. However, the attorney may not advise the Board on the same matter that she is prosecuting or defending before them. There is no evidence that Ms. Paylor advised the CCSD Board concerning the appeal of Sallie Ballard. Therefore, there is no due process violation with regard to Ms. Paylor's representation of Ms. Ballard before the CCSD Board.



ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Having disposed of the asserted due process violations, I find substantial evidence in the record before the CCSD Board to uphold its decision to void the attempted admissions policy change.[10]

IT IS, THEREFORE, ORDERED that the Charleston County School District Board of Trustees has the power to set the admissions policy for Buist Academy for Advanced Studies, a countywide magnet school for intellectually gifted elementary and middle school students; that the Constituent District 20 Board has no power to set or change that policy; that the authority of the constituent board is to approve transfers into the school district from other districts with the caveat that this decision is subject to appeal to the CCSD board for a determintation of whether the denial was "unreasonable or capricious" per the authority of Act 370, §7(1) and SC Code § 59-63-510; that the hearing given by the CCSD Board with regard to this action of the District 20 Board complied with the requirements of due process; and that the decision of the CCSD Board to declare the action of the District 20 Board void is affirmed.

IT IS FURTHER OPDERED that Civil Action Numbers 2006-CP-10-3307 and 2007-CP-10-4573 are hereby consolidated into Case Number 2007-CP-10-4573.

AND IT IS SO ORDERED!

MIKELL R. SCARBOROUGH
Special Circuit Court Judge

Charleston, SC

February 22, 2008

[10] Plaintiffs-Appellants have not asserted that there was not substantial evidence on which the CCSD board could base its decision.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 12

October 2013 Emails between Royal and City of Charleston Assistant Corporation Counsel, Janie E. Borden

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Michael D. Royal
To: Borden, Janie
Subject: RE: Scan from a Xerox WorkCentre
Date: Monday, October 28, 2013 11:02:00 AM

Hi Janie,

Just wanted to check in since it's been a couple weeks. Is the Mayor's office responding to your request?

Thanks,

Michael

-----Original Message-----
From: Michael D. Royal
Sent: Friday, October 18, 2013 9:06 AM
To: 'Borden, Janie'; Carducci, Colleen
Subject: RE: Scan from a Xerox WorkCentre

Okay, sounds good. Thanks very much, Janie.

Best,

Michael

-----Original Message-----
From: Borden, Janie [mailto:BORDENJ@charleston-sc.gov]
Sent: Friday, October 18, 2013 9:03 AM
To: Michael D. Royal; Carducci, Colleen
Subject: RE: Scan from a Xerox WorkCentre

Michael,

I have made the requested changes and forwarded to the Mayor's office for signature. Once we receive it back, we will need to schedule a time to meet, so that I can give you the deed to file at the RMC.

Thanks,
Janie

-----Original Message-----
From: Michael D. Royal [mailto:michael@pareto.gr]
Sent: Friday, October 18, 2013 7:19 AM
To: Borden, Janie; Carducci, Colleen
Subject: RE: Scan from a Xerox WorkCentre

Hi, thank you Janie.

I wonder if you can make hand corrections to two items before recording. There are two sentences in which the deed grants the property to grantee, and in both cases, grantee is not named correctly:

1. In paragraph #1, it appears there's a typo and the grantee is "FKS," an undefined term, instead of "FKAC."

2. In the "TO HAVE AND TO HOLD" paragraph, "Free Kindergarten Association" should be either "FKAC" or

"Free Kindergarten Association of Charleston."

Thanks,

Michael

-----Original Message-----
From: Borden, Janie [mailto:BORDENJ@charleston-sc.gov]
Sent: Thursday, October 17, 2013 3:11 PM
To: Carducci, Colleen; Michael D. Royal
Subject: FW: Scan from a Xerox WorkCentre

Copy of signed deed as requested. Rachel is going to file it at the RMC office, today.

-----Original Message-----
From: xerox@charleston-sc.gov [mailto:xerox@charleston-sc.gov]
Sent: Thursday, October 17, 2013 4:08 PM
To: Borden, Janie
Subject: Scan from a Xerox WorkCentre

This document was sent from the City of Charleston Legal Department xerox machine.

Attachment File Type: PDF

WorkCentre Location: machine location not set
Device Name: XRX0000AADD0857

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Exhibit 13

Quitclaim Deed for the Property from the City of Charleston to FKAC, executed October 31, 2013, Recorded December 12, 2013

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

BP0378596

PGS: 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that the City of Charleston, a South Carolina municipal corporation ("**City**") for and in consideration of the premises and also in consideration of the sum of Fifteen Thousand and No/100 ($15,000.00) Dollars, to it in hand paid at and before the sealing of these presents by June Wells, on behalf of the Free Kindergarten Association of Charleston ("**FKAC**") in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed and by these presents does remise, release and forever quit-claim unto **FKAC**, the following described property, to-wit:

ALL that certain lot, piece, or parcel of land, with the buildings and 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 as No. 34 Pitt Street, TMS#: 4570401129.

SAID NO. 34 PITT STREET measuring and containing fifty-six feet, six inches (56',6"), more or less, on the north and south lines.

BUTTING AND ABOUNDING 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.

This being the same interest acquired by the City by virtue of a certain Declaration of Trust executed by the Free Kindergarten Association of Charleston on July 19, 1963, the same being duly recorded in the R.M.C. Office for Charleston County in Book V77 at Page 169.

GRANTEE ADDRESS: CITY OF CHARLESTON
PO BOX 304
CHARLESTON, SC 29401

TOGETHER will all and singular rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining:

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Free Kindergarten Association of Charleston heirs and assigns, forever -- so that neither it the said City Council of Charleston nor its successors, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances or any part of parcel thereof, forever.

IN WITNESS WHEREOF, the grantor herein has caused these presents to be executed on behalf of the City of Charleston and its seal to be hereunto affixed, this 31st day of October 2013.

SIGNED AND DELIVERED IN THE PRESENCE OF:

Claire Willett
Witness

Debra Matthews
Witness

THE CITY OF CHARLESTON

BY: _____
Joseph P. Riley, Jr., Mayor

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STATE OF SOUTH CAOLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, Debra Matthews, and made oath that she saw the within named City of Charleston, a South Carolina municipal corporation, by its Mayor, Joseph P. Riley, Jr., sign, seal and deliver the within written Quit Claim Deed and that she with Claire Willett , witnessed the execution thereof this 31st day of October, 2013.

Debra Matthews

SWORN to before me this 31st day of October, 2013.

Notary Public for South Carolina

My Commission expires: 2/1/15.

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property was transferred by City of Charleston
to June Wells on behalf of Free Kindergarten Association of Charleston on October 31, 2013.

3. Check one of the following: The deed is
(A) ✓ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity , or is a transfer to a trust or as distribution to a trust beneficiary.
(C) _____ exempt from the deed recording fee because (See Information section of affidavit): _____ (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ____ or No ____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

(A) ✓ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $15,000.00.
(B) _____ The fee is computed on the fair market value of the realty which is _____.
(C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check YES ___ or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:
(A) Place the amount listed in item 4 above here: $15,000.00
(B) Place the amount listed in item 5 above here: $0.00
(If no amount is listed, place zero here.)
(C) Subtract Line 6(b) from Line 6(a) and place the result here: $15,000.00

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: $66.00.

8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized agent of the purchaser (Free Kindergarten Association of Charleston).

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

June Murray Wells
Responsible Person Connected with the Transaction

June Murray Wells
Print or Type Name Here

Sworn this 12th day of December 2013
Donna Trapp Oostdyk
Notary Public for South Carolina / Charleston County
My Commission Expires: 9-21, 2022

STATE OF SOUTH CAROLINA
NOTARY PUBLIC
DONNA TRAPP OOSTDYK

ROYAL_000465

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RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

COUNTER CUSTOMER
PARETO GROUP LLC
59 KING ST APT A
CHARLESTON SC 29401

RECORDED

Date:	December 12, 2013
Time:	4:22:31 PM

Book	Page	DocType
0378	596	Q/Claim

Charlie Lybrand, Register
Charleston County, SC

MAKER:
CITY OF CHARLESTON

RECIPIENT:
FREE KINDERGARTEN ETC AL

Original Book:

Original Page:

Note:

# of Pages: 4

Recording Fee	$	10.00
State Fee	$	39.00
County Fee	$	16.50
Extra Pages	$	-
Postage	$	0.50
Chattel	$	-
TOTAL	$	66.00

DRAWER: Drawer 1
CLERK: KLH

AUDITOR STAMP HERE
RECEIVED FROM RMC
DEC 16 2013
PETER J. TECKLENBURG
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP MKD
DATE 12/17/13
31

0378 Book
596 Page
12/12/2013 Recorded Date
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Original Book
Original Page
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Exhibit 14

Declaration of Trust Executed by FKAC on July 19, 1963, Recorded in the Charleston County R.M.C. Office in Book V77, at Page 169

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

BOOK V 77 PAGE 169

5277

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

DECLARATION OF TRUST

WHEREAS, heretofore, the FREE KINDERGARTEN ASSOCIATION OF CHARLESTON has operated its kindergarten on property situated on the north side of Huger Street Street in the City of Charleston, the title to which was confirmed in the said ASSOCIATION by THE CITY COUNCIL OF CHARLESTON by instrument dated June 24, 1959, and recorded in the R.M.C. Office for Charleston County in Book K-68, page 490; and

WHEREAS, in and by said instrument it was provided that the title to said property and the right to possession and enjoyment thereof should immediately revert to the said THE CITY COUNCIL OF CHARLESTON if the same should cease to be used for kindergarten purposes; and

WHEREAS, the said property lies within the established right of way of Interstate Highway No. 26, and is, consequently, to be acquired by the State Highway Department for the sum of $21,500.00; and

WHEREAS, by virtue of the said acquisition, the premises will no longer be available for kindergarten purposes and it has been necessary for the said FREE KINDERGARTEN ASSOCIATION OF CHARLESTON to acquire a new location at No. 34 PITT STREET, Charleston, S.C., upon which new facilities are to be erected; and

WHEREAS, the said premises at NO. 34 PITT STREET, Charleston, S. C., have been acquired by the said FREE KINDERGARTEN ASSOCIATION OF CHARLESTON by four separate deeds of record in the R. M. C. Office for Charleston County in Book B-80, at pages 270, 271, 273 and 279; and

WHEREAS, THE CITY COUNCIL OF CHARLESTON proposes to relinquish its claim to the proceeds arising from the sale of the Huger Street premises by virtue of its reverter interest therein, in consideration of the acquisition of a similar possibility of reverter in and to an undivided one half interest in the property located at NO. 34 PITT STREET.

ROYAL_000024
PL DOC 0003, PG 0001
R. p. 1349

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, in consideration of the above recited premises and the sum of ONE ($1.00) DOLLAR, to it in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, does hereby declare that it holds an undivided one half interest in and to:

> ALL that certain lot, piece or parcel of land, with the buildings and 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.
>
> SUBJECT, HOWEVER, to the mortgage of the Free Kindergarten Association of Charleston to First National Bank of S.C., dated Sept. 10, 1963, recorded in the R. M. C. Office for Charleston County in Book 077, page 271.

IN TRUST, NEVERTHELESS, to construct, maintain and operate a kindergarten on said premises and to hold the title thereto until such time as the same shall cease to be used for kindergarten purposes, at which time the said undivided one half interest in and to said property shall forthwith revert to THE CITY COUNCIL OF CHARLESTON, its successors and assigns; it being the intention of said FREE KINDERGARTEN ASSOCIATION OF CHARLESTON by the execution of this instrument, to create in itself a fee simple determinable estate in and to said undivided one half interest in said property.

IN WITNESS WHEREOF, the FREE KINDERGARTEN ASSOCIATION OF CHARLESTON has caused these presents to be executed

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

BOOK V 77 PAGE 169

in its name and under its seal, this 19th day of July, A. D. 1963.

IN THE PRESENCE OF:

Bruce R. Mayhugh

Gordon R. Schmidt, Jr.

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON (SEAL)

BY Its Ethel M. Murray Pres.

BY Its

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me Gordon R. Schmidt, Jr. and made oath that he saw the within named FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, by Ethel M. Murray, its President, and K. E. Riddock, its Treasurer, sign, affix its seal, and as its act and deed, deliver the foregoing Declaration, and that he with Bruce R. Mayhugh witnessed the execution thereof.

SWORN to before me this 19th day of July, A. D. 1963

Gordon R. Schmidt, Jr.

Bruce R. Mayhugh

Notary Public for South Carolina

NOTARY PUBLIC SOUTH CAROLINA

-3-

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

Filed, Indexed and Recorded
Oct. 18 1963 at 12:23
Book V-7 Page 113
Register Mesne Conveyance
Charleston County, S. C.

THE KINDERGARTEN ASSOCIATION OF CHARLESTON

TO

THE CITY COUNCIL OF CHARLESTON

5277

DECLARATION

SINKLER, GIBBS & SIMONS
20 Broad Street
CHARLESTON, S. C.

COPY

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Exhibit 15

November 4, 2015 Emails between Michael Royal and Charleston County Assessor Toy S. Glennon

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

From: Michael D. Royal
To: Toy Glennon
Subject: Re: Free Kindergarten Society
Date: Wednesday, November 4, 2015 5:16:40 PM

Ms. Glennon,

A huge thank-you for working on this matter! I know you have thousands and thousands of properties within your oversight, so I deeply appreciate your spending personal time on it, and I will get in touch with Ms. June Wells tonight to update her. I will also let her know that it is possible DOR will want to examine current use of the 34 Pitt Street property.

Best regards,

Michael Royal

From: Toy Glennon <TGlennon@charlestoncounty.org>
Date: Wednesday, November 4, 2015 at 4:08 PM
To: Michael Royal <michael@pareto.gr>
Subject: Free Kindergarten Society

Mr. Royal,
Believe it or not, there is progress on this. Lots of progress

The delinquent tax office has pulled the property from Execution, it will **not** be sold this year. It was pulled sometime last week- towards the end of the week

The bill still shows as delinquent (as I understand it) but it is off the execution list.

DOR has confirmed verbally that the FK was the organization that had the original exempt approval and is their owner of record for the exemption

Unfortunately the original documentation is being scanned (apparently old stored records are being imaged by some service) which created an issue or two

There was some concern that we needed the original documentation to fix the exemption, but that is not the case.

The Auditor has indicated that if we get an email from DOR confirming that the FK was the originally approved applicant- he will restore the exemption for the prior years immediately- I will send it straight to him- he said that would keep it from going into a to do stack.

The Exempt Property Supervisor at DOR (that position is in transition, so this is the 'outgoing' supervisor) has agreed to confirm the exemption via email.

The new supervisor may look into the current use, which might be a problem, the old supervisor is not pushing that issue, so I have closed the loop with her.

I sent her an official request for confirmation, she has it, but it may be next week before she does it (she said Monday was likely)

I have calendared to check back with her on Tuesday if I don't have it.

The restored exemption should eliminate any late payment penalties, which are a percentage of the bill (no bill, no percentage!!)

The only thing that may hang out there is the fees that delinquent tax charges- which are set amounts.
Those are small, in the $100 range as I recall. Those will probably be waived, but sometimes fees are a computer nightmare to get rid of.
Once the rest is done, I will check on the fees, worst case they will need to be paid, best case, they will be able to waive them.

So, for now this is close to being finalized – very close. I apologize that is has taken so long, but at least it is 90% done.

Sincerely

Toy S. Glennon
Charleston County Assessor
P.O. Box 427
Charleston, SC 29402
843-958-4100

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Exhibit 16

Certificate of Existence of FKAC, Executed by the South Carolina Secretary of State on August 23, 2013

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence, Non-Profit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON, a Non-Profit Corporation duly organized under the laws of the State of South Carolina on January 24th, 1901, has as of the date hereof filed as a non-profit corporation for religious, educational, social, fraternal, charitable, or other eleemosynary purpose, and has paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-31-1404 of the South Carolina code and that the non-profit corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 23rd day of August, 2013.

Mark Hammond

Mark Hammond, Secretary of State

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ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 17

CCSD's Responses to Plaintiff's First Set of Requests for Admission

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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; Charleston County School District; Charleston Chapter No. 4, UDC; the Confederate Museum, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No.2018-CP-10-5739 **DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT'S RESPONSES TO PLAINTIFF MICHAEL D. ROYAL'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT**

TO: EVAN P WILLIAMS, ESQUIRE AND JEFFERY S. TIBBALS, ESQUIRE OF BYBEE & TIBBALS, LLC, ATTORNEYS FOR PLAINTIFF MICHAEL D. ROYAL:

Defendant Charleston County School District ("CCSD" or the "District"), hereby responds to Plaintiff Michael D. Royal's ("Royal's") First Set of Requests for Admission to Defendant Charleston County School District as indicated below:

REQUESTS FOR ADMISSION

1. Admit that June Wells was a member of FKAC during the period of 2010 until the time of her death, November 29, 2020.

Response: Denied.

2. Admit that June Wells was a board member of FKAC during the period of 2010 until the time of her death, November 29, 2020.

Response: Denied.

3. Admit that June Wells had authority to act on behalf of FKAC during the period of 2010 until the time of her death, November 29, 2020.

Response: Denied.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

4. Admit that June Wells had authority to sell the Property on behalf of FKAC during the period of 2010 until the time of her death, November 29. 2020.

Response: Denied.

5. Admit that the purchase price of $315,200 set forth in the PSA was consistent with the fair market value of the Property as of April 23, 2013.

Response: Denied.

6. Admit that FKAC has not been dissolved.

Response: Admitted.

7. Admit that the AG's approval of the sale of the Property by FKAC to Royal is not necessary.

Response: Denied.

8. Admit that the AG's approval of the PSA was not necessary.

Response: Denied.

9. Admit that CCSD does not own the Property.

Response: Denied. CCSD is the beneficial and/or equitable owner of and holds a legally protectable beneficial and/or equitable interest in the Property and/or all proceeds of sale therefrom.

10. Admit that CCSD does not own the assets of FKAC.

Response: Denied. CCSD is the beneficial and/or equitable owner of and holds a legally protectable beneficial and/or equitable interest in the assets of FKAC and/or all proceeds of sale therefrom.

11. Admit that CCSD is not the beneficiary of any of the assets of FKAC.

Response: Denied. CCSD is the beneficial and/or equitable owner of and holds a legally protectable beneficial and/or equitable interest in the assets of FKAC and/or all proceeds of sale therefrom.

Respectfully Submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: _s/A. Bright Ariail_____
A. Bright Ariail
SC Bar No. 69570
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412
bright@brightariaillaw.com
843/814-8805
ATTORNEY FOR CHARLESTON COUNTY SCHOOL DISTRICT

October 22, 2021
Charleston, South Carolina

CERTIFICATE OF MAILING
I hereby certify that a copy of the foregoing document WAS emailed to all counsel of record in this proceeding this 22nd day of October, 2021.
_s/A. Bright Ariail_____

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Exhibit 18

FKAC's Answers to Plaintiff's First Set of Requests for Admission

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Charleston	)	Case no: 2018-CP-CP-5739

Michael D. Royal, Plaintiff, v. Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina and the Charleston County School District, Defendants.	)	DEFENDANT FREE KINDER-GARTEN ASSOCIATION OF CHARLESTON'S ANSWERS TO PLAINTIFF MICHAEL D. ROYAL'S FIRST REQUESTS FOR ADMISSION

TO: Plaintiff Michael D. Royal and his attorneys, Jeffrey S. Tibbals, Esq., and Evan P. Williams, Esq:

Defendant Free Kindergarten Association of Charleston ("FKAC") and its attorney, Patrick F. Stringer, Esq., Answer Plaintiff Michael D. Royal's First Request for Admission as follows:

1. Admit that the Agreement, as of the date of execution in 2013, was a valid contract.

Defendant FKAC denies #1 of Plaintiff's Requests for Admission.

2. Admit the authenticity of the Agreement attached herein as Exhibit A.

Defendant KFAC admits #2 of Plaintiff's Requests for Admission.

3. Admit that FKAC, as of March 29, 2018, intended to close on the sale of the Property to Royal for $315,200.00.

Defendant FKAC admits #3 of Plaintiff's Requests for Admission.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

4. Admit that FKAC, prior to April 2018, was unaware of any alleged requirement that the AG approve the sale of the Property to Royal.

Defendant FKAC admits #4 of Plaintiff's Requests for Admission.

5. Admit that FKAC failed to close on the sale of the Property to Royal on or before May 25, 2018.

Defendant FKAC admits #5 of Plaintiffs Requests for Admission.

6. Admit that June Wells was mentally competent during the time period of 2010 through approximately May 25, 2018.

Your Defendant neither admits nor denies the statement that June Wells was mentally competent during the time period, 2010 through approximately May 25 of 2018. Patrick F. Stringer obviously is not a medical doctor and is unable to diagnose Mrs. Wells' mental competency. Patrick F. Stringer was hired in 2018 to prepare a Deed relative to the pending closing between Plaintiff and the Defendant FKAC. Prior to that time period there was no representation of June Wells or FKAC, therefore Patrick F. Stringer has no knowledge as to Ms. Wells' competency at that time. Please refer to the Deposition of June Wells as to her competency at the time of the Deposition in 2019. Her mental competency waned in her later years prior to her death in 2020 and in approximately October, 2020 June Wells suffered a serious stroke, was placed in long-term nursing care, and later died on November 29, 2020. Mrs. June Wells never would agree to see a doctor as to her mental capacity, but it is clear from any review of her

Deposition in 2019 that she was often confused and could not remember dates and otherwise appeared to have some diminution regarding her mental acuity and capacity.

7. Admit that FKAC has not been dissolved.

Defendant FKAC admits #7 of Plaintiff's Requests for Admission.

8. Admit that the AG's approval of the sale of the Property by FKAC to Royal is not necessary.

Defendant FKAC denies #8 of Plaintiff's Requests for Admission.

9. Admit that the AG's approval of the PSA is not necessary.

Defendant FKAC denies #9 of Plaintiff's Requests for Admission.

10. Admit that CCSD does not own the Property.

Defendant FKAC admits #10 of Plaintiff's Requests for Admission.

11. Admit that CCSD does not own the assets of KFAC.

Defendant FKAC admits #11 of Plaintiff's Requests for Admission.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

12. Admit that CCSD is not the beneficiary of any of the assets of FKAC.

Defendant FKAC denies #12 of Plaintiff's Requests for Admission.

Patrick F. Stringer
753 Folly Road
PO Box 12370
Charleston SC 29422-2370
(P) (843) 795-1331
(F) (843) 762-0144
(Email) pfstringer@yahoo.com

Oct 11, 2021.
Charleston, S.C.

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

Charleston, S.C. this 11th day of Oct, 2021.

By: _____

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Exhibit 19

The AG's Responses to Plaintiff's First Set of Requests for Admission

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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,	)	**Responses to Plaintiff Michael D. Royal's First Requests for Admission to Intervenor the Attorney General of the State of South Carolina**
	)	
Defendant,	)	
	)	
The Attorney General of the State of South Carolina and The Charleston County School District	)	
	)	
Intervenors	)	
	)	

Intervenor the Attorney General of the State of Carolina, by and through his undersigned attorneys, hereby responds to Plaintiff's First Request for Admissions. The Intervenor reserves the right to amend and supplement their responses as necessary and appropriate.

The Attorney General has not completed his completed preparation for trial. These answers are based only upon such information and documents, which are presently available to and specifically known to the Attorney General. The Attorney General reserves the right to make contentions and submit evidence at trial in this action which supersedes the contentions or evidence set forth in these answers. The following answers are given without prejudice to Attorney General's right to produce or rely upon facts or documents which he may later discover or recall, or contentions which he may later formulate.

1. Admit that June Wells was a member of FKAC during the period of 2010 until the time of her death, November 29, 2020.

RESPONSE: The Attorney General admits only that June Wells described herself as an advisory member of the FKAC in her affidavit of June 23, 2010.

2. Admit that June Wells was a board member of FKAC during the period of 2010 until the time of her death, November 29, 2020.

RESPONSE: The Attorney General admits only that during her deposition on January 9, 2020, June Wells at times described herself as a board member.

3. Admit that June Wells had authority to act on behalf of FKAC during the period of 2010 until the time of her death, November 29, 2020.

RESPONSE: The Attorney General admits only that June Murray Wells stated as follows in her affidavit dated November 23, 2010: "I am the last living advisory member of the Free Kindergarten Association of Charleston with capacity to act on behalf of the Free Kindergarten Association of Charleston."

4. Admit that June Wells had authority to sell the Property on behalf of FKAC during the period of 2010 until the time of her death, November 29, 2020.

RESPONSE: Denied at this time.

5. Admit that the purchase price of $315,200 set forth in the PSA was consistent with the fair market value of the Property as of April 23, 2013.

RESPONSE: Denied at this time.

6. Admit that FKAC has not been dissolved.

RESPONSE: Admit.

7. Admit that the AG's approval of the sale of the Property by FKAC to Royal is not necessary.

RESPONSE: Denied.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

8. Admit that the AG's approval of the PSA was not necessary.

RESPONSE: Denied.

9. Admit that the AG does not own the Property.

RESPONSE: Admit.

10. Admit that the AG does not own the assets of FKAC.

RESPONSE: Admit.

11. Admit that the AG is not the beneficiary of any of the assets of FKAC.

RESPONSE: Admitted, thought the Attorney General notes that he has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) ("[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the AG has the duty to represent the unspecified charitable beneficiaries.").

Respectfully submitted,

ALAN M. WILSON
Attorney General
C. HAVIRD JONES, JR.
Senior Assistant Deputy Attorney General
MARY FRANCES JOWERS
Assistant Deputy Attorney General
KRISTIN M. SIMONS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
(803) 734-3680
Attorneys for South Carolina Attorney General Alan Wilson

October 8th, 2021

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Exhibit 20

January 14, 2013 letter from Royal to June Wells

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Michael D. Royal
59-A King Street
Charleston, SC 29401
January 14, 2013

June M. Wells
PO Box 547
Folly Beach, SC 29439

Dear June,

Please find enclosed a copy of Mike Robinson's appraisal of 34 Pitt Street, as well as a proposed real estate contract I have drafted, using Mr. Robinson's appraised value as the purchase price. I'm also including copies of materials from the State Archives which I mentioned to you.

I'm eager to sign a contract and begin planning toward the future, even if I'm unable to actually use the property for some time. I've included a provision in the contract ensuring your exclusive use and possession of the property until June 30. If you feel that date is too early, given how busy you've been, please let me know what date you would prefer. Of course, while I greatly look forward to moving in at 34 Pitt Street, I want to accommodate your timeline, and I know you are dealing with quite a lot.

Another important feature of the contract is that it is structured like an "option" so that if in our research, it turns out there are insurmountable challenges with the property (e.g., strict restrictions on use), I could choose not to close, and the Association would continue to own the property.

Regarding the appraisal, please note that Mr. Robinson concluded that due to residential zoning restrictions and flood zone regulations requiring the elevation of the building's first floor if it were converted for residential use, a "normal" investor would most likely remove the building and start over with a new, modern residential structure. Thus, his value of $315,200.00 is a "land value" price. As I've mentioned before, I personally love the brick building and would like to find a way to work with it, but I hope you will find the appraised value acceptable as a purchase price for our contract.

When convenient, please let me know your thoughts and if there are any changes you would like to make to the contract. Otherwise, if you like the contract as is, you may sign it and have it notarized, and I will deliver the deposit.

Yours truly,

Michael D. Royal
(407) 284-9258

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 21

The AG's Responses to Plaintiff's First Set of Interrogatories

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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.	)	
	)	**The Attorney General of the State of South Carolina's Responses to Plaintiff Michael D. Royal's First Set of Interrogatories to Intervenor the Attorney General of the State of South Carolina**
Free Kindergarten Association of Charleston,	)	
	)	
Defendant,	)	
	)	
The Attorney General of the State of South Carolina and The Charleston County School District	)	
	)	
Intervenors	)	

Intervenor the Attorney General of the State of Carolina, by and through his undersigned attorneys, hereby responds to Plaintiff's First Request for Admissions. The Intervenor reserves the right to amend and supplement their responses as necessary and appropriate.

1. Give the names, addresses, and telephone numbers of persons known to you or counsel to be witnesses to or concerning the facts of the case, and set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such.

RESPONSE:

Michael D. Royal
14 Lockwood Drive, Apt 12D
Charleston, SC 29401
Mr. Royal is expected to testify about his knowledge of the facts and circumstances surrounding the real estate transaction that is the subject of this action.
See the partial Deposition of Michael R. Royal taken May 5, 2021.

June Wells (deceased)
See Deposition of June Wells taken January 9, 2020.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

William Wells
410 E Cooper Ave.
Folly Beach, SC 29439
Mr. Wells is expected to testify about his knowledge of the facts and circumstances surrounding the real estate transaction that is the subject of this action.
See Deposition of William Wells taken May 25, 2021.

Michael Robinson
Charleston Appraisal Services, Inc.
25 Cumberland Street
Charleston, SC 29401
Mr. Robinson is expected to testify as to the two appraisals he prepared for the property at 34 Pitt Street. See his appraisals of December 19, 2012, and June 7, 2018.

2. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case, and include a summary of the anticipated testimony sufficient to identify the evidence, information, and documents utilized by the expert in arriving at the opinion, the basis of each opinion, and the theory upon which each opinion is based.

RESPONSE:

Michael Robinson
Charleston Appraisal Services, Inc.
25 Cumberland Street
Charleston, SC 29401
Mr. Robinson is expected to testify as to the two appraisals he prepared for the property at 34 Pitt Street. Please see his appraisals of December 19, 2012, and June 7, 2018.

3. List the names, personal and business addresses, telephone numbers, and place of employment and position of any non-testifying, or consulting, expert witnesses retained by you or on your behalf to assist you in anticipation or preparation of the litigation of this case.

RESPONSE: None.

4. Set forth in narrative form a description of all due diligence that the AG performed as to the ownership of the Property and the assets of FKAC.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine. Subject to and without waiving this objection, the Attorney General's response is as follows: This matter came to the attention of the Attorney General's Office when Rick Stringer contacted the Office in

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

April 2018. The Office understood at that time that the FKAC had title to the property. The Attorney General was provided with title work related to the property, and the Attorney General is not aware of any dispute as to the ownership of the property and assets of the FKAC and understands that the FKAC is the titleholder of the property and assets.

5. Set forth in narrative form a description of all due diligence that the AG performed as to the value of the Property during the time period of 2013 through 2018.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine. Subject to and without waiving this objection, the Attorney General's responses is as follows: The Attorney General has reviewed the appraisals of Michael Robinson of December 19, 2012, and June 7, 2018.

6. State whether Charleston School District #20 still exists.

RESPONSE: According to a 1971 Resolution of the FKAC which was recorded with the South Carolina Secretary of State, in the event of dissolution, the residual assets of the FKAC are to be turned over to Charleston School District Number 20. The Attorney General's position is that upon dissolution, the funds should go to the entity which would benefit students who would go to schools that would be in Charleston School District Number 20, as contemplated by the FKAC in 1971. The Attorney General understands that the Charleston County School District #20 is one of the eight constituent school districts within the Charleston County School District. Charleston County School District #20 covers downtown Charleston and encompasses the schools located on the Charleston peninsula. This is an issue of fact and law for the Court to decide.
The Attorney General has not formed a final opinion as to whether this beneficiary exists. If it does exist, then the assets would go to this entity. If it is part of the Charleston County School District, then the assets would go to the Charleston County School District for the benefit of students in this district. If it does not exist at all, then the assets would be distributed pursuant to the laws of the State of South Carolina. It is expected that if the entity does not exist, the assets would be distributed pursuant to S.C. Code Ann. § 62-7-413, equitable deviation.

7. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that FKAC is a charitable or nonprofit trust.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine and that it seeks legal conclusions. Subject to and without waiving this objection, the Attorney General's response is as follows: The FKAC was established as a nonprofit corporation in South Carolina on January 20, 1901. It has been in continuous existence, without changing its status as a nonprofit, since then. The FKAC has always been recognized as a nonprofit, and it operated for a public purpose, with a mission to provide a free kindergarten education to students whose parents could not afford to pay for one. See also the Motion of the Attorney General of the State of South Carolina to Intervene and Memorandum in Support, filed January 28, 2019, and the Order Granting Motion of the Attorney General of the State of South Carolina to Intervene, filed July 10, 2019, in this action.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

8. Set forth in narrative form all facts and information which support, or relate to, your contention that the AG has an interest in the PSA.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine and that it seeks legal conclusions. Subject to and without waiving this objection, the Attorney General's response is as follows: For authority of the Attorney General, please see the following: Motion of the Attorney General of the State of South Carolina in Intervene and Memorandum in Support, filed January 28, 2019, and Order Granting Motion of the Attorney General of the State of South Carolina to Intervene, filed July 10, 2019, in this action.

9. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that the AG must approve of the sales price for the Property set forth in the PSA.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine and that it seeks legal conclusions. Subject to and without waiving this objection, The Attorney General's cites the following authority:

1. ***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**
2. **S*outh Carolina Dep't of Mental Health v. McMaster, et al.*, 372 S.C. 175, 642 S.E.2d 552 (2007)**
3. ***Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005)**
4. **S.C. Code Ann. § 33-31-1202(f)**

While the Court must ultimately approve the sale, the Attorney General has a right to object and be heard.
In further response to this Interrogatory, please see the following: Motion of the Attorney General of the State of South Carolina in Intervene and Memorandum in Support, filed January 28, 2019, and Order Granting Motion of the Attorney General of the State of South Carolina to Intervene, filed July 10, 2019, in this action.

10. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that the AG must approve of the PSA.

RESPONSE: See response to Interrogatory #9.

11. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that the AG must approve of the sale of the Property.

RESPONSE: See response to Interrogatory #9.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

12. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that the AG can prevent the PSA from being enforced.

RESPONSE: See response to Interrogatory #9.

13. Identify any prior notice(s) given by the AG to Plaintiff and/or FKAC that the AG allegedly must approve of the PSA and/or the sale of the Property.

RESPONSE: The Attorney General is not aware of any prior notice that it provided to the Plaintiff or FKAC of S.C. Code Ann. § 33-31-1202(f).

14. State the basis for, including all information and/or facts you relied upon or utilized in making, each of your denials of Plaintiffs First Requests for Admission to Defendant The Attorney General of the State of South Carolina.

The Attorney General denied Request to Admit Number 4: Admit that June Wells had authority to sell the Property on behalf of FKAC during the period of 2010 until the time of her death, November 29, 2020.

This denial related to issues raised relative to June Wells' capacity to act and authority to execute the contract, including the issues raised with regard to her mental capacity and her authority related to the FKAC.

The Attorney General denied Request to Admit Number 5: Admit that the purchase price of $315,200 set forth in the PSA was consistent with the fair market value of the Property as of April 23, 2013.

It is unknown what the fair market value of the property was as of April 23, 2013. The Attorney General reviewed appraisals dated December 19, 2012, and June 7, 2018, only.

The Attorney General denied Request to Admit Number 7: Admit that the AG's approval of the sale of the Property by FKAC to Royal is not necessary.

See Reponses to Interrogatories 8, 9, 10, 11, and 12.

The Attorney General denied Request to Admit Number 8: Admit that the AG's approval of the PSA was not necessary.

See Reponses to Interrogatories 8, 9, 10, 11, and 12.

15. Describe in detail any oral communications between the AG and FKAC, including but not limited to June Wells, relating to FKAC's desire to sell the Property to Royal.

RESPONSE: On or after April 4, 2018, staff at the Attorney General's Office had telephone conversations with Patrick F. Stringer regarding notice he provided to the Attorney General of the sale of the FKAC property. The Attorney General's Office did not talk to anyone on behalf of the FKAC other than Mr. Stringer and his staff.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

16. Describe all facts and information, or other bases, which support or relate to the contention that the fairness or reasonableness of purchase price set forth in the PSA should not be viewed in light of the fair market value of the Property as of the on which date the PSA was executed, on or about April 23, 2013.

RESPONSE: The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine and seeks legal conclusions. Subject to and without waiving this objection, the Attorney General's response is as follows: The Attorney General's Office reviewed this matter as of the time it received the notice of the sale pursuant to section 33-31-1202(f) and obtained an appraisal at that time. Given the information available at that time related to fair market value, the Attorney General could not consent to the sale of the of property. In further response to this Interrogatory, please see the following: Motion of the Attorney General of the State of South Carolina in Intervene and Memorandum in Support, filed January 28, 2019, and Order Granting Motion of the Attorney General of the State of South Carolina to Intervene, filed July 10, 2019, in this action.

17. Identify the beneficiary of the residual assets of FKAC upon FKAC' s dissolution, and state whether said beneficiary is alive and/or exists.

RESPONSE: **The Attorney General objects to this Interrogatory on the ground that the information it seeks is protected by the attorney work product doctrine and that it seeks legal conclusions. Subject to and without waiving this objection, the Attorney General's response is as follows: The Resolution of the FKAC, dated January 16, 1971, states as follows: "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."**
The Attorney General has not formed a final opinion as to whether this beneficiary exists. If it does exist, then the assets would go to this entity. If it is part of the Charleston County School District, then the assets would go to the Charleston County School District for the benefit of this District and the students in this District. If it does not exist at all, then the assets would be distributed pursuant to the laws of the State of South Carolina; it is expected that if the entity does not exist, the assets would be distributed pursuant to S.C. Code Ann. § 62-7-413, equitable deviation.

18. Set forth in narrative form, and identify, all facts and information which support, or relate to, your contention that the person identified in response to Royal's interrogatory number 16 is the beneficiary of the residual assets of FKAC upon FKAC's dissolution.

RESPONSE: See response to Interrogatory #17.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

19. Provide the full name, current address, and telephone number for all persons who provided information or documents relating to, or otherwise assisted with, the preparation of the answers to these Interrogatories.

RESPONSE:

C. H. Jones, Jr., Senior Assistant Deputy Attorney General, Office of the SC Attorney General, PO Box 11549, Columbia, SC, 29211, 803-734-3680
Mary Frances Jowers, Assistant Deputy Attorney General, Office of the SC Attorney General, PO Box 11549, Columbia, SC, 29211, 803-734-3680
Kristin Simons, Assistant Attorney General, Office of the SC Attorney General, PO Box 11549, Columbia, SC, 29211, 803-734-3680

Respectfully submitted,

Mary Frances Jowers

ALAN M. WILSON
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C. HAVIRD JONES, JR.
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Attorneys for South Carolina Attorney General Alan Wilson

October 20th, 2021

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Exhibit 22

CCSD's Answers to Plaintiff's Third Set of Interrogatories

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

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; Charleston County School District, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2018-CP-10-5739 **DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT'S ANSWERS TO PLAINTIFF'S THIRD SET OF INTERROGATORIES TO DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT**

TO: EVAN P WILLIAMS, ESQUIRE AND JEFFERY S. TIBBALS, ESQUIRE OF BYBEE & TIBBALS, LLC, ATTORNEYS FOR PLAINTIFF MICHAEL D. ROYAL:

Defendant Charleston County School District ("CCSD" or the "District"), hereby answers Plaintiff Michael D. Royal's ("Royal's") Third Set of Interrogatories to Defendant Charleston County School District as indicated below:

INTERROGATORIES

36. State the basis for, including identification of any contract or statute which allegedly enables or supports, CCSD's claim that it is entitled to recover its reasonable attorneys' fees and costs incurred in defending Plaintiff's Complaint.

Answer: CCSD's claim for attorneys' fees and costs arises out of the following:

(a) CCSD asserts that the Real Estate Purchase and Agreement (the "contract") is invalid, null and void and unenforceable as a matter of law. Plaintiff asserts that the contract is valid and enforceable as a matter of law. If, upon final judgment, the Court finds in favor of CCSD on this issue, the contract will be unenforceable, including Paragraphs 6 and 10 therein. If, upon final judgment, the court finds in favor of Plaintiff on this issue, the contract will be enforceable and Paragraphs 6 and 10 of the contract will entitle CCSD to a recovery of attorneys' fees and costs as third party beneficiaries of these provisions under the contract.

(b) The following statutes and rules also support CCSD's claim for attorneys fees and costs, independent of any claim under Paragraphs 6 and 10 of the contract: (1) SC Code §§ 15-53-10 thru 15-53-140; and (2) Rules 54 and 57, South Carolina Rules of Civil Procedure.

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

37. Identify the point in time, by date and triggering event, at which CCSD gained authority or control over the assets of FKAC, including the Property.

Objections: Defendant CCSD objects to Interrogatory 37:

(A) On the grounds that it is vague, unclear and ambiguous in its generalized, non-specific and undefined use of the words "authority" and "control" therein.

(B) To the extent that it seeks information that is protected from disclosure by the attorney/client privilege and/or attorney work product doctrine and/or is otherwise protected information ("protected information"). The protected information subject to this interrogatory and currently in the possession, custody or control of Defendant CCSD, if any, is listed or identified on the updated Privilege and Protected Information Log ("Log"), dated November 28, 2021, which Log has been produced to Plaintiff Royal in discovery herein.

****

Subject to, without waiving and hereby reserving the above objections, the Defendant CCSD provides the following answer to Interrogatory 37:

Answer: ***See*** **CCSD's Second Supplemental Answers to Plaintiff's First Set of Interrogatories to Intervenor Charleston County School District. Specifically, *see* CCSD's Objections/Answers to Interrogatories 5, 10, 11, 12 and 13 therein. In addition, prior to and since the date of this litigation, CCSD has not undertaken to take physical possession or control of FKAC's assets, including the Property. Since the date of this litigation, CCSD, acting through its legal counsel, has undertaken the following actions to protect CCSD's legally protectable beneficial and/or equitable interest in the assets of FKAC and/or proceeds of sale therefrom, including protecting its beneficial and/or equitable interest by intervening in this action and defending against Plaintiff's Complaint and claims therein in the following particular, to wit: (a) intervene as a party defendant in this litigation; (b) file pleadings in this litigation, including the filing of its Answer, Counterclaim, Crossclaim and Request for Declaratory Judgment; (c) conduct and respond to written discovery; (d) file and prosecute discovery and trial related motions and memoranda; (e) defend against Plaintiff's discovery and summary judgment motions; (f) take and defend depositions; (g) attend court hearings; (h) engage in activities/communications protected by the attorney client privilege and/or work product doctrine; and (i) consent, along with the other parties to this litigation, to the appointment of a receiver for the Property. The date of these activities, aside from CCSD's legal counsels' activities/communications protected by the attorney client privilege and/or work product doctrine, are a part of the court record and/or known to the Plaintiff.**

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

Respectfully Submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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ATTORNEYS FOR CHARLESTON COUNTY SCHOOL DISTRICT

December 8, 2021
Charleston, South Carolina

CERTIFICATE OF MAILING
I hereby certify that a copy of the foregoing document was emailed to all counsel of record and the pro se defendant in this proceeding this 8th day of December, 2021.
s/ A. Bright Ariail

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Exhibit 23

Excerpts of the June 4, 2019 Hearing on the AG's and CCSD's Motions to Intervene

Plaintiff Michael D. Royal's Pre-Trial Brief

Michael D. Royal
v.
Free Kindergarten Association of Charleston, The Attorney General of the State of South Carolina, and Charleston County School District

Civil Action No. 2018-CP-10-05739
Charleston County Court of Common Pleas

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Michael D. Royal,

Plaintiff,

vs. CASE NO. 2018-CP-10-5739

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

Defendants.

_____

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:09 a.m. on June 4, 2019 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

here by then?

MS. MATTHEWS: Yes, sir.

THE COURT: By the end of the day on the 21st. Certainly -- make sure you-all have e-mails and you-all can communicate by e-mail. You-all are going to need to communicate with each other.

Mr. Stringer, you're still in the case. Maybe not so actively, but you're --

MR. STRINGER: Very inactively. My lady lives on Social Security, so my job is not to spend lots of money that is not there.

THE COURT: Very good. But you can make her available for a deposition I'm sure?

MR. STRINGER: Oh, absolutely.

THE COURT: I think you-all need to probably go ahead and get that done sooner than later. Okay? Mr. Royal, yes, sir. You had a question?

MR. ROYAL: Sorry, sir. I just wanted to point out one thing. It was mentioned earlier that Ms. Wells was not represented at the time this contract was entered into, and I can understand why that would be a sensitive matter in this case. I just wanted to assure you that at the time I pleaded with her to seek legal counsel before entering the contract. I also put a provision in the contract

ELECTRONICALLY FILED - 2021 Dec 08 6:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1005739

that I would reimburse her for up to $1,000 in legal expenses.

I just wanted to make sure that -- that was something that was on my mind very much at the time. She at the time refused to take that advice. That's all I had to say.

THE COURT: Thank you, Mr. Royal.

So I'm sure we'll gather again at some point in time in the future. Okay? Good to see you-all. Thank you-all for briefing that. That made my job a whole lot easier. I did a lot of reading.

(The proceedings were concluded at 10:48 a.m.)

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