THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Supreme Court Case No. ___________
Appellate Case No. 2022-001165
Civil Action Case No. 2018-CP-10-5739

Michael D. Royal,

Petitioner,

v.

Free Kindergarten Association of Charleston,

Respondent,

The Attorney General of the State of South Carolina and
The Charleston County School District,

Intervenors/Respondents.

PETITION FOR WRIT OF CERTIORARI

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PRO SE PETITIONER

INTRODUCTION

This petition seeks review of a decision that, if left standing, undermines fundamental principles of agency and nonprofit corporate law and jeopardizes the reliability of third-party transactions with nonprofit corporations. In *Royal v. Free Kindergarten Ass'n of Charleston*, Op. No. 6102, App. Case No. 2022-001165 (S.C. Ct. App. Feb. 19, 2025), the Court of Appeals affirmed the Charleston County Master-in-Equity's refusal to enforce a 2013 real estate purchase and sale agreement ("PSA") between Petitioner Michael D. Royal ("Royal") and Free Kindergarten Association of Charleston, a South Carolina nonprofit corporation ("FKAC"), on the ground that June Wells ("Wells") lacked authority to bind FKAC to the PSA. *Id.* at 11.

Who was Wells? In short, Wells (now deceased) was the longtime guiding figure of FKAC, having worked for and/or managed FKAC for over *five decades* (having "arrived at the kindergarten in 1958," Charleston Post & Courier, R. p. 591) and outlasted every other person associated with FKAC. By 2013, she occupied 100% of every operational, administrative, membership, and governance role for the corporation, held herself out to be in charge of the corporation, was universally regarded as being in charge of the corporation, and specifically induced Petitioner to believe she was authorized to sell FKAC's property to him. Royal argues below – against the Court of Appeals – that Wells herself constituted the entire board of directors of FKAC. Among the "multitude of documents purporting to evince [her] authority" (a phrase used by the Court of Appeals itself, *id*. at 9) given to Petitioner by Wells was a 2010 ruling from the Charleston County Probate Court which found not only that Wells was authorized to act on behalf of FKAC in a matter at the core of FKAC's existence, but that Wells was "the only known person with capacity to act on behalf of the Association." (R. p. 614.)

Nonetheless, the Court of Appeals determined that Wells was without authority to bind FKAC to the sale of its one-story brick building at 34 Pitt Street in Charleston (the "Property") to

Royal, a third party acting in good faith to purchase the Property in reliance on Wells' representations and the abundance of evidence of her authority. Notwithstanding the specific evidence of Wells' role as a principal and not merely an agent for FKAC, the Court of Appeals dismissed Royal's claims with well-known but irrelevant doctrine: "An agency may not be established solely by the declarations and conduct of an alleged agent." Royal, Op. No. 6102, at 9, quoting *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000). **The Court of Appeals' decision ignores the fact that all roles of the corporation were embodied in a single human, and that person could not help but speak both as principal and as agent simultaneously.**

This case presents a matter of first impression for the Supreme Court: Whether apparent authority may arise from the representations of a principal on behalf of a nonprofit corporation to a third party about the principal's own authority on behalf of the corporation. While Royal contends that the logic of the apparent authority doctrine does not bar but should protect innocent third-parties under such single-person entity control scenarios, the phrasing of precedent case law may be interpreted as assuming (if not requiring) the existence of multiple individuals on the entity side. E.g., "When a principal . . . has knowingly caused or permitted *another* to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons." *Id.* 343 S.C. at 433, 540 S.E.2d at 118 (emphasis added). The prevalence of single-control entities in South Carolina would make Supreme Court guidance valuable.

The need for review is especially compelling because the decision below is self-contradicting. The Court of Appeals reasoned that only FKAC's so-called "Executive Committee" could authorize the sale of FKAC's building (*Royal*, Op. No. 6102, at 9), yet in the next breath, declared Intervenor / Respondent Charleston County School District ("CCSD") the beneficiary of

FKAC's assets upon FKAC's dissolution based on a 1970 charter amendment certified *not* by any "Executive Committee" but by a group of individuals *Royal* argued were the true board of directors (to include Wells by 1990) and who are described in FKAC's certification as the "DIRECTORS OR AUTHORIZED MANAGING BOARD" (R. p. 647) and described in the Secretary of State's 1971 certification as "the Board of Directors." In other words, the Court of Appeals invalidates one disposition of the Property for lack of a specific type of corporate approval, yet upholds a similarly situated disposition of the same Property (or sale proceeds from it) that did not receive the very approval the court deemed essential in the first instance. This logical inconsistency underscores the error in the Court of Appeals' analysis.

Certiorari is warranted under SCACR Rule 242(b) and urgently needed to prevent the de facto nullification of settled doctrinal principles and to resolve the contradictory rule announced below. For these reasons, Petitioner Michael D. Royal asks this Court to issue a writ of certiorari to review the decision of the Court of Appeals.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by concluding that Wells lacked authority to bind FKAC to the PSA, by failing to enforce specific performance of the PSA on this ground, and by upholding the AG's motion for nonsuit on this ground?

2. Did the Court of Appeals err by creating an irreconcilable contradiction in its ruling by holding that only FKAC's Executive Committee had authority to approve the sale of FKAC's property while simultaneously holding that a 1970 resolution never approved or certified by that body was effective to grant CCSD a right to FKAC's residual assets upon FKAC's dissolution?

3. Did the Court of Appeals err in upholding a finding by the Master-in-Equity that

the PSA violated public policy?[1]

STATEMENT OF THE CASE

I. Factual Background

A. Wells' Roles with FKAC at the Effective Date of the PSA in 2013

(a) Wells was the longtime guiding figure of FKAC, having worked for and/or managed FKAC for *over five decades* (R. p. 591).

(b) Wells was the corporation's sole remaining member. (R. p. 679.)

(c) Royal argues Wells was the sole remaining member of the corporation's "board of directors" as that term is defined by S.C. Code Ann. § 33-31-140(3) (2006).

(d) The Court Appeals explicitly disagreed by making a finding of fact – not reached by the Master-in-Equity – that the so-called "Executive Committee" was the body within FKAC meeting the definition of "board of directors" in § 33-31-140(3). This matter is discussed in detail below.

(e) Wells was the corporation's sole officer or officer-equivalent. By 2013, for 23 years, she had held a formal leadership position known as "Director" created by FKAC's 1901 constitution (R. pp. 187, 657-8).

(f) Wells had been found by Charleston County Probate Court in 2010 to be the "the

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[1] Regarding the third question, the Master-in-Equity held that the PSA was unenforceable on two grounds: (1) Wells' lack of authority, and (2) violation of public policy. Petitioner appealed the Master's order on both grounds. The Court of Appeals chose to affirm the Master's order solely on the ground that there was no valid contract due to Wells' lack of authority (*Royal*, Op. No. 6102, at 11), choosing not to reach the matter of whether the PSA satisfied or violated public policy. Petitioner raises the question of public policy here in order to preserve his arguments defending the enforceability of the PSA on public policy grounds and seeks to incorporate herein by reference issues and arguments presented in his Final Brief, Final Reply Brief, and Petition for Rehearing before the Court of Appeals.

only known person with capacity to act on behalf of the Association." (R. p. 614.) The Court of Appeals agreed that "there was no other person to act on behalf of FKAC" besides Wells. *Royal*, Op. No. 6102, at 10.

(g) Wells, for years, had been holding herself out to the public, the State of South Carolina, the City of Charleston as having authority and control over FKAC, and more recently to Royal as having authority to sell the Property, and she was regarded by the public, the State of South Carolina, the City of Charleston and Petitioner as the person who controlled FKAC and Property. (R. pp. 284-5, 594-609, 612-37, 670.)

(h) Finally, Wells did *in fact* control FKAC and its property. (R. pp. 30, 284-5.)

B. Initial Meetings and Discussions Regarding a Sale (2011-2013)

In 2011, planning a move back to Charleston where he had grown up, Royal was searching for a property suitable for both residential and business uses. (R. p. 257-8). On December 3, 2011, Royal drove by the Property, a 2,800 square foot one-story brick building formerly used as a kindergarten in a residential neighborhood, and immediately identified it as the property he had been seeking. (R. pp. 258, 577). City staff advised Royal that FKAC owned the Property and to contact Wells for purchase discussions. (R. pp. 261, 267, 275). Royal met Wells for the first time in 2012 and discussed FKAC and the Property. (R. p. 277). During that and subsequent conversations, Wells advised she was the last remaining member of FKAC's board of directors, she had authority to sell the Property, and no other person had any authority with respect to the Property. (*See, e.g.*, R. pp. 281, 283, 288). Wells indicated FKAC was open to selling since its kindergarten operations had ceased. (*See, e.g.*, R. pp. 285, 289).

On January 14, 2013, Royal mailed Wells a proposed contract, offering to purchase the Property for $315,200, the fair market value reflected in an appraisal, the contract to close in 2013. (R. pp. 293, 596-600). FKAC did not countersign. (R. pp. 299-300, 596-600). In subsequent conversations, Royal determined the hesitation was due to Wells' concern about creating a vacate date by which to remove property. (R. p. 300-1).

C. Royal and FKAC Execute the Real Estate Agreement (2013)

On April 23, 2013 ("Effective Date"), Wells executed an updated version of the contract with language intended to assuage Wells' evident anxiety about a move-out deadline, giving FKAC extreme flexibility and allowing it to unilaterally set a date for closing on any day from the Effective Date until April 9, 2018 (R. pp. 340-1, 491, 601-604, 620-622, 309, 340-1, 1261; *see also* R. p. 213). Royal testified at trial, ". . . the only way I could figure to do it [draft a contract suitable to FKAC] was to give her a superabundant amount of time and flexibility." (R. p. 426.)

Notwithstanding the PSA's potentially expansive closing provision, Royal, based on Wells' representations, expected to close soon after the Effective Date. (R. p. 353-5, 426-7 ("I didn't think that it would take that time, and to my best knowledge and belief, Ms. Wells was also very hopeful of getting to a quick closing, but there was something about Ms. Wells' mindset that created a serious anxiety about having a deadline, and therefore, I created that provision to remove the anxiety"); R. p. 491.)

D. Royal's Repeated Attempts to Close Expediently (2013-2018)

Royal was and has been ready, willing, and able to close on the Property since the Effective Date. (R. p. 382.) From contract execution until mid-2018, Royal politely but persistently contacted FKAC seeking to close, many times offering assistance in relocating personal property. (*See, e.g.*, R. pp. 109, 138, 144, 352-3.) On numerous occasions, Royal took actions or made proposals to assist FKAC and facilitate closing. (R. pp. 345-52, 354.) For example, via January 25, 2015 letter, Royal proposed to close immediately and preserve FKAC's right of possession until April 9, 2018. (R. pp. 631-632). Royal offered to make a $30,0000 down payment and pay taxes and insurance while FKAC occupied the building rent-free. *Id.*; (R. pp. 359-60.)

Additionally, Royal repaired the Property at his expense (R. p. 467) and resolved a cloud on title (R. p. 623-8). Despite all of Royal's efforts, and even though the Property was no longer in use for FKAC's corporate mission, Wells continued to store her personal property in the building at 34 Pitt Street, forcing Royal to wait the full five years for a closing date. (R. pp. 354-5, 362.) On March 29, 2018, FKAC's attorney assured Royal that FKAC would close by April 9, 2018, stating a deed had been prepared and a bank account opened for FKAC to receive the sale proceeds. (R. pp. 634-5.) On April 4, 2018, upon recommendation of Royal's closing attorney, FKAC noticed the AG of the sale pursuant to S.C. Code Ann. § 33-31-1202(f) 2006. (R. pp. 524-5, 636-7.)

E. The Attorney General Halts the Sale; FKAC Refuses to Close (2018)

Thereafter, FKAC's counsel twice the closing date be extended, first to April 26, 2018 and then to May 25, 2018, and Royal and Wells executed a PSA addenda to this effect. (R. pp. 110, 136, 140, 371-4.) Unbeknownst to Royal, the AG was separately corresponding with Stringer, exhorting FKAC to resist the sale. (R. pp. 162, 1276-84.) Also on April 26, 2018, Royal participated in a conference call with Sonny Jones, Senior Assistant Deputy Attorney General ("Jones"), and Mary Frances Jowers, Assistant Deputy Attorney General, during which Jones insisted that the AG had independent power to nullify the PSA. (R. pp. 387, 667). Jones further stated that the AG was voiding the contract unless Royal agreed to pay an amount equal to the 2018 fair market value of the Property. (R. p. 388.) Royal asked Jones to identify the source of the AG's authority to nullify or renegotiate the terms of the PSA, and Jones cited the notice requirement of S.C. Code Ann. § 33-31-1202 (2006).[2] (R. p. 388.) When Royal questioned the AG's interpretation of that statute, Jones responded bluntly, "That's the way we do it." *Id*. On

[2] The AG has admitted, and the lower court found, that FKAC's April 4 notice (R. pp. 636-637) satisfied the requirements of the statute. (R. p. 40.)

May 11, 2018, FKAC sent Royal a letter refusing to close "without approval of the Attorney General." (R. p. 390.) When he received FKAC's letter on May 14, Royal sent FKAC's counsel an email advising the letter amounted to anticipatory breach of the PSA. (R. pp. 110-1, 144.) Ultimately, FKAC refused to close because the AG would not approve the sale based on an appraisal he had commissioned valuing the Property as of June 7, 2018 for $522,500. *Id.*; (R. pp. 33, 559-72).

In its first communication with Royal after it had been notified of a possible interest in FKAC's residual assets after FKAC's future dissolution, Charleston County School District ("CCSD") falsely claimed FKAC was in the dissolution process and that the Property was to be conveyed directly to CCSD. (R. pp. 400-1.) (It is now not in dispute that FKAC was and still is in good standing and authorized to do business in South Carolina; nor has any dissolution proceeding been initiated with regard to FKAC.)

Due to FKAC's continued refusals to close, and Intervenors' continued interference, Royal was forced to initiate this action on December 4, 2018.

II. Procedural History

Royal filed the underlying action as a *pro se* plaintiff on December 4, 2018, claiming breach of contract and seeking specific performance of the PSA. On March 21, 2019, the case was referred by consent order to the Charleston County Master-In-Equity, the Honorable Mikell R. Scarborough. Prior to this reference, the AG and CCSD filed separate motions to intervene on January 28 and February 7, 2019, respectively. The AG asserted that statutory and common law governing charitable trusts granted him authority over the sale of FKAC's last known substantial asset, the Property. CCSD claimed an interest pursuant to a February 5, 1971 amendment to FKAC's charter, reflecting a 1970 resolution of the members that upon the corporation's dissolution, its residual assets would "be turned over to Charleston School District #20, part of the

South Carolina State School System[.]" (R. p. 648) ("1971 Amendment"). Via June 7, 2019 form order, the AG intervened as a matter of right and CCSD permissively intervened.

Wells, who had hired and was directing FKAC's legal counsel in the case, died November 29, 2020. On February 22, 2021, Joe Qualey was appointed as Receiver for FKAC and directed to take possession of the Property.[3] Royal hired attorney Jeff Tibbals of Bybee & Tibbals to represent him in advance of the case going to trial.

The Master conducted a non-jury trial of this matter on December 15, 2021. On March 31, 2022, the lower court entered an order with its findings and conclusions from trial ("Order"). In relevant part, the Order: (a) found that FKAC's assets, upon dissolution, shall pass to CCSD (R. p. 47); (b) did not explicitly endorse but implied its support for the AG's theory that S.C. Code Ann. § 33-31-1202(f) (2006) requiring nonprofit corporations to notice the AG in advance of certain property sales gives the AG independent veto power over contracts between nonprofit corporations and third parties (R. p. 37)[4]; (c) found that Wells had "some authority" based only on the fact that she was "somebody with knowledge about the FKAC," but not sufficient authority to bind FKAC to the PSA (R. p. 35); and (d) found that the PSA was void for being contrary to public policy, primarily because the contract price lower than the 2018 fair market value based on the AG's appraisal, notwithstanding FKAC had complete control over the closing date and chose to

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[3] Charleston Chap. 4, United Daughters of the Confederacy and Confederate Museum intervened Aug. 10, 2021, and were dismissed Oct. 28, 2021, after removing their materials from the Property.

[4] The Master-in-Equity's most colorful promotion of this principle at trial was in indicating that the AG holds a "trump card" and that Royal's role was, far from defending his contract rights, to ask the AG "how high" he should jump. (R. p. 554.) The toned down court order merely cited to *Duvall v. S.C. Budget and Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) ("The Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act"). (R. p. 37.)

delay closing until 2018 (R. pp. 41-47).

At trial, before Royal completed his case in chief, the Master called on the AG to move for non-suit dismissal of Royal's claims under SCRCP Rule 41(b) after the AG had attempted to move for directed verdict ("Well, you can go ahead and make the motion because I'm going to grant it. Go ahead and make the motion. . . . It's a motion for nonsuit."). (R. p. 530-1).

The orders appealed to the Court of Appeals included the March 31, 2022 order; July 18, 2022 orders ruling on CCSD's motion to exclude and strike filed trial exhibits and denying Royal's motion and amended motion to reconsider; and intervention orders attached to the Notice of Appeal, served August 17, 2022.

III. The Court of Appeals' Decision

The Court of Appeals (Turner, J., joined by Williams, C.J. and McDonald, J.) heard oral argument on September 11, 2024 and filed its published Opinion No. 6102 on February 19, 2025. The opinion affirmed the Master's order. Regarding Royal's claim for specific performance of the PSA, although the Master-in-Equity held the PSA to be unenforceable on two separate grounds – lack of Wells' authority and inconsistency with public policy – the Court of Appeals affirmed the lower court solely on the authority issue and declined to address the public policy ground except to say "We affirm" in reference to the findings of the lower court. (*Id*. at 2). The Court of Appeals stated in its conclusion, "Because the issue of specific performance is dispositive, we decline to reach the remaining issues." (*Id*. at 12, excluding citation).

The Court of Appeals also specifically upheld the Master's finding that CCSD is the proper beneficiary of any residual assets of FKAC upon FKAC's dissolution based upon a 1971 amendment to FKAC's charter, even though the certification of that resolution helps prove that Wells was a member of FKAC's statutory board of directors (argued below).

Royal filed a timely Petition for Rehearing in the Court of Appeals. The Court of Appeals denied rehearing on May 16, 2025. Pursuant to Rule 242, SCACR, this petition follows, timely filed.

ARGUMENT

The Court of Appeals' Opinion 6102 overlooked, disregarded, and misapprehended material facts and principles of law in concluding that Wells lacked the authority to bind FKAC to the 2013 PSA, beginning with a blunder which led to further mistakes in analysis: the Court of Appeals made a pivotal but demonstrably false independent finding of fact which was *not* a reached by the Master-in-Equity: **"the Executive Committee was FKAC's equivalent of a board of directors."** *Royal*, Op. No. 6102, at 7.

I. FKAC's Executive Committee Is Not Its Board of Directors

FKAC's "Constitution and Charter of the South Carolina Kindergarten Association, Charleston, S.C. 1901" (R. pp. 655-661.) contains three sections: (a) the Constitution, (b) the By-Laws (together making up the statutory "Bylaws" under the definition given by S.C. Code Ann. § 33-31-140(4) (2006)), and (c) the Charter. FKAC's constitution describes two standing committees: an Educational Committee and an Executive Committee. (R. p. 658.) The Educational Committee's purpose is "to aid the Director in any questions pertaining to the educational interests of the Training School, and to conduct the official organ of the Association"; whereas, the Executive Committee is organized "to transact the necessary business of the Association, and to act in emergencies." *Id*. Because the Executive Committee's mandate does not touch on FKAC's core educational mission, which is the purview of the Educational Committee, it cannot be said that the Executive Committee is vested with the "overall management of the affairs" of FKAC. Consequently, the Executive Committee cannot be deemed FKAC's "board of directors" under the statutory definition provided in § 33-31-140(3): "the individual or individuals vested with *overall management* of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated . . . .” (emphasis added). Therefore, the Court of Appeals clearly erred in concluding that “[b]ecause FKAC’s Executive Committee is tasked with ‘transact[ing] the necessary business’ of FKAC, the Executive Committee was FKAC’s equivalent of a board of directors.” *Royal*, Op. No. 6102, p. 7.

Further, the record, containing documents from over a century of activities, contains no resolution, agreement, or other document outside of the constitution itself in which the term “Executive Committee” even appears. Given the evidence in this case, rather than finding that the Executive Committee was the statutory board of directors, it would be far more reasonable to find that the Executive Committee took care of administrative tasks (“necessary business”) rather than important decisions of FKAC and may have become defunct ages ago. At any rate, the 2013 sale of FKAC’s building in Charleston was not “necessary business” under any interpretation and therefore would not come within the ambit of this body, which is absent from the record.

II. FKAC’s Charter and Constitution Show That the Director Is Part of the Leadership Team Constituting the “Board of Directors” as Defined by § 33-31-140(4)

FKAC’s governance structure, devised in 1901, is unlike that of modern corporations which institute a board of directors as a governing body apart from both officers and shareholders/members. Neither Act No. 219, 1900 S.C. Acts 390 (“1900 Act”) under which FKAC was incorporated nor FKAC’s constitution & by-Laws (R. pp. 655-661) contemplates any “board of directors” as such. Rather, these instruments present two possibilities for the application the statutory definition of “board of directors” to FKAC:

A. Members as the Board of Directors

Under FKAC’s constitution, active members were directly involved in corporate governance: they were required to attend “all regular meetings of the Association” (R. pp. 656) and the regular meetings were called “for the transaction of business” (*id.* at 658). The Court overlooks this language when stating, "The only voting rights specifically granted to members by FKAC's constitution and bylaws are the right to vote to (1) elect officers, (2) amend the constitution, and (3) amend the bylaws." (*Royal*, Op. No. 6102, at 7.) Indeed, the Court of Appeals neglects to note that the corporation's members were the persons who approved the 1970 resolution (R. p. 647) specifically upheld by the Court of Appeals (*Royal*, Op. No. 6102, at 7). More broadly, the Court of Appeals overlooked the contrast between the general mandate of the membership to transact business for FKAC and the above-referenced scope of the Executive Committee for "necessary business" and emergency actions. The regularity of the member meetings, the requirement of members to attend, and the broad authority to transact the business of the corporation supports a strong argument that the application of § 33-31-140(3) to FKAC makes the members themselves the board of directors.[5]

That Wells was the sole member of FKAC from prior to the time she executed the PSA in 2013 until her death in 2020 stands unrefuted in the evidentiary record, and this fact is consistent with FKAC's firm position in the case: "Ms. June Murray Wells ('Ms. Wells') was and is the duly authorized director and last surviving member of the Free Kindergarten Association of Charleston

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[5] That FKAC did not have something which its governing documents called a "board of directors" and that members themselves took an active role in corporate governance is consistent with the fact that Wells, in her affidavit for Charleston County Probate Court, called herself "the last living advisory member of the Free Kindergarten Association of Charleston with capacity to act on behalf of the Free Kindergarten of Charleston" as a source of her authority (Affidavit of June Murray Wells, R. p. 617-19, 617), and consistent with Judge Condon's re-phrasing of Wells' affidavit as "June Murray Wells is the last living advisory *board* member of the Free Kindergarten Association with capacity to act on behalf of the Association" (Charleston County Probate Court Order in Case No. 2010-GC-10-90, dated November 23, 2010, R. pp. 613-616, 614 (emphasis added)). Judge Condon's perceived need to add "board" to signify Wells' authority is, like the Nonprofit Corporation Act and boilerplate forms FKAC executed in the record, the modern corporate governance model imposing itself on an organization founded in 1901 whose Constitution did not anticipate the need for a "board of directors" as such.

and that as such she has authority and had authority since approximately 1990 to represent the Free Kindergarten Association of Charleston." (R. p. 187.)

The Court overlooks the significance of Wells' sole membership at FKAC, but it is important in showing her control and authority with respect to FKAC for two reasons. First, if the members are the board of directors, she was the *entire* board of directors as it existed in 2013. Second, apart from any action Wells might otherwise engage in as an officer or director (or complete board), her status as sole member gave her almost unbounded authority over the corporation including the power to singlehandedly suspend and amend the constitution and by-laws, and even constitutionally bind FKAC to the PSA, had she desired.[6] Thus her capacity as sole member was even greater than the capacity of a board of directors, as such, which cannot amend FKAC's constitution and by-laws.

B. "Director" and Officers as the Board of Directors

Alternatively, if there is a subset of the members to be designated as the "individual or individuals vested with overall management of the affairs" of FKAC (which will be assumed for the remainder), for reasons discussed below, those persons would have been FKAC's Director (Wells in 2013) and officers named in FKAC's constitution.

While the 1900 Act is almost silent on matters of corporate governance, it requires that organizations formed under it file with the Secretary of State the "names . . . of all officers, managers, trustees, directors or other officers or agents of the proposed corporation." 1900 Act § 2 at 390. Guided by the 1900 Act, FKAC's Charter in Section 5 uses the same terms to designate

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[6] Amendment to the constitution and by-Laws would involve S.C. Code Ann §§ 33-31-140(4) (2006), 33-31-702(a)(2) and (c), and § 33-31-1021(d) (2006); FKAC Constitution VIII; FKAC By-Laws I(6) and III; and Henry M. Robert III, *Robert's Rules of Order Newly Revised* §§ 4:13 and 47:12(3) (12th ed. 2020).

"Managers, Trustees, Directors, or other Officers." R. p. 660. FKAC's phrasing "or other Officers" directly equates FKAC's "Director" position to FKAC's "Officers." Consequently, Evelyn Holmes, whose title is shown as "Chairman Educational Committee and Directors of Free Kindergarten and Training Class" is included in Section 5 of the Charter along with the president, vice-presidents, treasurer, and secretaries.

The "Director" position is created in the Constitution and Charter and is referred to variously as "Director of the Training School" (FKAC Constitution at VII(1), R. p. 657) and "Director" (*id*. at VII(3), R. p. 658). The person who occupies the Director position also occupies the chairmanship of the Educational Committee. *Id*.

In short, while FKAC's Charter and Constitution do not contemplate a "board of directors" as such, if the statutory board of directors is a subset of the members, these instruments plainly show the positions in the corporation responsible for the "overall management of the affairs" of FKAC **include the Director**. The Court overlooks these facts in holding that "Royal's argument for establishing apparent authority rests on representations made by Wells—the purported agent—rather than by FKAC" (*Royal*, Op. No. 6102, at 10). Just because Wells was an agent and an officer or officer-equivalent, she was not therefore prohibited from occupying a board position or acting as a principal on behalf of FKAC. For, "a director [as in "member of the board of directors"] is not forbidden from also being an . . . agent of a corporation." *Fletcher Cyc. Corp.* § 271 (2022). There is no reason why Wells was barred from speaking both as principal and agent for FKAC simultaneously.

III. Historical Documents Further Prove That the "Director" Is a Member of the Board of Directors and That Wells Exercised This Position as Both as Principal and Agent

In addition to FKAC's charter, constitution, and bylaws, below are three historical documents in the record overlooked by the Court which further prove that the Director was among the individuals vested with "overall management" of the affairs of FKAC and therefore was a member of the statutory board of directors.

Example 1: Section 5 of FKAC's Certificate of Incorporation provides the names and positions of seven individuals under the heading, "Managers, Trustees, Directors or other officers" while excluding any reference to a "board of directors" and "Executive Committee."[7] (R. p. 640-1.) The positions are "President," "First Vice President," "Second Vice President," "Treasurer," "Corresponding Secretary," "Rec. Secy. & Chr. Executive Committee," and "**Chr. Educational Com. & Director Free Kindergarten [unclear] Training [unclear]**." (*Id*., emphasis added). These positions generally correspond to the positions in the FKAC's Constitution and By-Laws. (FKAC Constitution V(1), VII(1), and VII(3), R. p. 657.)

Example 2: The Application for Amendment of Eleemosynary Charter, dated January 16, 1971 and reciting a resolution passed by members in 1970 names as the "DIRECTORS OR AUTHORIZED MANAGING BOARD" five individuals with the positions "President," "Vice-President," "Secretary," "Treasurer," and "Director." (R. p. 647.) Again, the document contains no mention of an Executive Committee. The phrase "directors or authorized managing board" is synonymous with the statutory phrase "the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation" and demonstrates that the Director and other officers were functionally FKAC's statutory board of directors.

Example 3: FKAC's June 25, 1997 certification of a corporate resolution is the clearest

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[7] Compare with § 33-31-202 (see especially subsections (c)(2) and (d) where "board of directors" is included in provisions for modern articles of incorporation while "officers" are omitted, indicating that the duties which now are given to a board of directors were given in 1901 to "Managers, Trustees, Directors or other officers").

example that the Director and other officers acted as the "board of directors" under § 33-31-140(3) while also acting in their officer/agent capacities. (R. p. 610.) It names Wells both as one of three "Board Members" *and* separately below as "Director" while designating the other two "Board Members" as "Selected Board Members." Wells then executes the bottom of the document a third time designating herself as "Director" in handwriting while scratching through the pre-printed "Secretary" (officer) designation of capacity.

FKAC's governing documents and its century-plus year custom of practice demonstrate that its Director and other officers operated both (a) as board of directors and (b) as officers, and both (a) as principal and (b) as agent. **The certification of corporate resolution in particular is excellent evidence that Director Wells acted *simultaneously* as a member of the statutorily defined "board of directors" and as an officer/agent of the corporation. Her action here on behalf of FKAC as both principal (board of directors) and agent ("Director") is perfectly consistent with FKAC's Constitution and its historical practices, and it foreshadows the manner of her sale of FKAC real estate which is the subject of this case.**

IV. Wells, in Her Own Person, Constituted Both the Entire Board of Directors and the Sole Agent of FKAC; Therefore, Her Acts as Agent of FKAC, Including the Execution of the PSA, Were Implicitly Authorized by the Principal

It is established above that Director Wells was a member of FKAC's statutory board of directors, and that she had historically acted in that position both as principal and agent for FKAC in the same binding instrument (with perfectly on-point evidence in the above-referenced certification of a membership resolution).[8]

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[8] Notably, while the Court acknowledges that Wells held the Director position described in FKAC's constitution, without explanation, basis in the record, party allegation, or support from the lower court, the Court seems to imply that Wells ceased to hold this Charter- and Constitution-created position when the kindergarten ceased operations in the early 2000s. *Royal*, Op. No. 6102,

Additionally, the evidence proves, in the words of Judge Condon of the Charleston County Probate Court, Wells was "*the only* known person with capacity to act on behalf of the Association." Charleston County Probate Court Order in Case No. 2010-GC-10-90, dated November 23, 2010, R. pp. 613-616, 614 (emphasis added). If (a) individuals meeting the statutory definition of the "board of directors" at FKAC were also the agents of FKAC, and (b) Director Wells was one of these individuals, and (c) by 2010, she was the *only* person with capacity to act for FKAC, then (barring entrance of another member of the board of directors, of which there is no evidence) by necessity she was in 2010 and thereafter both the *entire board of directors* and the *sole officer / officer-equivalent / agent* of FKAC. As the entire board, any act she undertook as the agent of FKAC was implicitly authorized by FKAC as principal.

Specifically, when Wells signed the PSA for FKAC as its "Authorized Agent," the act of her execution of the document was an instance of FKAC authorizing her to bind FKAC to the agreement (express and actual authority) and an instance of FKAC manifesting to Royal a representation that Wells was the authorized agent (apparent authority). Further, each and every time Wells ratified the contract through, e.g., affidavits and contract amendments, it was not simply an agent claiming she had authority of the principal; it was FKAC (principal) representing to Royal

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at 2. This novel factual assertion, if it is an assertion, is directly contradicted by FKAC's own position in this case. FKAC has always maintained that Wells remained as Director and never indicated that she ceased being director before her death in 2020. See Defendant's Reply to Crossclaim, p. 1, R. p. 187 ("Ms. June Murray Wells ('Ms. Wells') was and is the duly authorized director and last surviving member of the Free Kindergarten Association of Charleston and that as such she has authority and had authority since approximately 1990 to represent the Free Kindergarten Association of Charleston.") The Constitution and By-Laws (R. pp. 655-661) provide no term for the Director position, so Wells' term cannot have expired, and there is no evidence that Wells was removed from or retired from her position. Thus, Wells was the Director for all times relevant to this case.

(third party) that Wells (agent) was authorized to bind FKAC to the PSA. (*See* R. p. 283-285.)

V. The Three Elements of Apparent Authority Were Satisfied

Of the three elements of apparent authority, the Court of Appeals attacked the PSA under the first ("[the] purported principal consciously or impliedly represented another to be his agent"); questioned the second ("[the] third party reasonably relied on the representation"); and left the third alone ("[the] third party detrimentally changed his or her position in reliance on the representation"). *Royal*, Op. No. 6102, at 9, citing *R & G Const.,* 343 S.C. at 434, 540 S.E.2d at 118 (Ct. App. 2000). Respectfully, the Court misapprehended the law and overlooked critical facts.

A. First Element: *Froneberger* Supports Rather than Detracts from the Theory that Wells Had Apparent Authority

The Court misapprehends and misapplies *Froneberger v. Smith* in drawing a parallel to this case and holding that "FKAC, as a distinct entity from Wells, was unaware of her actions." *Royal*, Op. No. 6102, at 10, citing 406 S.C. 37, 47-49, 748 S.E.2d 625, 630-31 (Ct. App. 2013). *Froneberger* involved a person who had *no* agency relationship with a company (much less any claim as board member) representing to third parties that he was an agent of the company; hence, the *Froneberger* court states, "Without knowledge of Mr. Smith's conduct, Euro cannot have permitted this behavior with conscious inaction." *Id*. 406 S.C. at 49, 748 S.E.2d at 631. By contrast, in this case, Wells had by 2013 been working with and for FKAC for 55 years and had held an Charter- and Constitution-created position constituting a membership in the board of directors for 23 years. (R. p. 591-92.)

Froneberger supports Royal's claims by holding that the first element of apparent agency, that the purported principal consciously or impliedly represented another to be his agent, may be established where "the principal implies authority by *passively permitting* another to appear to third parties to have authority to act on his behalf." *Froneberger* at 406 S.C. at 47-48, 748 S.E.2d at 630-31 (emphasis added; citations omitted). Here, for a period of years, FKAC passively permitted Wells to appear to third parties to have complete control over every aspect of the corporation, and then for a period of more than five years, passively permitted Wells to appear to Royal to have bound it to the PSA, ratified it multiple times, and allowed Royal to act in furtherance of the contract (making downpayment, clearing title, making building repairs, etc.).

The "multitude of documents" (*Royal*, Op. No. 6102, at 9) in evidence purporting to show Wells' authority for and control over FKAC, which the Court disregards, are important in showing that Wells, who spoke as principal and as agent, was prolific in her representations to the public about her authority over FKAC and her assumption of president, treasurer, and secretary duties. Space does not permit review of the abundant evidence in the record or summarized in Appellant's Final Brief, but here Royal urges this Court's attention to Charleston Chapter No. 4, UDC and the Confederate Museum's Answers to First Set of Requests [for] Admission by Plaintiff. R. pp. 695-98. The officer of UDC, an organization to which Wells belonged, testified "Admitted" in answer to "Admit that UDC believed that June Wells was a board member of FKAC during the period of 2010 until the time of her death." *Id.* at 696. And in answer to "Admit that June Wells had the authority to sell the Property [34 Pitt Street] on behalf of FKAC," the respondents stated, in part, that Wells "made representations to officers and/or agents that she had such authority." *Id.* at 697.

The Court disregards common law doctrine that "a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment. Accordingly, the knowledge of officers, employees, and agents obtained in the course of their employment will generally be imputed to the corporation." *Am. Jur.* Corporations § 1413. Further, **<u>"Even if the agent's actions are totally adverse to the corporation, if the agent is the sole agent or sole shareholder of a corporation, the agent's knowledge and conduct will be imputed to the</u>**

<u>corporation.</u>" *Am. Jur.* 18B Corporations § 1424 (2015). Thus, FKAC is deemed to have had constructive knowledge of Wells' actions and, by way of *Froneberger*, FKAC passively permitted her to appear to a third party (Royal) to have authority to act on its behalf.

B. Second Element: Against the Evidence, the Court Improperly Imputed to Royal Uncertainty About Wells' Authority by Way of Language in the PSA

The Court improperly states that language in Paragraphs 2 and 6 of the PSA mean that "the Agreement repeatedly acknowledged the uncertainty around Wells' authority to enter into the contract on FKAC's behalf." *Royal*, Op. No 6102, at 3, referencing language at R. pp. 602-03. This fact assertion, which echoes the Master-in-Equity's order (R. p. 43) is untrue and directly contradicted by the only evidence on the matter at trial or in the record, Royal's testimony, which is abundant on this specific matter. Royal's concern in including the referenced language in the contract was the *documentation* of Wells' authority for use with third parties, not the existence of her authority.[9]

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[9] On cross, counsel for FKAC asked if the language indicated "an issue as to authority in your mind when you created this document?", to which Royal responded ". . . there was not an issue as to what I believe to be Ms. Wells' authority. I believed and trusted in all of her representations to me and all of the evidence that had been before me. There was, I believe, an issue related to the *documentation* of that authority, and I was eager to assemble for myself and potential third parties, which is lenders and title companies, the *documentation* of that authority. . . . I eventually was quite satisfied with the *documentation* related to authorities . . . ." (R. p. 406, emphasis added.) Also, "I was satisfied with her authority. I was just hoping to find more *documentation*. And during the year 2013, these provisions that relate to Ms. Wells providing further *documentation* of authority, although I had the right to pursue them, I didn't. I never did because I didn't feel the need to, especially after seeing Judge Condon's order." (*Id*. at p. 413, emphasis added.) Also, "I was so satisfied with that *documentation* and other representations that she had made to me, I felt no need to pursue the actions that are described in the last sentence of paragraph 6." (*Id*. at p. 416.) Also, when questioned on direct, Royal testified, ". . . all of her representations to me and statements to me led me firmly to believe that she was, in fact the authorized agent. . . . I had asked her, I think, previously for sort of direct documentation of this authority. . . . My understanding is that corporate records had been burned in a fire. I had been receiving documents from Ms. Wells, but I didn't have everything I wanted. So I was eager to keep establishing her authority for any

C. The Evidence Overwhelmingly Shows the Elements Are Satisfied

The Court of Appeals' reasoning is: (a) the Executive Committee is the statutory board of directors and thus effectively the "principal" of FKAC; (b) there is no evidence the Executive Committee made representations to third party Royal about purported agent Wells' authority; (c) therefore, the apparent authority of Wells could not have arisen; and even if it did, language in the PSA raises doubt about whether Royal relied upon any representations concerning Wells' authority. The Court then allows itself to disregard the voluminous evidence of Wells' authority.

This petition so far has shown that the Executive Committee was *not* the statutory board of directors; that under the two plausible theories how to apply "board of directors" to FKAC (all members or "Director" plus officers), Wells alone constituted the entire board of directors in 2013 and FKAC's sole agent; that knowledge of her actions are imputed to FKAC; that FKAC consciously or impliedly represented Wells to be its agent; and that all of the evidence shows that Royal was firmly convinced at the effective date of the PSA that Wells was authorized to bind FKAC to it and relied on Wells' representations to that effect. Thus, the two challenged prongs of apparent authority under *R & G Const., Inc.* are satisfied.

VI. Further Legal Doctrines Supporting Wells' Authority Including Those Which Overcome the Court of Appeals Attack on FKAC's Governance Irregularities

Should this Court grant a writ of certiorari, Royal will provide expanded analysis of additional legal doctrines, summarized below, which were neglected by the Court of Appeals and which support Wells' authority, some of which address and overcome the Court of Appeals' attack on FKAC's governance irregularities. The Court of Appeals stated or implied that the PSA is

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documentation that she had. I knew that that might be important at some point for, you know, third-party lenders, title commitment, and so forth." (*Id*. at p. 297.)

unenforceable due to FKAC's failure to satisfy corporate governance standards set out by the Nonprofit Corporation Act such as holding an official vote approving the PSA. *Royal*, Op. No. 6102, at 7-8. Royal notes that the Act also requires boards of nonprofit corporations to have a minimum of three directors. § 33-31-801(a). The issue of corporate governance irregularities was not addressed by the Master-in-Equity, and the Court of Appeals raised it independently. In doing so, especially in the context of a corporation whose single-director, single-agent/officer, and single-member were the same individual, the Court overlooked certain principles of law in application to the particular circumstances of this case.

(a) Ratification. Notwithstanding corporate irregularities, FKAC effectively ratified Wells' execution of the PSA by its failure to quickly repudiate the PSA (*see* Am. Jur. 18B Corporations § 1401 (2015)), its retention of benefits (*id*. at § 1402), and its allowance of Wells' and Royal's continued actions in furtherance of the PSA including her execution of an affidavit and amendments/addenda to the PSA, all over a period of more than five years (R. pp. 373, 380.)

(b) *De Facto* Officers. Should any attack on Wells *de jure* status in FKAC land, it would not be dispositive as to her authority if she was a *de facto* officer with authority to sell the Property. Under this doctrine, "an officer is defined to be one who has the reputation of being the officer they assume to be in the exercise of the functions of the office and yet is not a good officer in point of law . . . ." *Fletcher Cyc. Corp* § 373 (2022). "The de facto doctrine is a legal fiction invoked to protect the interest of third parties who have relied in good faith upon acts of de facto officers of a corporation . . . ." *Am. Jur.* 18B Corporations § 1204 (2015). Importantly, in South Carolina the *de facto* officer doctrine does not require color of title (such as "president") but only color of authority: "What gives him that status is color of authority – color of title is not essential, strictly speaking." *Heyward v. Long*, 183 S.E. 145, 151, 178 S.C. 351, 366 (1935), quoting *Ekern* *v. McGovern*, 154 Wis. 157, 142 N.W. 595, 612 (Wis. 1913). In South Carolina, application to the corporate setting (versus public officials) is scant, but the Attorney General has published an opinion supporting application of the doctrine to an officer of a nonprofit corporation. S.C. Att'y Gen. Op. No. 11-2011, at 2 (Jan. 14, 2011).

(c) Waiver. Under the doctrine of waiver, ". . . a corporation, its board of directors and shareholders, may waive any necessity of a meeting of its board of directors for the transaction of the business of the company by permitting the directors to establish a habit or usage of assenting separately to the making and performance of contracts by their agents." Fletcher Cyc. Corp. § 394 (2022). In the case of FKAC, there is no evidence in the record of any formal meeting of any "board of directors" ever (unless the members were the statutory board of directors) and such meetings are not called for in the governing documents.

VII. Royal Used Due Care to Ascertain the Scope of the Wells' Authority, Arguably Greater Care than Used by the AG or the South Carolina Judiciary

The Court of Appeals cautions that "it is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *Royal*, Op. No. 6102, at 6, quoting *McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987), quoting *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939)). Royal did so by speaking and meeting with Wells and others who knew she controlled FKAC, speaking with members of the public, and by asking Wells for documentation of her authority, which she provided in several boxes of documents. Royal knew in 2013 that Wells was the only person who had any authority with respect to FKAC and was the entire existing board of directors of FKAC, and that if she, as the board, were to pass a resolution to sign the PSA, it would in substance be the same as Wells signing the PSA itself.

Compare Royal's actions with the actions of other presumably reasonable actors. (a) Judge Condon of the Charleston County Probate Court did not require the reconstitution of the full board of FKAC or any board resolution when he relied on Wells' representation of her own authority in proceeding to terminate the trust that had funded FKAC. (b) The AG in dealing with FKAC in 2010, even drafting Wells affidavit of authority for her, did not require a reconstitution of the full board or formal board approval for Wells' to represent FKAC. (c) What can we make of the fact that in the present lawsuit, neither the trial court, nor the Court of Appeals, nor any party to this case has ever raised any issue with Wells hiring and directing the attorney for FKAC, representing FKAC as its 30(b)(6) witness, or being FKAC's voice for discovery responses. This case, just as the PSA, determines the disposition of the Property, and Wells was in charge of the case for FKAC.

In fact, the logic of the Court of Appeals' decision requires us to believe that FKAC is not even a party to this lawsuit. If Wells was not a principal for FKAC, then *no principal and no authorized agent was ever served with process, hired counsel, or appeared in the trial court*. FKAC's pleading that Wells "has authority and had authority since approximately 1990 to represent the Free Kindergarten Association of Charleston" (R. p. 187) – a statement made by Wells on behalf of FKAC through the attorney she engaged for FKAC – is merely part of a giant and expensive charade that has lasted seven years (so far).

CONCLUSION

For the foregoing reasons, Petitioner Michael D. Royal respectfully requests that this Court grant a writ of certiorari to review the decision of the Court of Appeals in *Royal v. Free Kindergarten Ass'n of Charleston*.

Respectfully submitted June 16, 2025,

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Jun 16 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI (Rule 242, SCACR)

Supreme Court Case No. ___________
Appellate Case No. 2022-001165
Civil Action Case No. 2018-CP-10-5739

Michael D. Royal,

Petitioner,

v.

Free Kindergarten Association of Charleston,

Respondent,

The Attorney General of the State of South Carolina and
The Charleston County School District,

Intervenors/Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Writ of Certiorari and the Appendix required by SCACR Rule 242(e) on the above-named Respondent and Intervenors/Respondents by means provided for in SCACR to their respective counsel of record on today's date or before today's date at the addresses shown below.

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June 16, 2025