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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Equity Court

The Honorable S. Jackson Kimball, III, Master-in-Equity

Case No. 2013-CP-46-1986

York County and Cultural and Heritage Commission  
of York County, ..... Respondents,

v. .

Culture and Heritage Foundation, Inc.; Sustainable  
Development Group, Inc.; SDG Properties, LLC;  
and CHF Property Management, LLC. .... Appellants.

**APPELLANTS' MEMORANDUM ON ISSUE OF APPEALABILITY**

This Memorandum from Appellants is in response to the letter dated November 27, 2013, of V. Claire Allen, Deputy Clerk, The South Carolina Court of Appeals, asking Appellants, among others, to address the issue of appealability by December 7, 2013.

**I. The orders on appeal**

Although the Notice of Appeal lodged by Appellants references the orders of the Honorable S. Jackson Kimball, III dated October 14, 2013, those orders incorporate the Orders dated August 16, 2013 and September 5, 2013. (Order

Denying Defendants' Motion to Dismiss Amended Complaint, pp. 1-2 and 4). The Orders dated August 16, 2013 and September 5, 2013 are attached hereto at **Tab A**.

On appeal are the decisions embodied in these four orders that allow a former supported organization of a South Carolina charity to pursue claims for alleged maladministration and ownership of assets without joining the South Carolina Attorney General and Secretary of State, and Internal Revenue Service as indispensable parties. Respondents are asserting they have superior rights to all assets of Appellants notwithstanding the wishes of donors. Respondents are second-guessing reviews of Appellants performed by the South Carolina Attorney General and Secretary of State, and Internal Revenue Service, in which all three found no violations and that Appellants were in compliance with applicable laws. The orders also grant the former supported organization an accounting without first requiring proof of entitlement to such relief.

Appellants are not appealing the mere denial of summary judgment and a discovery order. They are appealing denial of their motion to dismiss for failure to join necessary and indispensable parties. They are appealing a final order on the accounting cause of action set forth in the Amended Complaint attached hereto at **Tab B**. Before the Court of Appeals is a determination of the right of Respondents to proceed with their challenge of agency decisions without the presence of the agencies themselves (which cannot be corrected *tabula rosa* through subsequent appeal after discovery). Also before the Court of Appeals is the award of an accounting which cannot be later corrected once the accounting has been provided. The Court of

Appeals has appellate jurisdiction pursuant to S.C. Code Ann. § 14-3-330(1), (2) (1976). Sections (1) and (2) are not exclusive provisions, and a ruling may fall within the confines of both. *Link v. School Dist. of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

## **II. Failure to join necessary and indispensable parties**

In *Stewart v. State Crop Pest Commission et al.*, 307 S.C. 133, 414 S.E.2d 121 (1992), our Supreme Court heard an appeal of the denial of a motion to dismiss for failure to join the United States Department of Agriculture and the Animal and Plant Health Inspection Service as indispensable parties. Unlike *Stewart* where the federal agencies were not affected by the litigation because their authority had been delegated to state agencies, in this case the authority and *parens patriae* roles of the South Carolina Attorney General and Secretary of State, and Internal Revenue Service are sought to be trampled by Respondents. In particular, the South Carolina Attorney General should be afforded the earliest opportunity to defend its position that the wishes of donors trump any contrary intentions of a disgruntled former beneficiary. See **Tab C**.

### **A. The Secretary of State**

Under S.C. Code Ann. § 33-56-140(A), the Secretary of State is empowered to “investigate any charitable organization . . . to determine if it has violated the provisions of [the Solicitation of Charitable Funds Act].” In connection with the power to investigate, the Secretary of State “may subpoena or audit persons and require the production of books, papers, and other documents to aid in the

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investigation of alleged violations of [the Solicitation of Charitable Funds Act].” *Id.*

If the investigation reveals that a violation has occurred, the Secretary of State “may bring an action before an administrative law judge to enjoin the charitable organization . . . from continuing the [ ] violation . . . and for other relief as the court considers appropriate.” S.C. Code Ann. § 33-56-140(C). The Secretary of State issued a subpoena *duces tecum* pursuant to which Appellants produced a voluminous quantity of documents. After a year long investigation, the Secretary of State did not issue any notice of violation. The Secretary of State did not bring any legal action.

### **B. The Attorney General**

Under S.C. Code Ann. § 33-31-171, the South Carolina Attorney General, as *parens patriae* of charitable trusts, is given the power to “make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State.” Under this Statute, the Attorney General may “examine and take copies of all [a nonprofit corporation’s] books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, by laws, and any and all other records of any such corporation as often as the Attorney General may deem it necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its charter rights and privileges or in violation of any law of this State.” *Id.*

Further, under S.C. Code Ann. § 1-7-130, the South Carolina Attorney General “shall enforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof

...” See also *Furman University v. McLeod*, 238 S.C. 475, 120 S.E.2d 865 (1961) (Attorney General is the appropriate party to protect the interests of the public at large in the administration and enforcement of charitable trusts); *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) (Attorney General shall enforce the due application of funds given or appropriated to public charities within the State.).

In *Wilson*, although Chief Justice Toal in her concurring opinion stated the Attorney General overreached by assuming the role of a super administrator in the settlement process and controlled the undertakings of the charity, she nevertheless made it quite clear that the donor, trustee (in this case, the Foundation) and the Attorney General have exclusive power over the activities of a charitable trust (and not its erstwhile beneficiaries). Citing *Estate of Horton*, 11 Cal.App.3d 680, 90 Cal.Rptr. 66, 68 (1970), Chief Justice Toal quoted with approval:

The role of the Attorney General is as an overseer of charities representing the public, the ultimate beneficiary of the charitable trust.... His duty is to remedy abuses in trust management.... He is a necessary party to proceedings affecting the disposition of the assets of a charitable trust.... It is his right and duty to participate in proceedings to protect charitable gifts....

*Wilson*, 403 S.C. at 457, 743 S.E.2d at 771.

The Attorney General also issued a subpoena *duces tecum* pursuant to which Appellants produced documents. The Attorney General did not issue any notice of violation. The Attorney General did not bring any legal action. But the Attorney General did issue a letter advising the Foundation to use its donated assets in accordance with the wishes of donors.

### C. The Internal Revenue Service

After the South Carolina Secretary of State and Attorney General completed their reviews of Appellants, in response to an unknown complaint the Internal Revenue Service audited Appellants. While the Internal Revenue Service provided comments on certain Form 990 entries of the Foundation, the Service did not find any violations, and approved of the Foundation's change in charitable tax status (as no longer a sole supporting organization of the Commission).

Each of the five causes of action in the Amended Complaint stems from Respondents' allegations that the Foundation has not operated in compliance with 26 U.S.C. § 509(a)(3), or its corresponding regulation 26 C.F.R. § 1.509(a)-4. Section 509(a)(3) and Treas. Reg. § 1.509(a)-4 each address how an entity can secure tax exempt status. Upon receiving such tax exempt status, whether an organization is operating in accordance with the requirements of this Statute and Regulation falls within the jurisdiction of the Internal Revenue Service. Chapter 78 - Discovery of Liability and Enforcement of Title - of the Internal Revenue Code (IRC) allows the Internal Revenue Service to issue summonses and examine documents and witnesses (including third parties) to determine if an entity is in compliance with the IRC. *See* 26 U.S.C. §§ 7601, *et seq.*

Compliance with Section 509(a)(3) and its corresponding regulation 26 C.F.R. § 1.509(a)-4 is handled by the officers and employees of the Treasury Department. Chapter 78 of the IRC does not create a private right of action that allows a third party to bring suit against a tax exempt entity for alleged violations of

the IRC. Instead, it provides for enforcement of the regulations by the Internal Revenue Service. Given this expansive regulatory enforcement scheme, there is no question that Congress did not intend for Section 509(a)(3) to create a private cause of action by a supported organization against its former supporting organization.

The “existence of an administrative scheme of enforcement is strong evidence that Congress intended the administrative remedy to be exhaustive” and did not intend to create a private right of action. *Sigmon v. Southwest Airlines Co.*, 110 F.3d 1200, 1206 (5<sup>th</sup> Cir. 1997) (No private right of action under the IRC against a third party for unpaid tax refund). “[W]here Congress has otherwise enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement, there is a strong presumption that Congress deliberately did not create a private cause of action.” *Tax Analysts v. I.R.S.*, 214 F.3d 179, 186 (C.A.D.C. 2000) (Holding no private right of action under IRC Section 6104 to force an exempt organization to turn over its exemption application and supporting documents.). *See also Alpert v. Riley*, 274 S.W. 3d 277, 293 (Tex-App. Houston 2008) (“No private cause of action lies for violation of regulations promulgated under the IRC except against the U.S. Government.”).

The Internal Revenue Service is a necessary and indispensable party because of the bases for relief set forth in the Amended Complaint. The lower court should abstain from hearing substantive federal taxation matters, especially where, as here, any determination would potentially be at odds with the Internal Revenue Service’s

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decision, which agency cannot be joined in the action.<sup>1</sup> Before this case proceeds any further in the lower court, it must be finally adjudged whether the Internal Revenue Service is a necessary and indispensable party. Appellants should not be placed at risk of a finding by a state court that they are in violation of federal taxation laws when the Internal Revenue Service has already determined that they are not.

**D. The risk without joinder**

The responsibilities of the South Carolina Attorney General and Secretary of State, and Internal Revenue Service are much more than “administrative approval concerning [Defendants’] status as charitable entities.” (Order dated August 16, 2013, p.5.) Without the South Carolina Attorney General and Secretary of State, and Internal Revenue Service in the case as framed by Respondents, the lower court cannot afford complete relief among those already parties; the ability of these

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<sup>1</sup> Under 28 USC § 1346(a),

district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims of (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort . . .

This is not the same as where the Internal Revenue Service is named in a state court foreclosure because of a lien on real property in South Carolina. 28 USC § 2410(a) specifically allows the United States to be named as a party in a civil action in state court when the action is to foreclose a mortgage or lien, quiet title, partition or condemn real or personal property upon which the United States has or claims a lien or a mortgage.

agencies to protect their interests will be impaired or impeded; and Appellants will be subjected to the substantial risk of incurring multiple or inconsistent obligations by reason of the agencies not being joined. Should the case proceed in the lower court without the necessary and indispensable parties, and such parties are thereafter compelled to join in the action after appeal, Appellants and the newly joined parties will be substantially prejudiced by written discovery and depositions which cannot practically be re-done or forgotten during re-litigation.

### **III. Award of an accounting**

Respondents are seeking an accounting as one of their requested avenues of relief in this action. (Amended Complaint, p.9, ¶¶ 58-61.) Their request for an accounting is based on factual allegations related to the formation of the Foundation (Amended Complaint, ¶¶ 8-17); the Foundation being a supporting entity of the Commission (Amended Complaint, ¶¶ 18-23, 30-32); the Foundation amending its purpose and bylaws after 1998 (Amended Complaint, ¶¶ 25-26, 28); and communications between or among Appellants and Respondents (Amended Complaint, ¶¶ 19, 47-49). These are the factual bases that define the scope of relevance and the parameters of likely to lead to admissible evidence under Rule 26(b)(1), SCRCF, including as to the accounting cause of action. Respondents may seek discovery to locate evidence that supports the factual bases. They do not have the right to use discovery to obtain their relief for an accounting without having proven any right to an accounting.

The protective order dated October 14, 2013 grants to Respondents: corporate

formation documents for Appellants; operating agreements; articles of incorporation; lists of members, shareholders and directors; annual reports; documents related to corporate functions; minutes of meetings; all memos; all correspondence; director's reports; all communications between and among Respondents; letters; e-mail; all communications with donors to the Foundation; all communications with shareholders and members of Appellants that are related to funds received or disbursed by Appellants; all communications with Respondents; all documents provided to the South Carolina Attorney General; all corporate formation documents of, agreements and communications with Cherokee SDG, LLC; all documents related to Cherokee Investment Partners; agreements with Cherokee; communications (including e-mail); documents reflecting ownership/control of Cherokee; all documents related to MB Kahn, Kanawha Development and Green Shores, including all communications whether or not by e-mail; all documents related to any loans received by Appellants; all documents related to any real estate transactions from 1998 to the present; all documents related to the Jane Spratt McColl land gift, including any communications and correspondence; all financial statements, balance sheets, reports or other accounting documents prepared by or for Appellants; all documents related to any capital calls involving Sustainable Development Group; all documents related to Fort Dearborn Partners, including all communications, correspondence, reports and recommendations; all state and federal tax returns filed by Appellants (from 1998 forward); and all documents submitted to federal and state tax authorities (from 1998 forward).

The orders dated October 14, 2013 awarded Respondents their requested accounting relief. Until Respondents have proven a right to an accounting, Appellants believe they have an obligation to maintain the confidentiality of their information, especially about donors and the use of donated gifts. Once disclosure has occurred, it is not possible to undo it. The information provided cannot be un-read or un-heard by Respondents.

#### **IV. Conclusion**

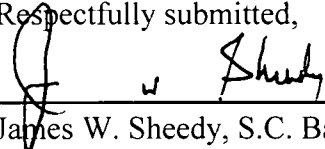
Immediate appeal is available from any intermediate order involving the merits or affecting a substantial right when the order in effect determines the action and prevents a judgment from which an appeal might be taken. S.C. Code Ann. § 14-3-330(1), (2). For an order to involve the merits, the order “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *State v. Isaac*, 405 S.C. 177, 183, 747 S.E.2d 677, 679 (2013) citing *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). See, e.g., *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006) (once sealed divorce case records were unsealed, no appellate remedy would repair the damage done by improper disclosure); *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012)(order of substitution of a party is immediately appealable); and *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 624 S.E. 2d 439 (Ct. App. 2005) (Interlocutory order that finally determined substantial matter forming part of appellant’s defense was immediately appealable.).

While the policies against delay (especially in a criminal proceeding) and

piecemeal appeals of preliminary rulings are deeply rooted in our jurisprudence, so too are judicial economy, efficient administration of justice, impartiality until final decision and the absence of legal prejudice due to inconsistent obligations. Respondents should be limited in their discovery to that which is necessary to prove the averments in their Amended Complaint. Appellants should not have to furnish an accounting to their former supported organization of their activities since their corporate formation until it has been shown they have a duty to the former supported organization. Appellants should not have to litigate through to a conclusion in this case, only to have to re-litigate the same case a second time once the necessary, indispensable parties are named in the proceeding.

Date: 12/5/13

Respectfully submitted,



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Attorneys for Appellants

# Tab A

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

York County and Cultural and Heritage )  
Commission of York County, )

Case No.: 2013-CP-46-1986

Plaintiffs, )

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DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

vs. )

**ORDER**

Culture and Heritage Foundation, Inc.; )  
Sustainable Development Group, Inc.; )  
SDG Properties, LLC; and CHF Property )  
Management, LLC, )

- (1) DENYING TEMPORARY INJUNCTION
- (2) DENYING MOTION TO DISMISS
- (3) DENYING MOTION TO DISQUALIFY COUNSEL

Defendants. )

This matter came before me on August 8, 2013, upon the following motions: (1) Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed July 5, 2013; (2) Defendants' motion to dismiss; and, (3) Plaintiffs' motion to disqualify Defendants' counsel, James W. Sheedy, from representing Defendants in this action. Representing the parties were: Brian A. Autry and Tracy T. Vann for Plaintiffs, and James W. Sheedy and Susan E. Driscoll for Defendants. Both sides filed extensive affidavits with attached exhibits in support of their respective positions on the motions, and the same were accepted into the record for consideration of all motions. Counsel for the parties also made extensive argument with reference to the affidavits and other exhibits.

**BACKGROUND**

This dispute arises out of a collaborative effort between York County ("County"), Cultural and Heritage Commission of York County ("CHC"), and Culture and Heritage Foundation, Inc. ("CHF") to promote and advance projects in furtherance of the preservation of the culture and history of York County. The pursuit of these goals began well prior to 2003, but the parties entered a written agreement dated November 17, 2003 ("Agreement"), memorializing their intentions. Very generally described, the Agreement and the efforts of the parties contemplated the collaboration of the County, CHC, and CHF, in projects "... to preserve the cultural, historical and natural heritage ..." of the County.

It is clear that a major component of the Agreement and the collaborative activities

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contemplated the creation of a site and construction of facilities for a new Museum of York County. A large component of the plan involved raising the funds for accomplishing the overall purposes of the Agreement. For various reasons consistent with the parties' purposes, the Defendants Sustainable Development Group, Inc. ("SDG"), SDG Properties, LLC ("SDGP"), and CHF Property Management, LLC ("CHFPM"), were created, each having a role in the plan for accomplishing the purposes of the Agreement.

In furtherance of the overall purposes, a charitable donation from Jane S. McColl, in the form of tract of land containing approximately 395 acres with substantial frontage on the Catawba River, was received. Title was initially vested in CHF, but portions of the tract have subsequently been the subject of multiple transfers. Some of the transfers have been in connection with arms-length sales to third parties unrelated to the parties to this action.

On February 21, 2011, the County terminated the Agreement, as permitted by the express terms of the Agreement. Since that time, CHF has amended its corporate charter to broaden its official corporate purposes. CHF has also indicated its intent to pursue purposes beyond the scope of the parties' original Agreement, and pre-Agreement activities.

By this action, Plaintiffs seek to bar the Defendants from pursuing purposes it contends are inconsistent with the original intention of the parties both prior to the Agreement, and during the term of the Agreement. A major component of Plaintiffs' claim concerns the disposition of the donated land by the Defendants, and the Defendants use of the proceeds of such disposition as well as their use of other proceeds donated. Hence, Plaintiffs pursue their prayer for temporary injunctive relief.

On the other hand, Defendants assert the right to pursue their charitable activities in any manner consistent with their stated corporate purposes. They deny any continuing connection or obligation to Plaintiffs, and oppose any injunctive relief.

### DISCUSSION

#### **A. Temporary injunctive relief.**

A party requesting a preliminary injunction "... must both allege facts sufficient to state a cause of action for an injunction and demonstrate the relief is reasonably needed to preserve the parties' rights during litigation." *Looney v. Grassroots of South Carolina, Inc.*, 2013 WL 2217666, \*1 (S.C. Ct. App. 2013), citing *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011). "Thus, the party seeking a preliminary injunction must establish '(1) it

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would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Id.*, quoting *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). Unless the party seeking the injunctive relief can satisfy all three elements, an injunctive relief is not appropriate. *See Scratch Golf Co.*, 316 S.C. at 121-122, 603 S.E.2d at 908.

Although a “. . . plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction . . . the plaintiff must present a reasonable question as to the existence of such a right.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009).

Upon review of all of the evidence, I find and conclude that Plaintiffs, at least at this stage of the litigation, have not demonstrated in accordance with the accepted standard a likelihood of success on the merits. In particular, significant questions are presented concerning the effect of the parties’ pre-Agreement actions, as well as their actions during the term of the Agreement, and following its termination. These matters require a full development of the evidence in this case. In this connection, I make no finding of facts by this order that are binding upon the parties as this action goes forward.

Therefore, because Plaintiffs have not shown a likelihood of success on the merits of this litigation at this stage, Plaintiffs’ request for temporary injunctive relief must fail.

**B. Motion to dismiss – motion for summary judgment.**

Defendants have posited their motion to dismiss on three separate grounds: (1) lack of subject matter jurisdiction; (2) lack of standing of the Plaintiffs; and, (3) as to all of Plaintiff’s causes of action, which are based claims arising out of the parties’ relationship pre-Agreement and during the Agreement, and Defendants’ actions post-Agreement.

In connection with a motion to dismiss pursuant to Rule 12, SCRPC,

. . . if matters outside the pleading are presented and not excluded by a court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRPC, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009); *see also, Higgins v. Medical University of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct.App. 1997).

Defendants have submitted multiple exhibits and affidavits in support of their Motion to Dismiss Plaintiffs’ claims, and posited their arguments on the same. The Motion, and

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Defendants' argument, contain essential factual assertions based on the affidavits and exhibits. As a result, I find and conclude that the Motion to Dismiss should properly be considered as a Motion for Summary Judgment. No party is prejudiced by such a treatment of the motion.

Summary judgment is a drastic remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Hooper v. Ebenezer Senior Svcs. & Rehabilitation Ctr.*, 377 S.C. 217, 226-27, 659 S.E.2d 213, 217 (Ct. App. 2008); *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004). Summary judgment is inappropriate where further inquiry into the facts of the case is necessary to clarify the application of law. *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005); *Wogan*, 366 S.C. at 591, 623 S.E.2d at 112; *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 542, 608 S.E.2d 440, 447 (Ct. App. 2004).

Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). Accordingly, in cases where the burden of proof is by the preponderance of the evidence, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Management Co. Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

(1) **Subject matter jurisdiction.**

Defendants assert that the circuit court lacks subject matter jurisdiction over the claims in this matter, and that they should be dismissed pursuant to Rule 12(b)(1), SCRPC. Defendants base their contention on two grounds: (a) the probate courts of South Carolina have exclusive jurisdiction over all subject matter related to trusts; and, (b) there is no private right of action for Plaintiffs' claims based interpretations of federal tax law, and findings of compliance by the South Carolina Attorney General's office.

(a) **Exclusive jurisdiction of the Probate Court.**

S.C. Code Ann. § 62-1-201(44) (1976, as amended) states:

"Trust" **includes** any **express trust**, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" **excludes** other **constructive trusts**, and it excludes **resulting trusts** . . . . [Emphasis added.]

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Although Plaintiffs use the term "charitable trust" in the allegations of their Complaint, the substance of their claim is based on what would be an alleged constructive trust. There is plainly no "express" trust agreement involving the parties. A constructive trust is an equitable matter, and is within the subject matter jurisdiction of this court.

The language of § 62-1-201(44) specifically excludes constructive trusts from the exclusive jurisdiction of the probate court. While constructive trusts established by court order may be subject to administration by the Probate Court under some circumstances, their establishment is clearly a matter for the Circuit Court. Defendants' argument is without merit.

(b) Plaintiffs' standing and private right of action.

Plaintiffs' claims are not dependent on interpretation of matters of federal tax law. Rather, Plaintiffs have alleged that Defendants' charitable status, as defined by the Internal Revenue Service, is evidence in support of Plaintiffs equitable claims that there is a special relationship between Plaintiffs and Defendants. This Court has subject matter jurisdiction over those claims.

Any findings of the South Carolina Attorney General related to Defendants and their charitable status, and compliance with applicable statute and regulation, are not dispositive in this matter, notwithstanding Defendants' argument to the contrary. The Attorney General's office is not empowered with the authority to determine the validity of the claims before the Court in this matter, and its formal opinions are not binding on this Court in dealing with the issues presented here. Thus, this Court has subject matter jurisdiction over Plaintiffs' claims.

(2) Plaintiffs' standing.

Defendants assert that because the IRS and the State of South Carolina have given administrative approval concerning their status as charitable entities, establishing that Defendants may have met the technical filing requirements of those entities, Plaintiffs cannot assert a private cause of action against them arising out of such status. Such administrative approval and confirmation of Defendants status as charitable organizations does not insulate them from Plaintiffs' claims as asserted in the Complaint.

Defendants also argue that either one or both of the Plaintiffs are not proper parties to this lawsuit. However, it is undisputed, and Defendants have admitted, that Plaintiffs and the CHF were all parties to the Agreement. The pre-Agreement cooperative interactions and associations of these parties toward a common purpose is also acknowledged. As such, Plaintiffs are real



parties in interest as to any claims arising out of the parties' prior dealings.

**(3) Summary Judgment based on facts alleged.**

I find and conclude that the record presented at this time requires denial of summary judgment. From the affidavits and exhibits presented by all the parties, viewed in a light most favorable to Plaintiffs, there are genuine issues of material fact raised, and it would be inappropriate to render judgment as a matter of law at this juncture without further development of the facts. Further, there has been no answer filed by the Defendants elucidating the defenses on which they will rely, and consequently, there has been no opportunity for discovery by Plaintiffs to address Defendants' defenses.

Thus, based on these findings and conclusions, Defendants' Motion based on the legal insufficiency of the facts alleged by Plaintiff fails.

**MOTION TO DISQUALIFY**

Plaintiffs' motion to disqualify Defendants' counsel was filed on August 7, 2013, and presented to me on that date. It was not timely filed and served for the purpose of being heard along with the other motions presented on August 8. The essence of Plaintiffs' position is that Defendants' counsel rendered legal advice to Plaintiffs, and received payment for services from Plaintiffs, in connection with the issues presented by this law suit. These assertions raise factual issues to which Defendants' counsel has the right to respond fully, and he is entitled to the requisite time to respond.

Nevertheless, Defendants' counsel represented to the court, as an officer of the court, that Plaintiffs were never his client in regard the legal matters at issue here. He represented that although his firm did receive payment from Plaintiffs, the payment was made on behalf of Defendant CHF, who was, and is currently, his client, as part of the understanding of the parties at that time. He presented written evidence to support that conclusion.

Thus, I find and conclude that to delay the hearing on these critical motions based on Plaintiffs' untimely motion would not serve the interests of the parties or the court. I, therefore, decline to rule on the motion, as it was not timely. However, based on the record presented, the circumstances of the motion, and for the purposes of proceeding with the hearing on the motions timely filed, I decline to disqualify Defendants' counsel in regard to hearing the motions before me on August 8. Plaintiffs may pursue the motion to disqualify further, if desired, after Defendants' counsel has had a proper opportunity to make a formal response to the motion.

*AN*  
*AB*

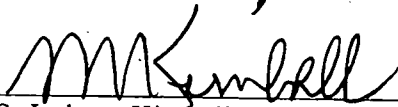
**CONCLUSION**

Based on the findings and conclusions set forth in the foregoing discussion, it is ordered as follows:

1. Defendants' Motion to Dismiss is denied in its entirety.
2. Plaintiffs' motion for temporary injunctive relief is denied.
3. Plaintiffs' motion to disqualify Defendants' counsel is denied for the purposes of the hearing on the motions presented.

ALL OF WHICH IS SO ORDERED.

August 16, 2013

  
\_\_\_\_\_  
S. Jackson Kimball  
Special Circuit Court Judge  
York County

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STATE OF SOUTH CAROLINA

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JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

DAVID HAMILTON  
C.C.C.P. & G.S.  
YORK COUNTY, SC

CASE NUMBER 2013CP4601986

IN THE COURT OF COMMON PLEAS

York County	Cultural And Heritage Commission Of York County	Culture And Heritage Foundation Inc SDG Properties LLC	Sustainable Development Group Inc CHF Property Managements LLC
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before me on September 5, 2013, upon Defendants' motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed August 22, 2013. Representing the parties were: Tracy T. Vann for Plaintiffs, and, James W. Sheedy for Defendants.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I believe that the issues concerning which Defendants seek further consideration, are dealt with, at least be implication, in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order.

Additionally, Defendants acknowledge that their argument is based, at least in part, on issues of first impression in South Carolina. I conclude that a decision on those issues at this stage would not be appropriate, as they are in direct conflict with what Plaintiffs assert as the basis for their claims.

Therefore, it is ordered that Defendants' Motion pursuant to Rule 59(e), SCRPC, be denied.

AND IT IS SO ORDERED.

*[Handwritten signature]*  
#1



# Tab B

STATE OF SOUTH CAROLINA

COUNTY OF YORK.

York County and Cultural and Heritage Commission  
of York County,

Plaintiffs,

vs.

Culture and Heritage Foundation, Inc., Sustainable  
Development Group, Inc., SDG Properties, LLC, CHF  
Property Management, LLC,

Defendants.

IN THE CIRCUIT COURT

Civil Action No. 2013-CP-46-01986

AMENDED COMPLAINT

FILED-RECEIVED  
2013 SEP -5 AM 11:32  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

The Plaintiffs, York County and Cultural and Heritage Commission of York County, complain of the Defendants, Culture and Heritage Foundation, Inc., Sustainable Development Group, Inc., SDG Properties, LLC, and CHF Property Management, LLC, allege and would show the Court that:

**PARTIES AND JURISDICTION**

1. York County (the "County") is a political subdivision of the State of South Carolina.
2. The Cultural and Heritage Commission of York County (the "Commission") is a non-profit charitable organization organized and existing under the laws of the State of South Carolina, with its principal place of business in Rock Hill, York County, South Carolina. The Commission operates as a division of York County.
3. The Culture and Heritage Foundation, Inc. (the "Foundation") is a non-profit, eleemosynary 501(c)(3) corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Rock Hill, York County, South Carolina.
4. Sustainable Development Group, Inc. ("SDG") is a South Carolina corporation with its principal place of business in Rock Hill, York County, South Carolina. The Foundation is the majority (99%) owner of SDG and is in control of it.

5. SDG Properties, LLC ("SDGP") is a Delaware limited liability company, authorized to do business in the State of South Carolina and having its registered agent in Rock Hill, York County, South Carolina. SDGP is wholly owned by SDG and is a disregarded entity for tax purposes.

6. CHF Property Management, LLC ("CHFPM") is a South Carolina limited liability company having its principal place of business in Rock Hill, York County, South Carolina. CHFPM is wholly owned by SDG and is a disregarded entity for tax purposes.

7. Venue and jurisdiction are proper in this Court.

#### GENERAL ALLEGATIONS

8. The Commission is formerly the Museum of York County. In 1997, the Museum and the York County Historical Commission merged to form the Commission.

9. In 1992, Friends of the Museum of York County, Inc. ("Friends") was formed with the declared purpose of "support[ing] the educational and civic purposes of the Museum of York County." In 1993, Friends amended its articles of incorporation to become a 501(c)(3) entity for federal tax purposes. In its resolutions, Friends stated that its purpose for operating was "exclusively to provide a source of endowed funding for the Museum of York County, which is a York County government unit."

10. Friends was formed by the Board of Directors of the Museum to oversee an endowment fund. At its formation, Friends reported to the Board of the Museum and continued to do so after it obtained its independent status.

11. In 1998, Friends changed its name with the South Carolina Secretary of State to the "Culture and Heritage Foundation, Inc." At the time of the name change, the Foundation did not amend or broaden its purpose, meaning that its previously stated purpose remained the same – the sole benefit of the Commission.

12. In November 1998, the Foundation Board adopted new bylaws (the "1998 Bylaws") stating that it was now to "operate exclusively for the benefit of museums, historic sites, nature

conservancies, and cultural facilities operated by and/or supported by the Cultural and Heritage Commission of York County...by raising, investing, and managing endowment, capital building, acquisition, and operating funds for, and disbursing said fund to [the Commission].”

13. The 1998 Bylaws also stated that, although the “Foundation may develop, amend, or restate guidelines from time to time in order to effectively implement the aforesaid purposes...the Foundation shall always be operated exclusively for the benefit of museums, historic sites, nature conservancies, and cultural facilities operated and/or supported by the [Commission].”

14. The 1998 Bylaws also gave the Commission significant oversight with respect to the Foundation Board of Trustees, including:

- a. Requiring that prospective members of the Foundation Board of Trustees be approved by the Commission;
- b. Including the Commission’s Chair, Vice Chair, Finance Committee Chair, and Director as original members of the Foundation Board of Trustees; and
- c. Requiring that the Commission’s Board approve any amendments to the Foundation Bylaws.

15. The 1998 Bylaws could only be amended, subject to the approval of the Board of Trustees of the Commission, by the 2/3 vote of the Board, provided the Board had been given two weeks’ notice of the proposed amendments.

16. The 1998 Bylaws provided that, upon dissolution of the Foundation, all funds remaining in the Foundation accounts would revert to the Commission.

17. Finally, the 1998 Bylaws require that the Foundation be operated “in accordance with the provisions of 26 USC Sections 501(c)(3), 509(a)(1), (2), or (3) and the regulations thereunder” and that “[n]otwithstanding any other provision of these Bylaws, the operations, activities, and powers of the Foundation shall be limited to those permitted by (i) an organization described in 26 USC Sections 501(c)(3), 509(a)(1), (2), or (3)...”

18. In all of the Foundation's tax filings, it has taken the position that it qualifies as a Type I "supporting organization" under Internal Revenue Code 509(a)(3)(B)(i). A supporting organization is a special kind of 501(c)(3) entity described in Section 509(a)(3).

19. The Foundation has represented to the Plaintiffs and the federal government, throughout its existence, that it is a Section 509(a)(3) supporting organization.

20. The function of a supporting organization is to provide support to a designated public charity that is referred to as its "supported organization." The Foundation's bylaws designate the Commission as its supported organization.

21. A supporting organization is one that is so connected to the supported organization that it derives its own tax exempt status as a public charity from that relationship. The Foundation's tax exempt status as a public charity is derivative of the Commission's status as a public charity.

22. The Foundation's operation as a Section 509(a)(3) entity imposes several requirements on it, including, but not limited to, the following:

- a. Foundation may not change its designated supported organization from the Commission except in circumstances that are beyond the Foundation's control;
- b. Foundation must be supportive of and responsive to the needs of the Commission; and
- c. Foundation must provide the Commission with a significant voice in its major decisions.

23. Because of the Foundation's relationship with the Commission, its stated purpose, and its status as a supporting organization, funds and property given to the Foundation are impressed with a constructive trust for the sole benefit of the Commission, which imposes duties on the Foundation of a trustee.

24. In December 1998, after the 1998 Bylaws were adopted, the McColl family donated approximately 400 acres of property (the "McColl Property") to the Foundation.

25. On April 3, 2000, the Foundation's bylaws were amended to:
- a. Delete the reference to the Commission's Chair, Vice Chair, and Finance Committee Chair as automatic members of the Foundation Board;
  - b. State that the Commission's Director would serve as an "ex-officio member" of the Foundation's Board;
  - c. Remove the Commission's authority to approve new members of the Foundation Board; and
  - d. Remove the requirement that the Commission approve amendments to the Foundations bylaws (the "2000 Bylaws").
26. At the time of the 2000 Bylaws, there were no changes made with respect to the Foundation's purpose, its funds, its application and use of funds, the distribution of its funds in the event of dissolution, or its status as an IRC 509(a)(3) supporting organization.
27. The Defendants have "stonewalled" Plaintiffs and blocked Plaintiffs' attempts at obtaining information about the activities of the Foundation and the management and disposal of funds and property being held by the Foundation and managed by the Defendants.
28. On May 1, 2012, the Foundation filed documentation with the South Carolina Secretary of State, changing its purpose and broadening its scope to include "museums, historic sites, nature conservancies, cultural facilities and similar entities offering cultural and/or educational opportunities to South Carolina citizens" (the "Change in Purpose").
29. On March 8, 2013, the Foundation sent a letter to its supporters, informing them of the Change in Purpose and indicating that it was holding property (the McColl Property) that it could now use for purposes other than the benefit of the Commission.
30. The Foundation has changed its designated supported organization from the Commission of its own accord and not because of circumstances beyond its control.
31. The Foundation has not been supportive of and responsive to the needs of the Commission, evidenced by its uncooperative behavior, refusal to release information, and stated

intentions as to funds and property originally designated for the Commission.

32. The Foundation has not provided the Commission with a significant voice in its major decisions.

33. The Foundation has stated its intent to use funds and property donated to the Foundation for the benefit of the Commission and York County for other purposes.

34. Defendants SDG, SDGP, and CHFPM perform the following functions for the Foundation: (a) promotion and marketing; (b) property development (including the McColl Property); and (c) serving as title holder of real property in the care of the Foundation (including the McColl Property). As such, all of these entities are involved with and are complicit with the activities of the Foundation and have performed tasks in furtherance of the Foundation's activities.

**FOR A FIRST CAUSE OF ACTION**  
(Injunction)

35. Plaintiffs reallege the above paragraphs as if repeated verbatim.

36. The Defendants' actions and conduct, as alleged herein, will irreparably injure the Plaintiffs in the absence of injunctive relief.

37. The Plaintiffs are likely to succeed on the merits of this action.

38. The Plaintiffs have no adequate remedy at law.

39. An Order restraining and enjoining the Defendants' actions is necessary to preserve the *status quo*.

40. The Plaintiffs are entitled to a preliminary injunction and a permanent injunction precluding the Defendants from distributing funds or property (including the McColl Property) that were acquired by the Foundation prior to the Change in Purpose to any organization other than the Commission.

**FOR A SECOND CAUSE OF ACTION**  
(Declaratory Judgment)

41. Plaintiffs reallege the above paragraphs as if repeated verbatim.

42. The Plaintiffs bring this claim for declaratory judgment pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 *et seq.*, and pursuant to the inherent equitable powers of the Court.

43. A justiciable controversy exists between the Plaintiffs and the Defendants with respect to the organization, structure, and purpose of the Foundation and to the right, title, and interest in funds and property (including the McColl Property) held by the Foundation.

44. As a direct result, a declaratory judgment is necessary and proper to determine the rights and duties of the parties with respect the Foundation's organization, structure, and purpose and the funds and property (including the McColl Property) held by the Foundation.

45. Therefore, Plaintiffs seek a declaratory judgment that:

- a. All funds, endowments, real or personal property (including the McColl Property), or any other tangible and non-tangible items given to the Foundation prior to the Change in Purpose are for the sole use and benefit of the Commission;
- b. Properties and funds conveyed to the Foundation prior to the Change in Purpose (including the McColl Property) are impressed with a constructive trust for the sole benefit of the Commission, which imposes duties on the Foundation of a trustee;
- c. Actions taken by the Foundation without notice to or the input of the Commission that would give the Foundation the ability to transfer funds or property to anyone for the benefit of anyone other than the Commission are invalid.

**FOR A THIRD CAUSE OF ACTION**  
(Estoppel/Promissory Estoppel)

46. Plaintiffs reallege the above paragraphs as if repeated verbatim.

47. As set forth by the facts alleged herein, the Foundation made certain unambiguous promises and representations to the Plaintiffs in connection with its purpose and the disposal of funds and property held by the Foundation, upon which the Plaintiffs have reasonably relied.

48. The Foundation did foresee, or should have foreseen, that the Plaintiffs would detrimentally rely on the Foundation's promises and representations.

49. As the direct and proximate result of the Plaintiffs' reliance, the Plaintiffs have suffered or will suffer injury and pecuniary loss in an amount that will be proven at trial.

50. Foundation and the other Defendants should be estopped from taking any action contrary to the Foundation's promises and representations to the Plaintiffs, and the Plaintiffs are entitled to entry of a judgment against the Defendants for damages arising from the Plaintiffs' reliance on the Foundation's promises and representations.

**FOR A FOURTH CAUSE OF ACTION**  
(Breach of Fiduciary Duty)

51. Plaintiffs reallege the above paragraphs as if repeated verbatim.

52. By virtue of the relationship between the Plaintiffs and the Foundation, the Plaintiffs held a special confidence in the Foundation such that the Foundation was bound to act in good faith and with due regard to the interests of the Plaintiffs.

53. In addition, the Foundation owes a duty to the Plaintiffs to operate in accordance with its bylaws, its tax exempt status (including its status under IRC Section 509(a)(3)), and the purpose it has stated to the Plaintiffs, the federal government, and the public – as a supporting organization of the Commission, whose sole purpose is to benefit the Commission alone.

54. The other Defendants, by virtue of their relationship to the Foundation, also owed the same fiduciary duty to the Plaintiffs.

55. The Defendants have breached this fiduciary duty by:

- a. Failing to act in good faith and with due regard to Commission's interests, as alleged above;
- b. Failing to operate in accordance with its bylaws, to the detriment of Plaintiffs;
- c. Changing the Foundation's designated supported organization from the Commission of its own accord and not because of circumstances beyond its control;
- d. Failing to be supportive of and responsive to the needs of the Commission, evidenced by its uncooperative behavior, refusal to release information, and stated intentions as to funds and property originally designated for the Commission; and
- e. Failing to provide the Commission with a significant voice in its major decisions.

56. Plaintiffs have been damaged by the Defendants' breach of fiduciary duty in an amount to be determined at trial.

**FOR A FIFTH CAUSE OF ACTION**  
(Accounting)

57. Plaintiffs reallege the above paragraphs as if repeated verbatim.

58. The Commission, as the supported entity of the Foundation and the sole beneficiary of funds and property received by the Foundation prior to the Change in Purpose, is entitled to an accounting of all the books and records of the Defendants.

59. The Court should order an accounting of the affairs of the Defendants to determine:

- a. The status of funds currently held in the accounts of the Defendants;
- b. The status of property (including the McColl Property) being managed by the Defendants; and
- c. The extent to which the Defendants have engaged in conduct to the detriment of Plaintiffs.

60. The Defendants should be required to produce, for inspection and copying, the corporate books and records, including accounting records, of the Foundation, SDG, SDGP, and CHFPM.

61. To the extent that an accounting and inspection of records reveals that the Defendants have disposed of any funds or property being held for the benefit of the Commission by transferring the

same to other parties, then the Court should find the Defendants in breach of the constructive trust imposed on those funds and that property.

WHEREFORE, Plaintiffs pray that the Court:

1. Issue a preliminary injunction and a permanent injunction precluding the Defendants from distributing funds or property (including the McColl Property) that were acquired by the Foundation prior to the Change in Purpose to any organization other than the Commission.
2. Enter a declaratory judgment that:
  - a. All funds, endowments, real or personal property (including the McColl Property), or any other tangible and non-tangible items given to the Foundation prior to the Change in Purpose are for the sole use and benefit of the Commission; and
  - b. Properties and funds conveyed to the Foundation prior to the Change in Purpose (including the McColl Property) are impressed with a constructive trust for the benefit of the Commission, which imposes duties on the Foundation of a trustee.
3. Find that Foundation and the other Defendants should be estopped from taking any action contrary to the Foundation's promises and representations made to the Plaintiffs and enter judgment against the Defendants for damages arising from the Plaintiffs' reliance on the Foundation's promises and representations.
4. Find that the Defendants had a fiduciary duty to the Plaintiffs as a result of their relationship and the corporate structure of the Foundation, that Defendants have breached their fiduciary duty as alleged herein, and that Plaintiffs are entitled to damages as a result of the breach.
5. Order the production and an accounting of the corporate books and records, including accounting records, of the Defendants.
6. Award such other and further relief as the Court deems just, equitable, and proper.



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Henry W. Brown  
Brian A. Autry  
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Columbia, South Carolina 29202  
803.771.8900

Attorneys for Plaintiffs

September 4, 2013  
Columbia, South Carolina

# Tab C



ALAN WILSON  
ATTORNEY GENERAL

June 5, 2012

James W. Sheedy, Esquire  
Driscoll Sheedy, PA  
222 E Main St  
Rock Hill, SC 29730-4542

Re: Cultural and Heritage Foundation, Inc.

Dear Mr. Sheedy:

As you are aware and as we discussed, the Cultural and Heritage Foundation, Inc. filed an Amendment to its Articles of Incorporation to amend its charitable purpose. During our meeting on May 14, 2012, my understanding was that the Foundation will be writing to each of its donors to inform them of this amendment and to ask their permission to use donated funds for the new purpose.

I am writing to ask if has been done. If so, please provide me with a copy of the letters to each of the donors. If not, please advise when this will be completed. If letters cannot be sent to each of the donors within 30 days, please advise why, as this Office has a duty to protect the assets imposed with a charitable trust and ensure that donors are informed of changes and given the opportunity to consent in a timely fashion.

If you have any questions, please contact me at 803-734-3996.

Thank you for your prompt response to this inquiry.

Yours very truly,

Mary Frances Jowers  
Assistant Attorney General

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**From:** Jim Sheedy  
**Sent:** Tuesday, June 12, 2012 3:59 PM  
**To:** 'Mary Frances Jowers'  
**Cc:** Bill Easley  
**Subject:** York Cultural and Heritage Foundation

Yes. CHF intends to continue to do what the law requires.

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**From:** Mary Frances Jowers [mailto:MFJowers@scag.gov]  
**Sent:** Tuesday, June 12, 2012 3:57 PM  
**To:** Jim Sheedy  
**Cc:** Bill Easley  
**Subject:** Re: York Cultural and Heritage Foundation

Thanks for your email. My understanding is that the Cultural and Heritage Foundation (CHF) will use the funds donated prior to May 1, 2012, in support of its prior purpose, unless those donors consent in writing to use of their funds for the new purpose. Any funds donated after May 1, 2012, and with knowledge of the change in purpose, will be used in support of the new purpose. If this is correct, this is consistent with what the law requires, and the Office would not expect CHF to send letters to all donors who donated prior to May 1, 2012; the letter would only be required if the CHF wants to use donated funds for a purpose other than what the purpose was at the time the funds were donated.

>>> "Jim Sheedy" <JimSheedy@Driscollsheedy.com> 6/6/2012 8:59 AM >>>

Mary Frances,

Thank you for your vm yesterday to explain your attached letter and to express your concurrence with the below.

As suggested by you in our call, this e-mail from me is to memorialize, in contrast to your letter but consistent with our meeting in your office, that if CHF contributes funds donated prior to its change in purpose on May 1, 2012, it will be to the support of CHC, unless those donors consent in writing to the use of their donations for the amended purpose. Any unrestricted funds donated after May 1, 2012 with knowledge of the change in purpose may be used by CHF within the bounds of its new purpose. CHF has no immediate plans to seek donor consent in writing for the use of pre-May 1st donations for its amended purpose. But, if you insist on a donor notice within the next 30 days seeking such consent, CHF will do that.

Please confirm that your letter is hereby amended by this e-mail.

Jim

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**From:** Mary Frances Jowers [mailto:MFJowers@scag.gov]  
**Sent:** Tuesday, June 05, 2012 9:36 AM  
**To:** Jim Sheedy  
**Subject:** York Cultural and Heritage Foundation

Please see the attached letter.

8/1/2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Equity Court

The Honorable S. Jackson Kimball, III, Master-in-Equity

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Case No. 2013-CP-46-1986

York County and Cultural and Heritage Commission  
of York County, ..... Respondents,

v.

Culture and Heritage Foundation, Inc.; Sustainable  
Development Group, Inc.; SDG Properties, LLC;  
and CHF Property Management, LLC. .... Appellants.

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CERTIFICATE OF SERVICE

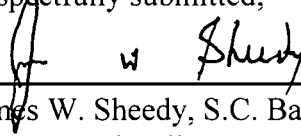
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The undersigned hereby certifies that on the date indicated below he served  
counsel for Respondents with a copy of the *Appellants' Memorandum on Issue of  
Appealability* by mailing a copy of the same via First Class, U.S. Mail, postage-paid  
on the date set forth below.

Brian A. Autry  
Nexsen Pruet, LLC  
P.O. Drawer 2426  
Columbia, S.C. 29202-2426

Date: 12/6/13

Respectfully submitted,

  
\_\_\_\_\_

James W. Sheedy, S.C. Bar No. 5052  
Susan E. Driscoll, S.C. Bar No. 71447  
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