

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ABBEVILLE )  
 )  
 ROBERT E. SMITH, )  
 and WILLIAM K. SMITH )  
 )  
 Plaintiffs, )  
 )  
 V. )  
 )  
 ERSKINE COLLEGE, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2011-CP-01-109

REVISED ORDER

**TRUE COPY**  
 BY *Emily Y McMahhan*  
 ABBEVILLE COUNTY CLERK OF COURT

EMILY Y MCMAHGAN  
 CLERK OF COURT

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FILED  
 STATE OF SOUTH CAROLINA  
 COUNTY OF ABBEVILLE

THIS MATTER CAME BEFORE THE COURT for a bench trial on May 22, 2014 in Greenwood, South Carolina. Present were James Randall Davis, Esq. and Nikki Setzler, Esq. representing the Plaintiffs, and Roy Hemphill, Esq. representing the Defendant. Prior to trial both parties moved for Summary Judgment in front of The Honorable Eugene C. Griffith, Jr. Summary Judgment was denied on June 18, 2013, and the case went forward. Plaintiffs' complaint seeks a Declaratory Judgment to confirm the validity and ability of Plaintiffs to redeem, honor or repurchase the Certificate of Scholarship and Sub-Certificates which were issued to Rev. J.R. Castles (hereinafter referred to as "Rev. Castles") in 1854 by Erskine College (hereinafter referred to as "Erskine").

The court issued an order dated January 2, 2015 finding that the doctrine of laches applies to prevent relief. Plaintiffs filed a motion for reconsideration, the hearing on which was held on May 18, 2015. Having carefully reviewed the parties' briefs, reflected on the testimony at trial, considered the relevant legal authorities, and reconsidered the court's order of January 2, 2015, the Court hereby finds as follows:

## FACTS

Erskine College was founded as a private liberal arts college in Due West, South Carolina in 1839. On April 8, 1853 Erskine adopted an Endowment Plan to raise funds for the school, primarily by the sale of scholarships. The Endowment reads in pertinent part as follows:

"...An Endowment Fund of a Hundred Thousand Dollars shall be created by the sale of Scholarships; which Scholarships shall be offered on the following terms and conditions:

1. The payment of forty dollars (\$40) shall endow a *single scholarship*, which shall entitle the subscriber to the tuition of *one student* during the term of six years.
2. The payment of sixty dollars (\$60) shall endow a Scholarship which shall entitle the subscriber to the tuition of one or more of his own sons, or of any students he may select, amounting in the aggregate to twelve years.
3. Any person paying or securing to the Trustees of said College the sum of one hundred dollars (\$100) shall be entitled to the education, free of tuition expenses, of one son or nominee for the term of *twenty-five years*, or of two or more pupils at the same time, amounting in the aggregate to twenty-five years.
4. No sales of limited scholarships shall be binding either on the purchaser or on the Board of Trustees, until scholarships amounting to *fifty thousand dollars* are sold, (due notice whereof shall be given in the public prints), after which time all contracts for scholarships made previous to that date shall be binding on the parties concerned, shall become due, and bear interest. On the payment of Scholarships, subscribers or purchasers of the same shall be furnished with a certificate, signed by the President and Secretary of the Board of Trustees of the said Erskine College, guaranteeing to the said subscribers the privileges enumerated by the resolutions of the Board, according to their relative subscriptions.  
\* \* \*
5. Any individual, association of individuals, or congregation, who shall pay or secure to the Trustees of Erskine College, the sum of five hundred dollars (\$500), shall be entitled to a perpetual scholarship, to which the party or parties may appoint any pupil he or they may think proper."<sup>1</sup>

If an individual made a contribution to the endowment fund, Certificates of Scholarship along with Sub-certificates were issued by Erskine to the individual reflecting the amount paid by the individual. The Certificates of Scholarship and Sub-certificates evidenced that an individual

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<sup>1</sup> In original endowment, listed as bullet 7. Also, all italics emphasis is as reflected in original endowment.

subscribed to the endowment and the Endowment Plan laid out the terms of the agreement between the individual and Erskine.

In 1854, Rev. Castles contributed one hundred dollars (\$100). Per the Endowment Plan's terms, Rev. Castles received the Certificate of Scholarship and the Sub-Certificates, with each Sub-Certificate representing a single year of tuition. Rev. Castle's Certificate of Scholarship lists his name and reads as follows:

"This certifies that, for and in consideration of One Hundred Dollars, paid to John N. Young, Treasurer of the Board of Trustees of Erskine College, or to his successor in office, Rev. J. R. Castles is entitled to twenty-five Years of Tuition in the said College; which Tuition is to be obtained on the surrender of the accompanying Sub-Certificates--- each Sub-Certificate entitling to One Year's tuition."

The Certificate of Scholarship is signed by both the President and Secretary of Erskine. The Sub-Certificates state that surrender "to the Treasurer of Erskine College entitles the bearer to One Year's Tuition in said College." None of the Sub-Certificates have expiration dates, nor do the Certificate of Scholarship or the Endowment Plan expressly limit when the certificates may be redeemed.

For the past one-hundred sixty (160) years, Rev. Castles' Certificate of Scholarship and Sub-Certificates have been passed down through family inheritance. Today, Robert and William Smith (hereinafter referred to as "Plaintiffs") have rightful ownership of the Certificate of Scholarship and the twenty-five Sub-Certificates. Plaintiffs now contend they are entitled to redeem the Sub-certificates in lieu of paying the current tuition at Erskine.<sup>2</sup> In 2011, Plaintiffs brought suit to enforce what Plaintiffs characterize as Rev. Castles' "investment." No real factual dispute exists concerning the Endowment Plan or the terms under which the Plan initially

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<sup>2</sup> The 2013-2014 tuition rate at Erskine was \$29,395.00, not including room and board or other associated fees. This rate was found on Erskine's website, <http://visit.erskine.edu/parents/excellence-affordability/>. Gregory W. Haselden, Erskine's Senior Vice President for Finance and Operations, signed an affidavit testifying that tuition for the 2011-2012 school year was \$26,350.00 and tuition for the 2012-2013 school year was \$27,915.00.

entitled the Rev. Castles, or his designees, heirs or assigns, to free tuition. Simply stated, the dispute is whether this ancient obligation remains viable and enforceable. Erskine contends the Certificate of Scholarship and Sub-certificates presently possess no redeemable value as they have expired, and if not expired, Plaintiffs' claims are barred by the doctrine of laches, doctrine of staleness of demand, and the statute of limitations. Plaintiffs assert that the Sub-certificates constitute an investment by Rev. Castles, and this investment is no different from a bearer bond. Plaintiffs seek a declaration that the Certificate of Scholarship and Sub-certificates are currently redeemable per the original terms of the endowment plan; in essence, Plaintiffs seek specific performance per the original terms under which the Certificates were issued, e.g. twenty-five (25) years of free tuition at Erskine.

For the following reasons, the Court finds that the Certificate of Scholarship and accompanying Sub-certificates have, by the passage of time and intervening historical events, been rendered void and unenforceable.

#### STANDARD OF REVIEW

A declaratory judgment action is neither legal nor equitable, but rather takes on the nature of the underlying claim. Felts v. Richland Cnty, 303 S.C. 354, 356, 400 S.E.2d 781, 782, (1991). An action for specific performance of a contract sounds in equity. Ingram v. Kasey's Associates, 340 S.C. 98, 105, 531 S.E.2d 287, 290 (2000). An action to construe a contract is an action at law. Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). An action for breach of contract seeking money damages is an action at law. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 430, 540 S.E.2d 113, 117 (S.C. Ct. App. 2000). The one who alleges the contract must prove it by the preponderance of the evidence, -by the greater weight of the testimony. In a civil suit that is always the rule, -the



preponderance of the evidence; the greater weight of the testimony. Jones v. Fitzpatrick, 47 S.C. 40, 24 S.E. 1030, 1031 (1896). Defenses, such as the statute of limitations, will bar recovery. Harvey v. S.C. Dept. of Corrections, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (S.C. Ct. App. 2000).

### LAW & ANALYSIS

As an initial matter, the Court acknowledges and appreciates the legal arguments made by both Plaintiffs and Defendant; this is certainly a very interesting case, and precedent to aid the court is sparse. Based on the unique facts presented, the passage of time, and intervening historical events, the Court finds Plaintiffs' claim is barred by the doctrines of laches and staleness of demand.

#### **A. Nature of the Transaction**

At the hearing on Plaintiffs' motion for reconsideration, Plaintiffs request that the court definitively classify exactly what type of instrument or agreement was at issue in this case. Although the court finds that a precise definition of the agreement is unnecessary, for purposes of subsequent review the court finds that the Certificate of Scholarship and accompanying Sub-certificates are hybrid instruments encompassing both an eleemosynary intent as well as a tuition or scholarship component. Put another way, the court concludes that Rev. Castles and others were likely motivated, at least in part, by charitable intent in deciding to purchase the Certificate of Scholarship. That is, Rev. Castles sought to endow Erskine as a college which would both promote the Presbyterian faith and educate others in a manner consistent with that faith. Therefore, a portion of the payment for the Certificate of Scholarship indicates a charitable or donative intent.

Additionally, by making this contribution, the Rev. Castles and others became entitled to assign twenty-five (25) years of education at Erskine to some other individual. Accordingly, Rev. Castles and other purchasers were also motivated by the investment nature of the Certificates. This aspect of the Certificate of Scholarship gives rise to a contractual right which could be exercised at the discretion of the purchaser.

Because of the dual nature of the Certificate of Scholarship, the court characterizes the instrument as an "Eleemosynary Scholarship Program," an instrument which combines both a charitable benefit to Presbyterian with a corresponding financial or educational benefit to the original benefactor or his assigns. Because Plaintiffs seek declaratory judgment that the Certificates of Scholarship's eligibility remains outstanding, due and payable, Plaintiff essentially seeks specific performance of this obligation from 1854.

#### **B. The Doctrine of Laches**

Laches is defined as an "unreasonable delay in pursuing a right or claim – almost always an equitable one – in a way that prejudices the party against whom relief is sought." Black's Law Dictionary 712 (9<sup>th</sup> ed. 2009). "The equitable defense of laches follows the equitable maxim: "Equity aids the vigilant, not those who slumber on their rights." Eldridge v. Eldridge, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) (citing Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955)). In South Carolina, "a party asserting laches must show that prejudice has occurred to the extent that it would be inequitable to allow enforcement of the other party's rights." 12 S.C. Jur. Equity § 25. "Delay alone does not constitute laches, but the delay must be such that, as a result, the defendant was materially prejudiced." Id. Therefore, the elements of the defense of laches are as follows:

1. Delay by one party

2. Unreasonable or unexplained length of time
3. Knowledge of rights by the party
4. Reliance on non-assertion by the other party
5. And, prejudice to that other party if the right is now asserted. Id.

Based on the foregoing, this Court finds the elements of the Defense of Laches have been met:

- (1) In this case, one-hundred sixty (160) years have passed since the original contract was formed between Rev. Castles and Erskine. As stated, Plaintiffs obtained Rev. Castles' Certificate of Scholarship and Sub-certificates through family inheritance. Although Plaintiffs were not privy to the contract between Rev. Castles and Erskine and although they obtained the certificates much later, their attempt to use these certificates one-hundred sixty (160) years later clearly constitutes a delay.
- (2) Further, although Plaintiffs may not have had possession of the certificates until relatively recently, no explanation is offered as to why the certificates went unredeemed from 1854 to 2008. During that period, other family members of the Plaintiffs had rightful possession of these certificates, yet they made no attempt to redeem them.
- (3) Because the certificates were passed through family inheritance, knowledge of the certificates certainly existed in Plaintiffs and Plaintiffs' family, as they have held the certificates for one-hundred sixty (160) years. Apparently, these certificates were passed through familial generations and not simply stumbled upon by the Plaintiffs, illustrating knowledge of an arguable right to tuition at Erskine by someone in Plaintiffs' family line over the last one hundred sixty (160) years. Importantly and in addition, at no point during this time period did any prior relative seek a determination as to the certificates' validity, nor is there any evidence of any inquiry by Plaintiffs' family to Defendant concerning their continued validity or enforceability.

(4) As was evidenced at trial, Erskine has not honored these certificates since the 1870s and there is no reference in Erskine's catalogs to the certificates since that time. Also, evidence shows the Civil War almost depleted the Endowment Funds, causing Erskine to honor the certificates on a reduced basis for a time prior to the second endowment in the 1870s. This new endowment fund entirely altered the terms of the original 1853 endowment. There is ample evidence that Erskine has long relied on these certificates being expired, extinguished, and no longer enforceable. The fact that no other instances of the certificates being presented and honored in full during the intervening one hundred, sixty (160) years indicate an acquiescence, acknowledgement, and understanding on the part of Erskine and any surviving post-Civil War certificate holders that history had compelled a change of circumstances upon Erskine and the donors, and that if Erskine were to survive as an institution of higher learning, redemption of the certificates at full value simply was not possible.

(5) Great prejudice would result from allowing the redemption of the certificates in that it would require Defendant to afford free tuition for any individuals who might come forward with these antiquated certificates. Also, as is further discussed below, Defendant would be greatly prejudiced by the discrepancy in the 1854 tuition rate and today's tuition rate. In short, honoring the certificates would represent a windfall to any certificate holder and would be extremely detrimental to Erskine's financial capacity to plan for and execute its educational mission.

Further, "in determining the question of laches, it is also proper to take into consideration whether there has been such a change in conditions as to prejudice the right of one of the parties in making his defense and render inequitable the enforcement of the claim sought

to be asserted." Hemingway v. Mention, 228 S.C. 211, 218, 89 S.E.2d 369, 372 (1955) (citing Lyerly v. Yeadon, 199 S.C. 363, 19 S.E.2d 648, 655 (1942)). As already stated, Erskine has not honored these certificates in over one-hundred forty (140) years, thereby prejudicing their right to create a defense against the certificates.<sup>3</sup> Rev. Castles and the architects of the original endowment have long since passed, and no one remains alive to explain fully the intent of Erskine or Rev. Castles. Also, the increase in tuition rates at Erskine from 1854 until present most certainly represents a substantial change in conditions which would constitute inequity if these certificates were enforced. Per Plaintiffs' argument, \$100 in 1854 bought twenty-five years of tuition at Erskine, and so long as Erskine exists, those certificates are redeemable in full. Today, Erskine's tuition is pushing \$30,000 per year, making the equivalent of the present value of the certificates \$750,000. The length of time and increase in tuition rates over the past one-hundred sixty (160) years most definitely constitute a change of conditions which would cause an unjust, inequitable, and potentially destructive effect on Erskine if these certificates were to be enforced.

One-hundred sixty (160) years is an incredibly long amount of time to allow this right to go unasserted. South Carolina case law states the burden in applying the defense of laches as being the lack of a statutory amount of time to allow the defense to be upheld:

It is confessedly impossible to adopt a general rule, and fix a definite length of delay which shall justify a court of equity in refusing relief on the ground of laches. Each case must be governed by its own facts, and courts of equity must be trusted to exercise a salutary discretion. Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816, 824 (1939).

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<sup>3</sup> At the hearing, the Court was advised that, in recent years, a student had come forward requesting redemption of a Sub-certificate. The terms reached by the student and Erskine concerning how that matter was handled are confidential, and the Court was not made privy to the specifics of that confidential agreement. Accordingly, being an isolated incident, this single occurrence has no bearing upon the Court's analysis.

Based on the specific facts of this case, this Court concludes one-hundred sixty (160) years is a sufficient, if not exorbitant, amount of time warranting the application of laches and, consequently, barring Plaintiffs' recovery. South Carolina case law has barred actions because of laches for much shorter lengths of time than one-hundred sixty (160) years. In 1955, the Supreme Court of South Carolina upheld the defense of laches due to a ten year length of time. Hemingway, 228 S.C. 211, 89 S.E.2d 369, (1955). In 1939, the Supreme Court of South Carolina upheld the defense of laches due to a nineteen year length of time. Bell, 191 S.C. 105, 3 S.E.2d 816, (1939). In 2010, the Supreme Court of South Carolina upheld the defense of laches due to a thirty-nine year length of time. Robinson v. Estate of Harris, 388 S.C. 616, 698 S.E.2d 214 (2010). Based upon a consideration of the five elements referenced above, the Court finds that laches bars Plaintiffs' action.

### C. The Doctrine of Staleness

While the Court rests its decision primarily on the doctrine of laches, the doctrine of staleness should also be considered in this case. It has been held, "there are some points of distinction between laches and staleness of demand." Bell, 191 S.C. 105, 3 S.E.2d 816, 824 (1939) (citing Thomas v. MacNeill, 138 S.C. 86, 92, 135 S.E. 643, 645 (1926)). In Bell, the Supreme Court reiterated,

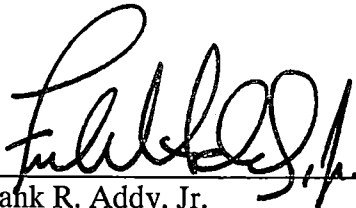
'Laches' has been defined as 'the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done' ... A 'stale demand' has been defined as 'one that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied.' Id., 3 S.E. 2d at 824 (citing Thomas v. MacNeill, 138 S.C. 86, 92, 135 S.E. 643, 645 (1926)).

In this case, there has been a delay that has rendered it difficult, if not impossible, for all parties and the court to understand the true meaning, significance, and intent of the Rev. Castles and Erskine. Although Erskine has continued as an institution of higher learning, every individual involved in the transaction of 1854 are deceased and there are no cases of record reflecting any similar situation arising in South Carolina. Based on the length of time which has passed and the fact that no effort was made to redeem the certificates or ascertain their continued validity, any claim regarding enforceability has been abandoned. At the very least, the passage of time and post-Civil War events have created a reasonable presumption that a party in possession of the certificates would not seek their redemption. Accordingly, this Court finds the doctrine of staleness would also bar Plaintiffs' recovery.

**CONCLUSION**

For the reasons explained above, due to the unique facts of this case, this Court finds the doctrine of laches and the doctrine of staleness bar Plaintiffs from enforcing both the Certificate of Scholarship and Sub-certificates.

**IT IS SO ORDERED.**

  
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Frank R. Addy, Jr.  
Circuit Court Judge  
Eighth Judicial Circuit

July 2, 2015  
Greenwood, South Carolina