

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Trial Court Case No.: 2011-CP-01-109
Appellate Case No.: 2015-001660

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SC Court of Appeals

Robert E. Smith, and William K. Smith Appellants

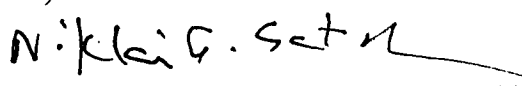
v.

Erskine College Respondent

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- i) Under common law principles, can a bearer coupon bond investment that was explicitly drafted without durational limitations be rendered void and unenforceable under the doctrines of laches or stale demand?
- ii) Did the Trial Court commit legal and factual error in its evaluation of the elements of laches and stale demand?
- iii) As part of its holding that the Certificate and Sub-certificates are void and unenforceable, did the Trial Court err in its factual finding that Reverend Castles harbored a charitable or donative intent when investing in the Certificate of Scholarship and Sub-certificates?

STATEMENT OF THE CASE

This suit was filed by Robert E. Smith and William K. Smith (herein also referred to as "Appellants" or "Smiths"), against Erskine College (herein referred to as "Erskine College" or "Respondent"), on April 25, 2011. [Summons and Complaint, p. 1]. The Smith's Complaint sought a Declaratory Judgment to confirm the validity of the Certificate of Scholarship and Sub-Certificates which were issued to Reverend J.R. Castles, the deceased ancestor of Appellants. In 1854, Erskine College contracted with Reverend Castles to invest One Hundred and no/100 (\$100.00) Dollars towards the Erskine College endowment fund in return for twenty-five years of tuition at Erskine College, redeemable upon surrender of individual Sub-Certificates. Erskine College refused to honor the Sub-Certificates and this suit followed.

Trial of this suit was argued on May 22, 2014 before The Honorable Judge Frank R. Addy, Jr., wherein Appellants arguments demonstrating the validity of the Certificate of Scholarship and Sub-Certificates were put forth. [Transcript, p. 1-70] The Trial Court granted an Order in favor of Respondent Erskine College on January 2, 2015. Appellant filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and put forth additional oral arguments before Judge Addy on May 18, 2015. [Motion Transcript, p. 1-26]. The court granted a Revised Order in favor of Respondent Erskine College on July 2, 2015. [Revised Order, p. 1-11] Appellants Robert E. Smith and William K. Smith now appeal the Revised Order of the court on the basis of errors of law and fact.

STATEMENT OF FACTS

Erskine College was founded as a private Liberal Arts college in 1839. In 1853, in an effort to keep pace with other college and university educations, both in thoroughness and affordability, Erskine College sought to establish an endowment fund for the benefit of their

college of higher learning. The governing body of the college, The Associate Reformed Synod of the South, discussed different methods of raising the finances necessary to create an endowment fund. Erskine's Board of Trustees later drafted the Erskine College 1853 "Plan of Endowment," and adopted it on April 8, 1853. [*Plaintiffs' Exhibit 1*]. The Plan of Endowment served as an internal resolution for the College.

The 1853 "Plan of Endowment" reads in pertinent part,

" . . . 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. . ."

* * *

6. The purchaser of a limited scholarship may enjoy the advantage of the same at such time, and at such intervals, as may suit his convenience.

* * *

9. All scholarships created by these proceedings, both limited and perpetual, may be transferred by bargain or sale, or assigned, or devised by Will, and in the case of intestacy, they shall pass to the administrators as other property.

* * *

Resolved, That the following form of Bond be adopted by the Board of Trustees to carry out the foregoing act establishing scholarships in Erskine College.

SCHOLARSHIP BOND

Whereas the Board of Trustees of Erskine College, Abbeville District, South Carolina, in order to raise the sum of Fifty Thousand Dollars, and upwards, for the purpose of education did on the 8th day of April, A.D. 1853, pass certain resolutions to the effect that the subscriptions and payment of certain sums should entitle the person or persons so subscribing, to the privilege of so many years Scholarship in the said Erskine College, as by said Resolutions will more fully and particularly appear. [*Plaintiffs' Exhibit 1*].

In Respondent's efforts to raise sufficient funds for the Endowment Fund, it contracted with many investors, including Reverend J. R. Castles. In 1854, Reverend J. R. Castles invested in the one hundred dollars (\$100) scholarship investment option. By paying One Hundred and no/100 (\$100.00) Dollars in return for the Certificate of Scholarship for 25 years of tuition and the Sub-Certificates, each representing a single year of tuition. [Plaintiffs' Exhibits 2 & 3].

The Certificate of Scholarship bears Reverend Castles' name and states specifically,

"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." [Plaintiffs' Exhibit 2].

The Certificate of Scholarship is then signed by both the President and Secretary of Erskine College. The Sub-Certificates each state that upon "being surrendered to the Treasurer of Erskine College, entitles the bearer to One Year's Tuition in said College." Each Sub-Certificate is individually numbered 725 (which represents the Sub-Certificate group number), and initialed M.N. by Erskin's agent. Erskine College began accepting the Sub-Certificates of Scholarship as compensation for full tuition in the years that followed.

The Civil War required that Erskine College close its doors for a number of years, due to the fact that the college aged men of South Carolina were participating in the war effort. After the war concluded, Erskine reopened and continued to honor the Scholarship Bonds, but at a reduced value of 20% of tuition. [Plaintiffs' Exhibit 7]. The stated reason was that a large portion of its endowment fund was lost due to the fact that Erskine College invested in Confederate Bonds. [Plaintiffs' Exhibit 9].

During that difficult financial time, Erskine College published its intent to continue honoring its Scholarship Bonds so far as its resources would allow. [Plaintiffs' Exhibit 9]. In the years that followed, Erskine College increased the value at which it honored the Certificates.

[Plaintiffs' Exhibit 7 & 8]. In 1871, Erskine began a separate endowment fund; this fund was similar to the 1853 effort, but expressly limited the duration of the College's obligation. Reverend Castles' authentic Certificate of Scholarship and Sub-Certificates were passed down through family inheritance and Appellants William and Robert Smith now have rightful possession of the Certificate of Scholarship and the twenty-five Sub-Certificates. [Transcript of Record at Trial, p. 7 line 20-23].

In 2008, Erskine College declined any right of Appellants' to surrender their Certificate and Sub-certificate in exchange for yearly tuition.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). An action seeking 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). "Moreover, a case with both legal and equitable issues presents a divided scope of review. Thus, 'a legal question in an equity case receives review as in law.'" *Dept. of Transp. v. M & T Ent.*, 667 S.E.2d 7, 12, 379 S.C. 645 (S.C. App., 2008) (citing *Sloan v. Greenville County*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App.2003)). Questions of law may be decided without deference to the Trial Court. *Id.* (citing *Doe ex rel. Legal Guardian v. Barnwell School Dist.* 45, 369 S.C. 659, 662, 633 S.E.2d 518, 519 (Ct.App.2006)). A court's ruling on laches and stale demand is reviewed for an abuse of discretion. *King v. James*, 388 S.C. 16, 694 S.E.2d 35 (S.C. App., 2010). An abuse of discretion occurs either by an error of law or by unsupported factual conclusions. *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729, 731 (S.C. App., 2014).

In addressing findings of fact in an equity action, this Court exercises an equity standard of review and has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Gaddy v. Douglass*, 359 S.C. 329, 333, 597 S.E.2d 12 (S.C. App., 2004) (citing *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001)). "This broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." *Id.* Additionally, Appellants carry the burden of proving that the Trial Court made erroneous findings. *Id.*

ARGUMENT

I. Common law principles of Laches and Stale Demand cannot render a bond investment invalid when that investment was specifically designed to have no durational limit.

a) A valid investment between Reverend J.R. Castles and Erskine College was reached.

A valid contract for investment was entered into between Defendant Erskine College and Reverend J. R. Castles in 1854. All of the necessary elements and terms of a contract are provided in the signed Certificates and Sub-Certificates, thereby creating a binding agreement between the parties, and enabling the contract to be enforced by the descendants of Reverend Castles today, under the same terms which were set forth at the time of contracting.[Plaintiffs' Exhibit 1-3].

To reiterate one of the most basic legal principles, a contract requires an offer, acceptance, and consideration. *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, 313 S.C. 215, 219, 437 S.E.2d 122, 125 (S.C. Ct. App. 1993). If all three elements are present,

then the validity of a contract may only be countered by affirmatively arguing a defense to formation or enforcement.

As the stipulated facts demonstrate, Erskine College set forth a number of different offers, in an effort to secure an endowment fund. [Plaintiffs' Exhibit 1]. The investment at issue, involved the exchange of the one hundred dollars (\$100) payment in return for the Certificate of Scholarship and twenty-five Sub-Certificates, each entitling the bearer to one year of free tuition to the College. Reverend Castles accepted the offer by paying the One Hundred and no/100 (\$100.00) Dollars, and the payment serves as valid consideration. [Revised Order, p. 6]. Defendant Erskine College does not set forth any defenses to formation, but rather argues theories strictly related to the enforcement of the contract. Further, there is case law from other jurisdictions demonstrating that disputes such as this are governed by contract law, and that endowment scholarship contracts are valid contracts. See *Howard College v. Moore*, 71 Ala. 429, 1882 WL 1256, *3 (Ala. Dec. Term 1882.); *Weeks v. Mississippi College*, 749 So.2d 1082 (Miss. Ct. App. 1999). The validity of Reverend Castles investment is established, the issue before this Court addresses its enforceability.

- b) The terms of the investment provided to Reverend Castles constitute bearer coupon bonds that were explicitly drafted without an expiration, nor any restriction as to the duration of their validity.**

The Trial Court erred in failing to recognize Reverend Castles' investment as a bond, both in title and function. In response to the Appellants' Rule 59 Motion to Reconsider, the Trial Court attempted to address the Appellants' contention that the classification of the instrument is appurtenant to the court's ability to determine the sustained validity of the instrument. [Revised Order, p. 5]. The Trial Court disagreed and then hedged by suggesting the nature of the

instrument encompassed eleemosynary intent, investment intent, and tuition scholarship components. [Revised Order, p. 5]. None of these statements provide an actual classification of the Reverend Castles' investment. The evidence provided at trial more than satisfies the preponderance of the evidence standard that the investment acquired by Reverend Castles is a form of bond, which carries with it the patience and longevity associated with bond investments, and is clear in its intent to be perpetually valid.

The rule for enforcement of any contract is a simple one. In Justice Watts' concurrence, it is noted that "People have the right to make any contract the law does not forbid. A contract may work a hardship on one of the contracting parties; but, unless the law forbids the contract, the courts of law must enforce it. People must take care of themselves, or the Legislature must protect them by making the contract unlawful". *Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709 (S.C., 1925). "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (S.C. 1993). All of the necessary terms constituting the investment between Defendant Erskine College and Reverend Castles are set forth within the Certificate, Sub-Certificates, and Plan of Endowment, and the extrinsic evidence put forth at trial only bolsters the arguments of Appellants.

The Certificate of a Scholarship states,

"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." [Plaintiffs' Exhibit 2].

The language drafted by Respondent, and provided in the Certificate and Sub-Certificates serves as the terms of the investment contract, and Respondent's acquiescence is demonstrated by the signature of the Erskine College President and Secretary. Under the law of contract construction,

"Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Jordan*, 428 S.E.2d at 707. Appellant contends that the language provided is perfectly clear and easily implemented. Nevertheless, if an ambiguity exists, the drafter of the document was in the best position to prevent confusion in the contract's construction and should be the party to suffer from its shortcomings. *WDI Meredith & Co. v. American Telesis, Inc.*, 359 S.C. 474, 480, 597 S.E.2d 885, 888 (S.C. Ct. App. 2004) (citing *Williams v. Teran, Inc.*, 221 S.E.2d 526, 529 (S.C. 1976).

The language of the Certificate of Scholarship and Sub-Certificates does not possess any limitation on the time in which the tuition certificates must be redeemed. [Plaintiffs' Exhibit 2 & 3]. Such a lack of any time restriction on the bearer document Sub-Certificates means that an owner's choice to not redeem a Sub-Certificate for tuition cannot be deemed an inexcusable failure to assert a known right. It instead can only be viewed as the family choosing to keep their investment until a time in which they wished to redeem it. This is a consequence that Respondent could have avoided simply by drafting more favorable terms in their own adhesion contract, and it is the intent they specifically acknowledged in a number of the exhibits presented to the Trial Court.

First, the Plan of Endowment that set this investment bond in motion explicitly states that "the purchaser of a limited scholarship may enjoy the advantage of the same at such time, and at such intervals, as may suit his convenience." [Plaintiffs' Exhibit 1]. That excerpt explicitly demonstrates the perpetual nature of the investment and the College's intent to make it so. However, they again demonstrate the perpetual nature of the 1853 Certificates of Scholarship when historical documents compare it to the 1871 endowment effort. [Plaintiffs' Exhibit 5].

The Catalogue of Erskine College discusses the history of the Erskine College endowment fund, it recalls the 1853 endowment fund scholarship sale, the effects of the civil war and the need for a second endowment fundraiser. The document states as follows:

"The result of the Civil War swept away all of this endowment excepting about \$13,000. Having tried some temporary expedients, the Synod, in 1871, entered into a second effort to secure a permanent endowment. ***The plan was similar to the one in 1853, except that the price of scholarships was raised to \$20 each, and the term of the College's obligation limited to 1895.***" [Plaintiffs' Exhibit 5] (emphasis added).

Erskine College's decision to limit its obligation to the end of 1895, *created a twenty-five year expiration date on the second scholarship offer*, and the Certificates issued to investors in the second endowment fund expressly denote when the right to tuition expires. [Plaintiffs' Exhibit 11]. No such language relating to the first endowment effort existed, and Respondent's own comparison of the two endowment efforts acknowledges that a durational limit was not created for the scholarships issued during the first endowment effort. [Plaintiffs' Exhibit 5].

Erskine College unmistakably indicates here that the College did not draft nor intend the 1853 scholarship certificates to have a restriction on the time frame in which they could be redeemed. They expressly created such a restriction on their second endowment, and were so clear as to articulate the difference in the College's obligations of the two Scholarship efforts in an official Erskine College document. [Plaintiffs' Exhibit 5 & 11]. Beginning in 1895, this language was issued for more than 10 years in Erskine's catalogue.

A final factual argument as to the Erskine College's intent to have these 1853 Scholarship bonds operate without expiration can be found in the manner in which the Board Chairman, J. I. Bonner refers to the individuals who purchases Certificates of Scholarship. In the Board's minutes from 1867, the same time in which Erskine was honoring Certificates at the 20% reduced rate due to the Civil War, Dr. Bonner refers to the original investors as "stockholders".

[Plaintiffs' Exhibit 10]. This is the same J. I. Bonner who served as Secretary of Erskine College in 1853 and *personally* signed Reverend Castles' Certificate of Scholarship. [Plaintiffs' Exhibit 2]. While not perfectly accurate, the College considered its Scholarship Bond investors as stockholders. This was not an investment subject to expiration.

There can be little argument that the investment instrument created by Erskine College is anything other than *bearer coupon bond*, redeemable for tuition. The "Plan of Endowment" which was a resolution passed by the Board of Erskine College with the specific purpose of creating the investment now at issue refers to the investment as a "bond", twice. First, below section "12", the Endowment Plan reads, "*Resolved*, That the following form of Bond be adopted by the Board of Trustees to carry out the foregoing act establishing scholarships in Erskine College." [Plaintiffs' Exhibit 1]. The key terms of that excerpt denoting the nature of the investment are "form of Bond" and "establishing scholarships." This interpretation and intent is confirmed by the heading of the following section of the Plan of Endowment, titled "SCHOLARSHIP BOND". [Plaintiffs' Exhibit 1].

Black's Law Dictionary states that a "Bond Coupon" is "part of a bond which is cut and surrendered for payment of one of successive payments of interest." Black's Law Dictionary, 162 (5th ed. 1979). Such a definition is practically identical to the nature of the Certificate of Scholarship, accompanied by Sub-Certificates. The only difference here being the coupons are redeemed for tuition, not interest on the bond's principle.

As to the nature of the bond itself, the specific language used by Respondent thwarts any argument that this investment is, by both title and function, a bearer coupon bond. The key contract term, as it relates to the matter before this Court, is provided on each of the twenty-five Sub-Certificates which are referenced by the Certificate of Scholarship. The Sub-Certificate

states that the "bearer" is entitled to one year of free tuition upon surrendering a single Sub-Certificate to the Treasurer of Erskine College.

The term "bearer" has the same legal meaning today as it did in the 1800's.¹ Black's Law Dictionary defines "bearer document" as: "A document that runs to bearer upon issuance or after a blank endorsement, and that is negotiated by delivery alone. Anyone in possession of a bearer document is a holder of it." Black's Law Dictionary 154 (6th ed. 1999). The status of holder entitles the bearer to receive payment pursuant to the document. Black's Law Dictionary 731 (6th ed. 1999). Use of the term "bearer" legally indicates that an individual who possesses and surrenders a bearer document for compensation, is entitled to the rights conferred by the document. In the case at hand, it indicates that the individual possessing a Sub-Certificate is entitled to redeem the value of the Sub-Certificate and receive the described benefit: one year of free tuition at Erskine College.

The intent of Erskine College is apparent in the language they used for the conveyance and redemption of the Sub-Certificates. Erskine College deliberately chose to use the word "bearer," and fully intended the legal consequences of the term. In the October 24, 1854 issue of the "The Telescope", Erskine College provided a summary of how the Sub-Certificates would be administered to individual investors. The article indicates that that when only a portion of a full sheet of Sub-Certificates is numbered, initialed, and issued, Erskine College required the remaining portion of the sheet to be *burned*. [Plaintiffs' Exhibit 4]. The article expressly indicates that throwing away or discarding the remaining portion of sub-certificates is insufficient. *Id.*

Erskine College demonstrates the bearer document nature of the Sub-Certificates in their burning procedure; had the College not acknowledged or intended that the Sub-Certificates act as

¹ A bearer document "'Passes by mere delivery, and the holder never makes any title by or through any assignment, but claims merely as bearer.'" *Town of Thompson v. Perrine*, 106 U.S. 589, 593 (1883).

bearer coupon bonds, then the method of disposal would not have been addressed or would not have specifically demanded burning. The College, in requiring absolute destruction of the remaining Sub-Certificates, acknowledged the fact that such certificates are valid on their face for any bearer to redeem for tuition. The choice to burn remaining Sub-Certificates clearly acknowledged this bearer document attribute.

The term "bearer" is accompanied by a number of other legal attributes. First, a bearer document is freely transferable. Black's Law Dictionary 154 (6th ed. 1999). The lack of a required signature or named recipient enables a bearer document to be transferred freely, allowing any holder to have the same legal rights as the original owner. Thus, the Sub-Certificates can be sold, assigned, bequeathed, devised, or inherited. The intent of this characteristic is further evident in the fact that the "Plan of Endowment" adopted by the Respondent expressly admits this right. [Plaintiffs' Exhibit 1]. The Respondent's own internal documents demonstrate the College's intent to create bearer coupon bonds in the Sub-Certificates.

The bearer coupon bond nature of the Sub-Certificates provides a timeless freedom of transferability that allows any possessor to redeem the certificates for tuition at Erskine College. The inheritance of the Sub-Certificates by Reverend Castles' descendants, Appellants Robert and William Smith, does not negate the validity of the contract. The Appellants, as bearers, may submit the Sub-Certificates for tuition or transfer them freely to a subsequent holder. The failure of the Trial Court to recognize the nature of these bearer coupon bonds was in legal error.

- c) **The nature of bearer coupon bonds and similar investments requiring long periods of time to accrue value cannot be deemed invalid under laches and stale demand unless explicit language limits the validity of the investment .**

If the evidence above is sufficient to prove that the Certificate of Scholarship is a bond instrument, then the fundamental issue of this case boils down to whether the doctrines of laches and stale demand are applicable to investment vehicles which, *by their very nature*, reward the patience of the investor who holds the investment for himself and even his future descendants without concern for the age of the investment. Corporate bonds, government bonds, stock certificates, and the like all incorporate business risk wherein the purchaser is predicting the value of his investment to increase over a great deal of time. The risk and detriment is that if the issuing entity goes under, the investment is worthless. This is precisely the type of investment that was offered by Erskine College and precisely the risk assumed by Reverend Castles and his heirs. Nevertheless, the Trial Court relied heavily on the doctrines of laches and stale demand in reaching its holding that Appellants' Certificate of Scholarship is void and unenforceable due to the passing of time and historical events. This holding is in error.

Both laches and stale demand are affirmative defenses which must be plead in equity by a defendant seeking to avoid obliging a legal right. *Robinson v. Estate of Harris*, 389 S.C. 360, 698 S.E.2d 801, 804 (S.C., 2010). "Laches is an equitable doctrine which arises upon the failure to assert a known right." *Emery v. Smith*, 301 S.C. 207, 215, 603 S.E.2d 598, 602 (S.C. Ct. App. 2004). In order to successfully argue a defense of laches, the party asserting the defense must show negligence on behalf of the opposing party, an opportunity in which the opposing party should have acted sooner, and material prejudice resulting from the negligent delay. *Provident Life and Acc. Ins. Co. v. Driver*, 451 S.E.2d 924, 929 (S.C. Ct. App 1994) (citing *Wallace v. Timmons*, 101 S.E.2d 844, 847 (S.C. 1958)). "Laches is neglect for an unreasonable and

unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright*, 474 S.E.2d 421, 423 (S.C. 1996). Lastly, *and critically important to the facts of this case*, a party's failure to assert a right cannot come into existence until a reason or situation arises which *demand*s that the right be asserted. *Id.*

The Supreme Court of South Carolina was unequivocal in its assertion of this particular rule in the application of laches. *Id.* Therein, the Court stated as follows:

"Importantly, delay in the assertion of a right does not, in and of itself, constitute laches; rather, '[s]o long as there is no knowledge of the wrong committed and no refusal to embrace opportunity to ascertain facts, there can be no laches.' *Archambault v. Sprouse*, 218 S.C. 500, 63 S.E.2d 459 (1951). The failure to assert a right 'does not come into existence until there is a reason or situation that demands assertion.' *Ex parte Stokes*, 256 S.C. 260, 182 S.E.2d 306 (1971)." *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d 421 (S.C., 1996)

The Court of Appeals reached the same conclusion in its discussion of this point, stating "the lached party must have had actual knowledge or inquiry notice of the facts forming the basis of its claim, and its failure to assert its right is irrelevant until there is a reason or situation that demands assertion." *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924, 929 (S.C. Ct. App 1994) (citing *Ex parte Stokes*, 182 S.E.2d 306, 310, 256 S.C. 260, 267 (S.C. 1971) and *Bell v. Key*, 191 S.C. 105, 3 S.E.2d 816 (S.C. 1939)).

The same general principles apply to stale demand, however a greater lapse of time is needed, and there need not be prejudice or change in position by the pleading party. *King v. James*, 388 S.C. 16, 694 S.E.2d 35, 41 (S.C. App., 2010). Stale demand applies when a known right "'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. (citing *All Saints Parish, Waccamaw v. The Protestant Episcopal Church in the Diocese of S.C.*, 358 S.C. 209, 236, 595 S.E.2d 253, 268 (Ct.App.2004)).

It should be noted that the rule requiring circumstances demanding assertion has not be discussed in specific reference to the doctrine of stale demand. However, the Court in *Bell v. Key* discussed both laches and stale demand in its analysis of the facts, and the *Bell* decision is one of the cited references for the rule from the Court of Appeals decision in *Provident Life*. S.E.2d at 929; *Bell v. Key*, 191 S.C. 105, 3 S.E.2d 816 (S.C., 1939). It stands to reason that such a basic premise would apply to both doctrines, given their similarity. The rule essentially speaks to a right or claim ripening to the need for assertion, and it does not make sense that a right could become stale, if it has yet to ripen in the first place.

The rule is critical because the bearer coupon bonds and similar investments are designed to be perpetual for so long as the issuing entity exists, and often they only reward the investor after many years have passed. The Trial Court failed to consider this argument both at trial and in consideration of Appellants' Rule 59 motion. [Plaintiff's Trial Brief, p. 29, Rule 59 Motion, p. 2]. By improperly characterizing the nature of this investment, the Court wrongly concluded that laches and stale demand could be applied, when in fact the circumstances of the investment have not provided circumstances demanding assertion.

Appellant did not delay in asserting a right to redeem a portion of the Sub-Certificates of scholarship. Reverend Castles and his heirs simply retained their bearer coupon bond investment, which by its own terms and drafting was unlimited by time or value. The investor is in control of when he feels his investment has reached its peak, and unless the investment clearly denotes an expiration, he need not concern himself with the number of years that have passed since purchasing the investment. There is nothing in the Certificate of Scholarship, the Sub-certificates, or the Endowment Plan which demonstrates any uncertainty as to the validity of the

investment due to time, nor is there any indication that an investor has a periodic duty to inquire about his investment. These Certificates were purposeful, explicit, and signed by the President and Treasurer of the College. American Jurisprudence speaks conclusively to such a circumstance where the rights are already acknowledged. "A party cannot be charged with laches or lack of diligence in asserting rights which have been accorded full recognition." 27 Am. Jur. 2d Equity § 155 (1966) (citing *Engel v. Mathley*, 48 NE2d 463, 467 (Ind. Ct. App. 1943)).

Similarly, the Court in *Morgan v. United States* demonstrates that the nature of the instrument determines whether it can be rendered unenforceable by stale demand. The United States Supreme Court, in its discussion of bearer bonds and negotiable paper, stated:

"the rule as to ordinary negotiable paper, payable on demand, is that it is not due, without demand, until after the lapse of a reasonable time within which to make demand; and what the length of that reasonable time is, may vary according to the circumstances of particular cases, and must be governed very largely by the intension of the parties, as manifested in the character of the paper itself, and the purposes for which it is known to have been created and put into circulation." *Morgan v. United States*, 113 U.S. 476, 501 (1885).

A bearer bond does not lose its value simply because the document is old. Absent a termination of the institution which issued the bearer document, the validity of a bearer document can endure the passing of time to whatever extent the language of the document and intent of the parties indicates. See *Id.* The record relating to this investment has an abundance of evidence demonstrating the intent of the parties, the terms of the agreement, and clarity sufficient for the court to know the investment is to be enforced. Furthermore, the record lacks any evidence that Reverend Castles has abandoned his rights. With an investment of this nature, abandonment of rights could only be accomplished by destroying the document or surrendering it back to Erskine without demand for tuition. Neither has occurred here.

Had the record and evidence been unable to provide such a clear demonstration of Erskine College's intent, the contract terms, and the other factual evidence demonstrated at trial, then laches and stale demand could potentially stand as a proper relief wherein uncertainty as to the contract prevents a provision of justice. However, the record in this matter is replete with evidence of intent and a clear ability to interpret the investment purchased by Reverend Castles. As such, laches and stale demand cannot be applied to the circumstances of this case.

d) Persuasive authority demonstrates that a contract which purports to remain valid and guarantees a service for an unlimited duration is valid and enforceable so long as the entity exists.

South Carolina does not have any legal precedent which precisely mirrors the issues created by this case. However, similar cases have arisen in other jurisdiction which do provide guidance as to how other courts have addressed the issues here.

A great deal of the court's reasoning seems to boil down to the idea that this contract is just too old to warrant enforcement. The reasoning suggests that an investment, regardless of its intent to remain perpetually valid, can simply die of old age. The Pennsylvania Supreme Court has handed down a ruling which goes straight to this issue.

Based on the ruling of *Hopkins v. Women's Medical College of Pennsylvania*, age is completely irrelevant to the validity of a contract if the duration is a party's obligation does not contain a restriction. *Hopkins v. Women's Med. Coll. of Pa.*, 331 Pa. 42, 47, 200 A. 32, 34 (1938)

Hopkins deals with the a contract reached between the Alliance of Catholic Women of the Archdiocese of Philadelphia (herein ACWA) and the Women's Medical College of Pennsylvania (herein WMCP) in 1920. The contract reached is summarized as follows: WMCP's acceptance of \$5,000.00 entitles ACWA being permitted to send one qualified candidate to the Women's Medical College of Pennsylvania, each and every year. *Id.* For 15 years following the agreement reached, the contract was honored. *Then in 1935, WMCP refused to accept a*

candidate on the grounds "of a lack of income in the fund necessary to support it." Id. at 45 (emphasis added). The Pennsylvania Supreme Court concluded as follows:

"In our opinion, there is no inconsistency, from a legal standpoint, between an obligation of respondent to administer a scholarship fund as a trust, segregated from its other assets, and an accompanying contractual obligation to give tuition to a student each year whether the income from the fund is or is not sufficient for that purpose. . . . *a valid contract exists between Alliance of Catholic Women of the Archdiocese of Philadelphia and the Women's Medical College of Pennsylvania obligating the College, so long as it exists, to grant tuition therein annually, without additional compensation, and irrespective of the amount of income obtained from the \$5,000 trust fund. . .*" *Id. at 47.*

The Pennsylvania Court demonstrated here that the contract to provide tuition to a selected student, with an unrestricted duration, is a valid contract and must be honored as such. The economic disadvantage that may occur or the age of the contract itself are completely irrelevant to institution's obligations.

The *Hopkins* court, in reaching its ruling, quoted a prior Pennsylvania Supreme Court case on a similar issue, which stated "the acceptance of the endowment and of the terms under which it was given constitute a covenant for the duration of the existence of the donee hospital and its successors." *Alumnae Ass'n of William Penn High Sch. for Girls v. Univ. of Pennsylvania*, 306 Pa. 283, 288, 159 A. 449, 450 (1932). This again shows that an endowment investment, in exchange for a service unrestricted in duration, is valid.

The Trial Court did conclude that the Sub-Certificates have no expiration date, nor do the Certificate of Scholarship or the Endowment Plan expressly limit when the certificates may be redeemed. [Revised Order, p. 3] Therein, the court agreed that the nature of the document is perpetual; but for the improper application of laches and stale demand the Trial Court disregarded the nature of the document. Although this is only persuasive authority, the highest court of the State of Pennsylvania has declared, twice, the exact foundational issue before this

Court: whether a contract which is unrestricted in duration can survive the extensive passage of time, so long as the contracting entity remains in existence. The answer to that question is yes.

II. In finding the Certificate of Scholarship void and unenforceable, the Trial Court erred in its application and evaluation of the elements of laches and stale demand.

a) The Trial Court failed to properly evaluate the elements of unreasonable or unexplained delay constituting laches and stale demand.

The Trial Court's improper application of the unreasonable or unexplained delay elements of laches and stale demand are encased in Appellants' argument that laches and stale demand cannot be properly applied to investment vehicles such as bearer bonds because the nature of the investment does not create a circumstance that demands assertion. See *Mid-State Trust, II v. Wright*, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (S.C. 1971); *Provident Life and Acc. Ins. co. v. Driver*, 451 S.E.2d 924, 929 (S.C. Ct. App. 1994). As the investments are perpetually valid on their face, the "age" of the investment does not equate to a "delay" by the investor in seeking redemption. See *Supra*. Argument I, sub-part (c). As there is nothing on the face of the documents which should provide any concern or question of validity, no delay has occurred in asserting the rights conferred by the Certificate of Scholarship.

b) The Trial Court fails to address the element of negligence in its application of laches.

The Trial Court failed to evaluate and support the negligence element in its findings of laches against the Appellants. The record lacks evidence demonstrating that Reverend Castles or any of his heirs in possession of the Certificate and Sub-certificates were negligent in waiting to redeem their right to tuition, and as such the court erred in ruling against Appellants Robert and William Smith on the basis of laches.

In order to successfully argue a defense of laches, the party asserting the defense must show negligence on behalf of the opposing party, as well as material prejudice that resulted from the party's negligent delay. *Id.* Laches can only apply to legal interests that remain "negligently" unasserted. *Appeal of Brown*, 288 S.C. 530, 535, 343 S.E.2d 649, (S.C. App., 1986).

Reverend Castles and Appellants cannot be assigned any *fault* for the time that has passed in which the Sub-Certificates have not been redeemed. They were relying on the expressed terms of the contract in the manner which was fully within their rights as demonstrated by the Certificate language. The terms failed to express any durational limit or cast any form of doubt as to the investments continued validity.

There is no disputing that Appellants knew they possessed the Scholarship coupon bonds and the rights conferred by the investment, but there is nothing to suggest that Appellants were negligent in asserting those rights. Negligence can only be found if there is some degree of evidence demonstrating that the party owed a duty to take action. See *South Carolina Ins. Co. v. James C. Greene and Co.*, 290 S.C. 171, 176, 348 S.E.2d 617, 620 (S.C. App., 1986). In this case, an action to come forward for a reason other than his desire to redeem his coupon bonds. No such evidence was provided by either party and the multitude of documents relating to the endowment fund do not speak to any such duty. Quite the contrary, as the language of the Certificate of service, sub-certificates, and endowment fund all demonstrate a perpetually valid investment that the purchaser may enjoy "at such time, and at such intervals, as may suit his convenience." [Plaintiffs' Exhibit 1]. With such broad discretion granted to the individual investor, no affirmative duty to act so as to protect his own rights can be levied against him. The Smiths and prior heirs of the Sub-Certificates chose to keep their investment until a time in which they wished to redeem it, and at no time was there ever a circumstance which *required* them to act upon their investment rights.

The Trial Court has imputed a duty upon Appellants and prior heirs to seek redemption within a certain time period or to inquire as to the validity of the Certificate, despite a lack of evidence which would raise such a duty or concern as to validity. [Revised Order, p. 7] Consequently, the Trial Court's ruling in this regard is in error and the ruling of the Trial Court should be reversed.

c) Erskine College cannot justifiably rely on the non-assertion of its bearer coupon bonds.

The Trial Court erred in finding that Erskine College could rightfully rely on the non-assertion of investment rights. As such, laches and stale demand are improper and the court's order should be reversed.

There are a number of legal and equitable justifications for why Erskine College cannot rely on the Appellants' non-assertion of their investment rights. First, as is discussed above, they are the party responsible for drafting the document without any durational limitation, nor any duty incumbent upon the investor to bring forth his investment outside of his own convenience. As such Erskine did not create any basis in which an investor's non-assertion could constitute an intent to abandon their investment rights.

“Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage.” *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (S.C. 1981) (quoting 17A C.J.S. *Contracts* § 324).

Erskine College drafted every word printed on the Certificate and Sub-Certificates. Investors had no input or control of the terms or drafting process: an adhesion contract by

definition. Reverend Castles and subsequent bearers should not endure the consequences of Erskine's drafting decisions. Once the question of ambiguity is settled, the court's single duty is to enforce the clear intent of the contract, unburdened by the possible obligations the contracting parties will have to accommodate. *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (S.C. 1993) *The silence of a contract to a term is not equivalent to an ambiguity.* See *Jordan*, 428 S.E.2d at 707.

Second, Erskine College published a statement in the local newspaper demonstrating its intent to continue honoring Certificates of Scholarship for "so far as the resources of the college will admit." [Plaintiff's Exhibit 9]. If there was any concern as to the validity of his investment going forward, this statement by the College demonstrates an effort to continue honoring the Certificates and it also demonstrates that better financial circumstances in the future will result in a better return on investment. The South Carolina Supreme Court has articulated that the unclean hands doctrine has applicability to the availability of a laches defense. When a party is at least equally responsible for the delay in which they now seek affirmative relief, they may not assert the defense of laches against the opposing party. *Charleston Library Soc. v. Citizens & Southern Nat. Bank*, 201 S.C. 447, 23 S.E.2d 362, 364-65 (S.C. 1942).

As such, the College cannot rely on non-assertion when its own statements constituted an encouragement to investors to hold onto their investment for better financial times.

Lastly, the Revised Order of the trial articulates that the 1871 Endowment fund fundamentally altered the terms of the original endowment and gave a basis to Erskine College to discontinue honoring its agreement and rely on non-assertion in the years that followed. [Revised Order, p. 8]. The Revised Order argues that they attempted to phase out the initial endowment scholarship. [Revised Order, p. 8]. Contract law does not permit such a result.

The investment contract between Erskine and its investors constitutes a bilateral contract. In bilateral contracts both parties exchange promises to perform, as opposed to unilateral contracts, where acceptance can only be accomplished by performance. Section 4 of the Plan of Endowment demonstrate a clear bilateral contract. It reads,

4. "No sales of limited scholarships shall be binding, either on the purchaser, or on the Board of Trustees, until scholarships amounting in 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 Scholarship 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 the said subscribers the privileges, enumerated by the resolutions of the Board, according to their respective subscriptions. [Plaintiffs' Exhibit 1].

The South Carolina Supreme Court has stated that no rule of law "allows a party to alter the terms of a bilateral contract by unilateral modification. It is well established that '[a] written contract may be modified by a subsequent agreement of the parties, provided the subsequent agreement contains all the requisites of a valid contract.'" *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 406, 581 S.E.2d 161 (S.C., 2003) (citing *Florence City-County Airport Comm'n v. Air Terminal Parking Co.*, 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct.App.1984)). The only way in which Erskine could modify the terms of Reverend Castles' investment was to reach a mutual agreement with the bearer of the Certificate. There is no evidence of any kind suggesting such an agreement to modification. [Transcript of Record, p. 54 line 5-13].

Absent such evidence the ruling of the court that the second endowment altered the terms of the first is both a factual and legal error, and reversal is justified.

d) There is no undue prejudice against Erskine College in honoring the terms of the Certificate of Scholarship.

The court erroneously found prejudice against Erskine College if this investment were to be upheld.

The Trial Court states that "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 . . . and by the discrepancy in the 1854 tuition rate and today's tuition rate." The court has not demonstrated prejudice as is required by laches. Prejudice under the doctrine of laches requires that the prejudiced party incur expense or otherwise detrimentally change its position. *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924, 929 (S.C. Ct. App 1994). Erskine College has not provided evidence that it incurred expense from Appellants investment nor changed its position in any way because of the time that has passed. Without such expense or change, there can be no laches.

In finding prejudice, the court cites the change in tuition rates and the fact that the College would have to honor the agreement. [Revised Order, p. 8]. This is essentially an acknowledgment that the College would have to abide by the terms of their investment. These coupon bonds were specifically designed to increase in value over time; that was the incentive in providing payment in advance for multiple years of tuition. It cannot be said that seeking the exact benefit that a party contracted for constitutes prejudice to the opposing party; if such were the case then all successful investments of every kind would be prejudicial to the issuing party.

It obliges recognition that the nature of Reverend Castles' investment came with a great deal of risk. Reverend Castles invested more than 6 years of tuition upfront to the College, and chose not to seek an immediate return on his investment. Erskine College was at the time a very young educational institution and its long term success could not be guaranteed. While the value of these Sub-Certificates is worth considerably more than they were when contracted for, they could just have easily been worth absolutely nothing just twelve years after their creation when the Civil War began, or any year thereafter. Similar to investing in a company and receiving stock, which is directly related to the health of the company, Erskine College asked investors to

invest in its health and promised a benefit to those investors of the educational institution. The benefit they issued provided no indication it would become invalid due to age or increased value.

As a final point regarding the value of a tuition certificate, the court failed to take into consideration the actual dollar amount it "costs" to have one extra student attend classes at a College, as well as the compound benefit Erskine has received from Reverend Castles' investment. It would seem at first glance that the increased tuition costs would render a slanted award for Appellants in comparison to the dollar value the Sub-Certificates would have been worth in closer proximity to the time of the investment. [Transcript of Record, p. 5 line 5-10]. However, Erskine College has been in a position to benefit substantially from the contract. Respondent received the one-hundred dollar investment and has had over 150 years in which to invest and gain compound interest from said one-hundred dollars. Even at a reasonable interest rate, such an investment would potentially be worth hundreds of thousands of dollars. Erskine College did not just receive one-hundred dollars in return for scholarship tuition certificates, it received the benefit of a substantial sum of money for which they have not had to repay any value upon, and the opportunity to invest that money for over 150 years. Part of that repayment is now being demanded, and Respondent should be required to honor the terms of its bargain, any other result would constitute unjust enrichment.

In *Heyward*, Justice Watts' concurrence recognizes that "People have the right to make any contract the law does not forbid. A contract may work a hardship on one of the contracting parties; but, unless the law forbids the contract, the courts of law must enforce it. People must take care of themselves, or the Legislature must protect them by making the contract unlawful." *Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709 (S.C., 1925). As the Pennsylvania Supreme Court noted, a perpetual scholarship is not rendered void simply because the income produced from the money received for the Scholarship is insufficient. *Hopkins*, Pa. at 47, 200 A. at 34 (1938).

Lastly, the court takes issue with historical events, such the Civil War, which prejudice Respondent in having to honor the investment. This argument is in error on the basis that the financial hardship resulting from the Civil War was also 150 years ago. It is certainly a double standard to find that Appellants waited too long on a unlimited investment, but then suggest that 150 year old hardship suffices to grant relief to Erskine College. Erskine has long since recovered from any hardship which it sustained due to war time. Furthermore, it made assurances that it would continue honoring Certificates so long as the resources of the College admitted. [Plaintiffs' Exhibit 9]. Any need for a change in circumstances, as reasoned by the Trial Court, have long since been alleviated, and the court's ruling to the contrary is in error.

Prejudice cannot be attributed to a Erskine simply for having to honor the investment they drafted, nor can a 150 year old war warrant prejudicial circumstances permitting Erskine College to escape its obligations. The court's ruling in this regard is in error and requires reversal.

III. There is no evidence of eleemosynary or donative intent within the record which could provide grounds for the Trial Court to find the Certificate of Scholarship and Sub-certificates void and unenforceable.

The Trial Court found that "Reverend Castles and others were likely motivated, at least in part, by charitable intent in deciding to purchase the Certificate of Scholarship." [Revised Order, p. 5]. This conclusion is unsupported by the record and is a factual error constituting abuse of discretion.

Appellants do not deny the fact that Reverend Castles was a Presbyterian minister, nor do Appellants argue that, as a Presbyterian minister, Reverend Castles would have desired to see Erskine College succeed as an institution of higher learning with a foundation built upon the Presbyterian faith. However, there is no evidence provided by either party that Reverend Castles or his heirs intended the \$100 payment to constitute a donation or charity to the College. The court's leap in reasoning cannot be

supported by the facts provided in the record. A desire to see the College succeed is not equivalent to an affirmative intent to donate his money, abandon his rights, or otherwise diminishing his intent to demand a return on his investment. It is more than common that investments are made with companies or entities in part because the entity's goals align with the interests or sympathies of the investor. However, the fact that an investor and entity share a common ideal does not render the assets of the investor "charitable". One could argue that government bonds sold during war, "eco-friendly" or alternative fuel companies, and medical technologies all have an element of altruism or goodwill in their corporate mission, but that does not give those companies a basis to refuse payment on their stocks and bonds. Similarly, if such were the rule, employees of a given company would never buy that company's stocks or bonds, and those who have could be turned away. As Appellant argued at their Rule 59 Motion to Reconsider, "just because you have a greater desire to invest in company 'A' because you are closely connected to it doesn't -- as opposed to company 'B' that you don't, doesn't mean that you're not entitled to receive exactly what you've contract to receive. [Rule 59 Motion Transcript, p. 21 line 22- p. 22 line 3]

The Trial Court's conclusion that a donative intent existed and contributed to the unenforceability of the investment is in error and reversal is warranted.

CONCLUSION

The Respondent seeks to ask this Court to grant it the *convenience* of escaping a perfectly valid investment. The law does not protect the conveniences of parties, but rather, it protects the rights of parties. Appellants Robert and William Smith have a contractual right to redeem the bearer Sub-Certificates for free tuition attendance at Erskine College, and the law protects this right above the economic disadvantage Respondent will face because of the less than advantageous contract it drafted and entered into with Reverend Castles.

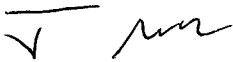
The Trial Court seized upon this plea and erroneously concluded that laches, stale demand, historical events, and eleemosynary intent render the Appellants' Certificate and Sub-certificates void and unenforceable. As the above arguments demonstrate, this investment was a

bearer coupon bond, perpetually valid by its nature and its drafting. Equitable relief pursuant to laches and stale demand cannot be logically applied to investments which are inherently based on lengthy retention and the investors sole discretion for seeking redemption. Yet even if applied to the facts of this case, the court's evaluation of the various elements of laches and stale demand are in error on both factual and legal grounds. Lastly, the court reaches factual conclusions as to the charitable intent of Reverend Castles despite an absence of evidence to support the conclusion.

These errors of law and fact are each sufficient to warrant reversal in this matter, and aggregately they demonstrate an abuse of discretion by the Trial Court which cannot stand. Appellants seek reversal of the Trial Court's Revised Order and a holding that Appellants' Certificate and Sub-certificates are valid and enforceable for free tuition at Erskine College.

DAVIS FRAWLEY, LLC

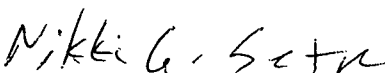
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December 2, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Trial Court Case No.: 2011-CP-01-109

Appellate Case No.: 2015-001660

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SC Court of Appeals

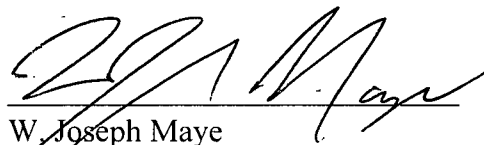
Robert E. Smith, and William K. Smith Appellants

v.

Erskine College Respondent

PROOF OF SERVICE

I certify that I have served the Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal, to the attorney for the Respondent, by placing it in the U.S. postal mail, postage pre-paid on December 2, 2015, addressed to its attorneys of record, Roy R. Hemphill, Esquire, P. O. Box 1547, Greenwood, SC 29648.



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THE STATE OF SOUTH CAROLINA
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Frank R. Addy, Jr., Circuit Court Judge

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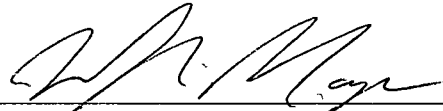
Erskine College Respondent

CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Respondent complies with Rule 211(b) of the South Carolina Appellate Court Rules.

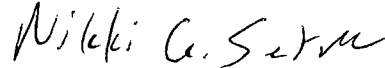
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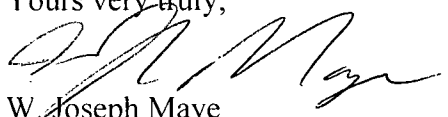
RE: Filing of Appellants Initial Brief and Designation of Matter
for Appellate Case # 2015-001660

To the Clerk of Court for the South Carolina Court of Appeals:

Attached is Appellants' Designation of Matter, Initial Brief, Proof of Service, and Certificate of Counsel in regard to Appellate Case number 2015-001660. Please file and send clocked copies back in the pre-addressed and metered envelope.

Thank you in advance.

Yours very truly,


W. Joseph Maye
/wjm; enclosures

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