

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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FEB 29 2016
SC Court of Appeals

Robert E. Smith, and William K. Smith Appellants

v.

Erskine College Respondent

REPLY BRIEF OF APPELLANTS

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February 26, 2016

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FACTS

At trial, a major dispute between the parties centered around the identification and interpretation of the Certificate of Scholarship, the Sub-certificates, and the Plan of Endowment language, and whether an expiration or durational limit was incorporated into the investment instrument. Judge Addy, in his initial Order, dated January 2, 2015, provided an extensive factual discussion about the Certificate of Scholarship in question and the terms provided for in the instrument. Therein, he states, "None of the Sub-Certificates have expiration dates, nor do the Certificates of Scholarship or the Endowment Plan expressly limit when the certificates may be redeemed." (Order of Trial Court, pg 3). Judge Addy goes on to rule against Appellant on the basis of laches and stale demand.

Appellants filed a Rule 59(e) Motion to Reconsider in order to acquire a ruling from the Trial Court identifying the *nature* of the instrument; Appellants contended that the bearer-bond nature of the instrument render the defenses of laches and stale demand inapplicable. Judge Addy obliged, filing a revised Order, but classified the Certificate of Scholarship and Sub-certificates as "hybrid instruments encompassing both an eleemosynary intent as well as a tuition or scholarship component. (Revised Order, 5). In the Trial Court's factual accounting for the Revised Order, Judge Addy again concluded that there is no expiration or express limitation as to when certificates may be redeemed. (Revised Order, 3). The Court maintained its ruling against Appellants on the basis of laches and stale demand, and this appeal followed.

Separate from a consideration of the doctrines of laches and stale demand, and in conflict with Judge Addy's rulings, Respondent seeks to argue on appeal that a twenty-five year expiration applies to the Certificates of Scholarship and Sub-certificates. (Initial Brief

of Respondent, p. 3-14). They also seek to argue that the Certificate of Scholarship and Sub-certificates are negotiable instruments and not valid in perpetuity. (Initial Brief of Respondent, p. 15-19).

ARGUMENTS

Though the parties have addressed the issues on appeal in detail in their previous submissions, Appellants William and Robert Smith submit this Reply Brief to briefly address Erskine College's arguments.

I. Respondent failed to institute a Cross-Appeal pursuant to Rule 203(c) of the SCACR, and is therefore barred from arguing against the Trial Court's unappealed rulings that the Certificates of Scholarship are not restricted by durational limit and are not negotiable instruments.

The Trial Court's rulings that the Certificates of Scholarship and Sub-certificates do not possess an expiration or durational limit and are not negotiable instruments are now the law of the case, and cannot be reached as issues on appeal.

Rule 203(c) of the South Carolina Rules of Appellate Practice permits a respondent to file a cross-appeal to address rulings of the lower court it wishes to have heard on appeal. In application of that rule, the South Carolina jurisprudence has demonstrated that if a respondent fails to cross-appeal an issue, they are barred from contesting a lower court's findings as to that issue. *Sanders v. S.C. Dept. of Corrections*, 665 S.E.2d 231, 234, 379 S.C. 411 (S.C. App., 2008); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct.App.1999). See *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 177 S.E.2d 544 (S.C., 1970). The trial court's ruling becomes the law of the case, whether right or wrong. *Id.*

In 2008, the Court of Appeals affirmed the ALJ's initial finding that Sanders had

a property interest in his non-wage funds deposited in his Account. The Court held,

"We do not address this issue because the Department failed to cross appeal the ALJ's finding. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct.App.1999) (holding a lower court's finding was the law of the case because respondent failed to cross appeal the issue); Rule 203(c), SCACR (detailing the proper procedure for filing a cross appeal). Therefore, the ALJ's finding that Sanders maintained a property interest in non-wage funds deposited into his Account is the law of the case and we find the circuit court did not err in affirming the ALJ on this issue. See *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (finding an unappealed ruling, right or wrong, is the law of the case).³" *Sanders*, at 234.

As is demonstrated in *Sanders*, a respondent to an appeal is charged with preserving any issues he or she desires to have heard on appeal. This rule of law is applicable to the circumstances created by arguments set forth in Respondent's Initial Brief.

In sections I(A), I(B), and I(C), of Respondent's Initial Brief, the Respondent argues as they did at trial, suggesting that a durational limitation or expiration is to be applied to the investment instrument. As is noted in Judge Addy's initial Order and Revised Order, there are no expirations or express limitations to when the Certificates may be redeemed. (Order, pg. 3; Revised Order, pg. 3). Respondent's arguments are in direct conflict with the Trial Court's ruling.

Additionally, Respondent argues in section I(E) that the Certificate and Sub-certificates are negotiable instruments and not valid in perpetuity. In his Revised Order, Judge Addy limits his identification of the instrument to an "Eleemosynary Scholarship Program" or "hybrid instrument". (Revised Order, pg. 3, 6). There is no mention of negotiability or perpetuity, rendering such arguments to be in conflict with the Court's rulings. In further support, the Trial Court's ruling on the basis of laches and stale demand demonstrate that the Judge Addy found the Certificates *equitably unenforceable*, not

invalid. As such, Respondent's argument in section I(E) is improper, as it is in conflict with the ruling of the Court.

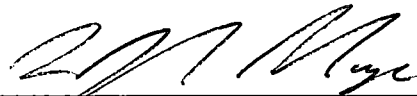
In light of the *Sanders* decision and prior precedent, Respondent's failure to file a Cross-Appeal, renders those issues unpreserved for consideration by the Court of Appeals. See *Sanders*, at 234. The law of the case is established, and the Trial Court's rulings as to the issues of expiration, negotiable instrument identity, and perpetuity cannot be disturbed.

CONCLUSION

In addition to Appellants arguments set forth in their Initial Brief, the above arguments of Respondent are improper in the absence of a Cross-Appeal, and therefore should not be reached by the Court.

Respectfully submitted,

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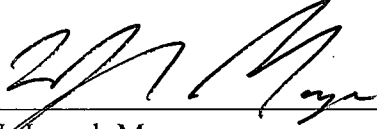
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PROOF OF SERVICE

I certify that I have served the Appellants' Supplemental Designation of Matter to be Included in the Record on Appeal and Appellants' Reply Brief, to the attorney for the Respondent, by placing them in the U.S. postal mail, postage pre-paid on February 26, 2016, addressed to its attorney of record, Roy R. Hemphill, Esquire, P. O. Box 1547, Greenwood, SC 29648.


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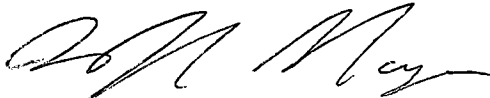
RE: Filing of Appellants' Supplemental Designation of Matter
for Appellate Case # 2015-001660

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

Attached is Appellants' Supplemental Designation of Matter to be Included in the Record on Appeal and Appellants' Reply Brief in regard to Appellate Case number 2015-001660. Please file and send clocked copies back in the pre-addressed and metered envelope.

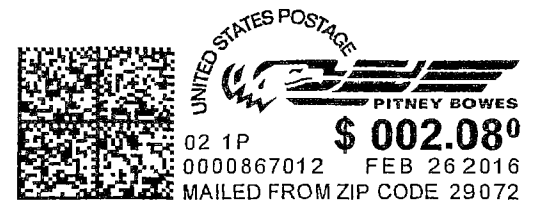
Thank you in advance.

Yours very truly,



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Enclosures



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