

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

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

Robert E. Smith and William K. Smith Appellants,

v.

Erskine College Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly held the Certificate of Scholarship issued pursuant to the 1853 Endowment Plan was an eleemosynary scholarship program.
- II. The trial court properly applied the doctrine of laches and the doctrine of staleness of demand to the facts of this case.

STATEMENT OF THE CASE

This action was filed on April 25, 2011, by Robert E. Smith and William K. Smith (hereinafter collectively referred to as “Appellants”) against Erskine College (hereinafter referred to as “Erskine”). Appellants sought a declaratory judgment that Erskine be required to honor the presentation of the Certificate of Scholarship and accompanying Sub-Certificates at issue by providing one year of free tuition for each Sub-Certificate presented. In the alternative, Appellants sought monetary damages from Erskine in the amount of the current value of the Sub-Certificates. Appellants presented Certificate Number 725, which had 25 Sub-Certificates. (R. pp. 23-25). Erskine answered and denied that the Certificate and accompanying Sub-Certificates in Appellants’ possession were currently valid and also asserted that any claims for specific performance or monetary damages were barred. (R. pp. 26-28).

A bench trial was held before the Honorable Frank R. Addy, Jr. on May 22, 2014. The trial court issued an Order granting judgment in favor of Erskine on January 2, 2015. The trial court found that Appellants’ claim related to the Certificate of Scholarship and accompanying Sub-Certificates was barred by the doctrine of laches and the doctrine of staleness of demand. (R. pp. 12-21).

Appellants subsequently filed a Motion to Reconsider Pursuant to Rule 59(e), SCRCP. Erskine requested the trial court deny such Motion, and the trial court issued a Revised Order affirming his prior Order and finding that Appellants’ claims are barred by laches and staleness of demand. (R. pp. 133-137; pp. 1-11).

Thereafter, Appellants filed this appeal.

STATEMENT OF FACTS

Erskine College was founded in 1839 by the Associate Reformed Presbyterian denomination. In 1853, its Board of Trustees, seeking to establish an endowment fund to raise \$100,000, adopted an Endowment Plan by resolution. The 1853 Endowment Plan 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.

7. 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. (R. pp. 156-158) (bold emphasis added; italics emphasis in original).

As contributions were made to the endowment fund, Scholarship Certificates were issued by Erskine, together with Sub-Certificates. The time within which the Sub-Certificates could be used was limited as set forth in the Endowment Plan. For example, upon paying the sum of \$100, the subscriber was entitled to free tuition "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." (R. pp. 156-158) (bold emphasis added; italics emphasis in original). As evidence of the \$100 Scholarship, a subscriber was issued one (1) Certificate along with twenty-five (25) Sub-Certificates. The Certificate and Sub-Certificates memorialized that an individual had subscribed to the 1853 Endowment Plan, and the Endowment Plan set forth the terms of the agreement between the individual and Erskine. Under the express language of the Endowment Plan, a subscriber who purchased a Scholarship Certificate for \$100 had a term of 25 years in which to use his Sub-Certificates, after which they expired and were no longer valid.

Events of the years following the adoption of the Endowment Plan support this interpretation. From 1853 through the remainder of the decade, Erskine documents indicate that the Sub-Certificates would be accepted in payment of tuition. (R. pp. 165, 181, 205 & 213). Although the Civil War (1861-1865) almost completely extinguished the endowment fund, Erskine continued to honor the 1853 Sub-Certificates through the early 1870s. During this period, the Sub-Certificates could be used in payment of tuition, although on a reduced basis. (R. pp. 219, 222-223, 228 & 238). At some point during the 1870s, Erskine embarked upon a second endowment plan, which made annual scholarships available for purchase for \$20. Thereafter, Erskine catalogs no longer refer to the Sub-

Certificates issued pursuant to the 1853 Endowment Plan or indicate that they may be used to pay tuition.

Appellants came into possession of the Certificate and accompanying Sub-Certificates at issue in this case in 1982 upon the passing of their father. (R. p. 400; p. 85, lines 9-22). In 2008, twenty-six (26) years after Appellants came into possession of the Sub-Certificates, Appellants presented them to Erskine, and Erskine denied their validity. In 2011, Appellants filed this declaratory judgment action requesting that Erskine provide one year of free tuition for each Sub-Certificate presented to Erskine or pay for the Sub-Certificates which they now hold. Tuition at Erskine for the 2011-2012 school year was \$26,350, for the 2012-2013 school year was \$27,915, and for the 2013-2014 school year was \$29,310. (App. R. pp. 401-403).

Erskine contends, however, that the Scholarship Certificate and Sub-Certificates held by the Appellants expired many years ago, and are therefore no longer valid. Additionally, even if the Scholarship Certificate and Sub-Certificates did not expire, Erskine contends that Appellants' claim is barred by the doctrine of laches and the doctrine of staleness of demand. The trial court held that Appellants' claim is barred by both of these equitable defenses.

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 County, 303, S.C. 354, 356, 400 S.E.2d 781, 782 (1991). An action to construe a contract is an action at law. Id. 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 (Ct. App. 2000).

An action for specific performance of a contract sounds in equity. Campbell v. Carr, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004).

The trial court determined that Appellants were seeking specific performance, and thus, the trial court sat in equity.¹ (R. p. 4). In an action in equity, tried by the judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Also, a court's ruling on laches and stale demand is reviewed for an abuse of discretion. King v. James, 388 S.C. 16, 28, 694 S.E.2d 35, 41 (Ct. App. 2010). "However, 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. Moreover, the appellant is not relieved of his burden of convincing the appellate court that the trial judge committed error in his findings." Pinckney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001) (citing Dorchester County Dep't of Soc. Servs. v. Miller, 324 S.C. 445, 477 S.E.2d 476 (Ct. App. 1996)).

¹ Appellants do not appeal the trial court's finding that this is a matter in equity. Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (finding that an unappealed ruling, right or wrong, is the law of the case).

ARGUMENT

I. THE TRIAL COURT PROPERLY HELD THE CERTIFICATE OF SCHOLARSHIP ISSUED PURSUANT TO THE 1853 ENDOWMENT PLAN WAS AN ELEEMOSYNARY SCHOLARSHIP PROGRAM.

A. The Endowment Plan establishes the terms of 1853 scholarship program.

In the present case, the printed words found on the Certificate and Sub-Certificates do not fully state the offer made by Erskine. Instead, the 1853 Endowment Plan of Erskine's Board of Trustees stands as a complete statement of the offer, and the payment made by Reverend Castles constitutes his acceptance of the offer. In fact, the 1853 Endowment Plan states that "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." (R. pp. 156-158) (bold emphasis added). The 1853 Endowment Plan contemplates that the Scholarship Certificate and Sub-Certificates were merely evidence of the offeree's acceptance of Erskine's offer, and the terms of the offer were set forth in the resolutions of the Board of Erskine. The Certificate and Sub-Certificates are only evidence of Reverend Castles' acceptance of Erskine's offer and of the amount of the consideration exchanged. They do not constitute the entire contract between the parties. The terms of the contract are found in the 1853 Endowment Plan.

The paragraph of the Endowment Plan applicable to the contract formed between Reverend Castles and Erskine provides as follows:

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. (R. pp. 156-158) (bold emphasis added; italics emphasis in original).

Contrary to Appellants' assertion that this language creates a right with no durational limit, perpetual contracts are disfavored in South Carolina, and to be perpetual, the perpetual nature must be an express term of the agreement. See Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 101, 447 S.E.2d 199, 201 (1994). There was no express term in the Endowment Plan providing that \$100 Certificates were of a perpetual nature. In fact, Paragraph 6 of the Endowment Plan refers to such scholarships being **limited** and thus, the only reasonable reading of this language is that it sets forth a calendar term of 25 years within which the Sub-Certificates could be presented.

Under South Carolina law, once a contract is before the court for interpretation, the paramount concern is to give effect to the intention of the parties. Parker v. Boyd, 309 S.C. 189, 191, 420 S.E.2d 850, 852 (1992). Moreover, the parties' intention must be gathered from the contents of the entire agreement, and not from any particular clause of the agreement. Id. Since common sense and good faith are the leading touchstones of construction of a contract, where one construction of a contract makes it unusual or extraordinary and another construction, which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail. Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975). A contract should receive a sensible and reasonable construction, and not such construction as will lead to absurd consequences. Twenty Ninth Ave. Corp. v. Great Atlantic & Pacific Tea Co., Inc., 311 S.C. 275, 277, 428 S.E.2d 734, 735 (Ct. App. 1993).

The paragraph at issue in this case is best examined by breaking it down into clauses. Specifically, the clause “of one son or nominee for the term of *twenty-five years*,” should be considered. Of note is the use of the word “term.” Erskine contends that the parties intended the word “term” to mean “a fixed period, [or] a determined or prescribed duration.” Black’s Law Dictionary 1639 (4th ed. 1968). The only means of giving a sensible, reasonable, and fair effect to the clause of the disputed paragraph is to find that this language created a calendar term of 25 years within which one designee of Reverend Castles was entitled to education free of tuition, and after which the contract expired.

Also, the last clause of the paragraph states as follows: “of two or more pupils at the same time, amounting in the aggregate to twenty-five years,” provided circumstances in which the calendar term of 25 years might be reduced. However, there is no reasonable interpretation which could extend the calendar term beyond 25 years. It is unreasonable to argue, as Appellants contend, that two or more students would have more than 25 years to present Sub-Certificates, but one student would be limited to “for the term of twenty-five years.”

The intention of the parties is revealed by viewing the section of the 1853 Endowment Plan in which this paragraph appears as a whole. This section reads:

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. (R. pp. 156-158) (bold emphasis added; italics emphasis in original).

When these three paragraphs are read together, it becomes clear that the Trustees of Erskine intended to create a comprehensive scheme based upon the age of a child/grandchild for whose benefit the subscriber made payment to the Endowment. The first paragraph allowed a subscriber a calendar term of 6 years within which the tuition of a designated student would be considered paid. This option would be particularly useful to a subscriber who desired to enroll a student of or very near college age.

Significantly, there is no language in this paragraph worthy of a construction that the subscriber was entitled to 6 years of tuition at any time. The word “during” is an expression of time; the phrase “during the term of six years” can only be reasonably interpreted to mean “at some time within six years.”

The second paragraph allowed a subscriber a calendar term of 12 years within which the tuition of one designee would be considered paid. In the alternative, it allowed a subscriber to enroll more than one designee, with the caveat that the term would be reduced accordingly. This option would have attracted both a subscriber enrolling two prospective students at or near college age, and a subscriber wishing to provide for a prospective student of grade-school age.

The third paragraph, which was applicable to Reverend Castles, would be useful to a subscriber hoping to eventually enroll more than one student of grade-school age, or to enroll a grandchild, perhaps.

With these paragraphs viewed as a whole, it becomes obvious that the only reasonable interpretation of the intention of Erskine was to create an endowment plan in

an effort to grow both its student body and its endowment. The above-quoted paragraphs reflect that effort, in that Erskine clearly sought to offer a variety of options for enrollment under scholarship to potential subscribers based on their individual needs as parents or sponsors. If a parent or sponsor had one child starting college within 6 years, they bought the \$40 Scholarship. If a parent or sponsor had a child expected to complete college within 12 years, or if they had 2 or more students expected to complete college within 12 years, they bought the \$60 Scholarship. If a parent or sponsor had infant children or grandchildren expected to complete college within 25 years, they bought the \$100 Scholarship. Parents or sponsors could choose between three different time frames – 6 years, 12 years, or 25 years – depending upon their circumstances. These Certificates were priced accordingly so as to account for tuition cost increases over a 25 year period. However, it is not reasonable to interpret the language of the Endowment Plan so as to give parents or sponsors more than 25 years, or, as the Appellants contend, more than 150 years, to present the Certificates.

B. History supports the interpretation that the scholarships issued pursuant to the 1853 Endowment Plan expired after 25 years.

Further supporting the interpretation of the scholarship Certificates and Sub-Certificates described above is the historical context surrounding the life of the 1853 Endowment Plan. This first endowment plan included issuance of the Certificates and Sub-Certificates of the type provided to Reverend Castles. In subsequent years, the minutes of Synod, the governing body of the Presbyterian church, and the catalogs printed by Erskine for the benefit of its current and prospective students made reference to the 1853

Endowment and specifically to the Sub-Certificates. (R. pp. 165, 181, 205, 213, 219, 222, 228 & 238).

Erskine closed for the Civil War during the fall of 1861 and reopened in the fall of 1866. The Civil War and its aftermath wiped out the funds of the endowment, and when Erskine reopened, the Sub-Certificates were expressly devalued. In 1866, Erskine allowed students to pay tuition by submitting \$32 in gold along with one Sub-Certificate from the 1853 Endowment Plan per year. In 1867 through 1872, Erskine allowed a Sub-Certificate issued pursuant to the 1853 Endowment Plan to be presented for a credit of \$10 towards the \$40 tuition per year. Notice of these changes concerning the Sub-Certificates issued pursuant to the 1853 Endowment Plan were published in the Minutes of Synod, the Erskine College Catalogue, and The Associate Reformed Presbytery. (R. pp. 219, 222-223, 228 & 238). These publications were available to church men, such as Reverend Castles, and notice was publicly given of the change to the terms of the Endowment Plan. There is no mention of the 1853 Endowment Plan in the Erskine catalogs after the early to mid-1870s, and thereby, no evidence exists that Erskine accepted the scholarship Certificates after that time. After 1878, a point in time 25 years after the Sub-Certificates were issued, Erskine catalogs no longer referred to the 1853 Endowment Plan or indicated that the Sub-Certificates issued pursuant to such plan may be used to pay tuition. (App. R. pp. 401-403). The strong inference arises that the 1853 Endowment Plan was no longer mentioned because the Sub-Certificates were no longer being presented by subscribers or recognized by Erskine, since the time period for their use had expired.

**C. The 1853 Endowment Plan distinguished between
“limited” and “perpetual” scholarships.**

After setting forth the three levels of scholarships discussed above, for terms of 6, 12, or 25 years, the Endowment Plan provides the following:

“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.

7. 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. (R. pp. 156-158) (bold emphasis added; italics emphasis in original).

Paragraph 4 of the Endowment Plan, with its use of the phrase “limited scholarships,” refers back to Paragraphs 1 through 3 of the Endowment Plan, discussed in detail above and pertaining to scholarships of limited times. Paragraph 7, on the other hand, proposed a separate means for a subscriber to procure a “perpetual scholarship.”

Importantly, the word “perpetual,” as used in Paragraph 7, describes a measure of time. “Perpetual” is defined by Black’s Law Dictionary, in relevant part, as “unlimited in respect of time.” Black’s Law Dictionary 1298 (4th ed. 1968). Taken in the context of the entire Endowment Plan, the word “limited,” as used in Paragraph 4, was used as the opposite of “perpetual.” Therefore, a “limited scholarship,” which would include a

scholarship secured by the Sub-Certificates in possession of the Appellants, was to have effect for a limited amount of time.

In summary, in consideration of the wording of the individual phrases of the paragraph at issue in this case, of the context of the paragraph within the comprehensive time-based scheme laid forth by the Endowment Plan, and of the historical events which followed the Endowment Plan, it is plain and clear that the only sensible, reasonable, and fair interpretation of the disputed paragraph is that it created a limited term of 25 years within which the contract between Reverend Castles and Erskine was to be presented. As a result, Appellants' opportunity expired by 1878.

D. The trial court properly found that Reverend J.R. Castles had a charitable or donative intent when contributing to the 1853 Endowment Plan.

The trial court properly found Reverend Castles had an eleemosynary or donative intent in contributing to the 1853 Endowment Plan. Erskine was founded by the Associate Reformed Presbyterian Synod of the South. Important to the intent of the parties in this matter is that Reverend Castles was a Presbyterian minister, and as such, he contributed to the 1853 Endowment Plan for Erskine, an educational institution that was the property of the Associate Reformed Presbyterian Synod of the South and which was under the direction and control of a Board of Trustees who were appointed by such Synod. (R. pp. 304 & 312). In the minutes from the Synod's meeting from 1853, it is noted that "[e]very minister in the Synod should lend a helping hand" to the work of the endowment. (R. p. 153). The 1853 Endowment Plan was by its terms a plan to put Erskine on equal footing with other similar colleges and to provide an education for its students as well as promote Presbyterian doctrine. Erskine was established to benefit the church and the state, and any donation to

Erskine would likewise have an element of eleemosynary or charitable intent to promote the religion. (R. pp. 153-158, 182-185). It is absurd to think that Reverend Castles, a Presbyterian minister, who contributed to the 1853 Endowment Plan to help put Erskine in a sound financial position would now want his Sub-Certificates to be used to potentially put Erskine out of business. There is sufficient evidence in the record to support the trial court's ruling that the Certificate of Scholarship combined both a charitable benefit with a corresponding financial or educational benefit to the original benefactor or his assigns.

E. The Certificate of Scholarship is a negotiable instrument and as such is not valid in perpetuity.

There is no doubt that the Certificate and Sub-Certificates in question are negotiable instruments. Langston v. S.C. Railroad Co., 2 S.C. 248, 251, 1871 WL 4541 (1871) (holding a bearer coupon bond is negotiable). If there is no time period placed on the negotiable instrument, it is payable on demand. Black's Law Dictionary defines a "note payable on demand" as "a note that is due at once . . . on presentation or at sight." Black's Law Dictionary 517 (4th ed. 1968). Certainly, the Sub-Certificates were payable upon presentation to the Treasurer of Erskine. The language of the Certificate indicates as much: "Tuition is to be obtained on the surrender of the accompanying Subcertificates." The language of the Sub-Certificates goes further: "This being surrendered to the Treasurer of Erskine College, entitles the bearer to One Year's Tuition in said College." (R. pp. 141-142). Further, Appellants agree that they are negotiable instruments and allege in their Brief that the instrument in question contains no time period, but is instead, payable upon the demand of the holder. (R. p. 45, lines 8-9; Appellants' Brief, pp. 6-13). As such, the Certificate and its accompanying Sub-Certificates are, based on Appellants' own argument, payable on demand.

The long-standing law of South Carolina, dating back to the first quarter of the nineteenth century, holds that a negotiable instrument payable on demand is due immediately, and that the statute of limitations runs in favor of the maker of the instrument from the date of the execution of the instrument. See Coleman v. Page's Estate, 202 S.C. 486, 25 S.E.2d 559, 560 (1943) (citing cases therein). Appellants attempt to circumvent this law by characterizing the Certificate and Sub-Certificates as a "bearer bond." The South Carolina Supreme Court in considering bearer bonds has discussed and applied the law of negotiable instruments and promissory notes. See Langston, 2 S.C. at 253, 1871 WL 4541 (when discussing a coupon bond the Supreme Court applied the rules applicable to promissory notes since both are negotiable instruments); see also Sparagon v. Georgia, 249 Ga.App. 440, 548 S.E.2d 118 (Ga. Ct. App. 2001) (finding no distinction between a bond and a promissory note when determining the accrual of a right of action). There can be no dispute that the law of negotiable instruments payable on demand apply to the Certificate and its accompanying Sub-Certificates.

Noticeably, Appellants cite no authority to support their argument that the Certificate and Sub-Certificates remain perpetually valid and enforceable. Even a case cited by Appellants only stated that a negotiable instrument payable on demand "is not due, without demand, until after the lapse of a reasonable time within which to make a demand." Morgan v. U.S., 113 U.S. 476, 501, 5 S.Ct. 588, 598 (1885) (noting that the bearer bonds at issue were not payable on demand; instead, they contained a time period for redemption). Nowhere in that opinion does it state that negotiable instruments payable on demand remain perpetually valid and enforceable.

Further, the out-of-state cases cited by Appellants for the proposition that an endowment investment in exchange for a scholarship unrestricted in duration remains valid for so long as the entity exists is not applicable in this case. In Hopkins v. Women's Medical College of Pennsylvania, 331 Pa. 42, 200 A. 32 (Pa. 1938), the scholarship at issue was by its explicit terms *perpetual*. The parties clearly contemplated that the Alliance of Catholic Women of the Archdiocese of Philadelphia (ACWA) would have the right to send a qualified candidate to the Women's Medical College of Pennsylvania (WMCP) every year and thus had a perpetual right. When the WMCP refused to continue to honor the agreement, ACWA immediately sued. Thus the Pennsylvania Supreme Court was not required to determine if the statute of limitations or an equitable defense, such as laches, would bar the ACWA's action. See also Weeks v. Mississippi College, 749 So.2d 1082 (Ct. App. Miss. 1999) (issue before the court was a question at law and not in equity and the scholarship certificate at issue explicitly provided "a Perpetual Scholarship"); Allumnae Ass'n of William Penn High School for Girls v. Univ. of Pennsylvania, 306 Pa. 283, 159 A. 449 (1932) (application of the statute of limitations or equity defenses of laches and staleness of demand were not issues before the court in that case); Howard College v. Turner, 71 Ala. 429 (Ala. 1882) (issue before the court was a question at law and not in equity and the scholarship certificate at issue was specifically a "Certificate of Permanent Scholarship").

In this case, the scholarship to which Reverend Castles or his successors-in-interest was entitled was limited and not perpetual like the scholarships at issue in the out-of-state cases referenced above. Even if Appellants' assertion that the contract between Reverend Castles and Erskine contains no express term of duration is true, the contract is not

perpetual. “[P]erpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract.” Carolina Cable Network, 316 S.C. at 101, 447 S.E.2d at 201 (citing Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911)). In Childs, the South Carolina Supreme Court held:

Where the parties to a contract express no period for its duration, and no definite time can be implied from the nature of the contract or from the circumstances surrounding them, **it would be unreasonable to impute to the parties an intention to make a contract binding themselves perpetually.**

87 S.C. at 572, 70 S.E. at 298 (emphasis added). Here, the Certificate and accompanying Sub-Certificates do not contain an express term stating they are perpetual, unlike the scholarships at issue in the above-referenced out-of-state cases. Therefore, it is not reasonable to impute an intention between the parties to make the Sub-Certificates binding perpetually. In addition as the trial court held, there was an element of donative or charitable intent in Reverend Castles contributing to the Endowment Plan and obtaining a Certificate of Scholarship because as a Presbyterian minister he sought to endow Erskine to help promote his Christian faith and educate individuals in a manner consistent with that faith.

Appellants’ argument that the equitable doctrines of laches and stale demand cannot apply to the Sub-Certificates since they have no durational limit is without merit because as discussed above, Reverend Castles’ Sub-Certificates were of a limited term, the law disfavors perpetual contracts, and, further, the equitable defenses may apply even if the statute of limitations has not run. Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816 (1939) (finding that the doctrine of laches may bar claims even though the statute of limitations

period has not yet expired on those claims); Lyerly v. Yeadon, 199 S.C. 363, 19 S.E.2d 648 (1942); see also 12 S.C. Jur. Equity § 25 (1992) (noting that “defense of laches typically arises in cases in which the statute of limitations has not run”).

The trial court properly found the Certificate of Scholarship was a hybrid document that had charitable and financial aspects to it. Whatever label is placed on it, the equitable doctrines of laches and stale demand bar Appellants’ claim. It is well-recognized in South Carolina that courts of equity can refuse to enforce an agreement between the parties because, as a matter of equity and public policy, the original witnesses to the transaction are long-since deceased, and the original intent of the parties is difficult, if not impossible, to discern. Also, equity will not decree specific performance unless the contract is fair, just, and equitable. Campbell, 361 S.C. at 263, 603 S.E.2d at 627. As the trial court sitting in equity properly found, Appellants’ claim is barred by the defenses of laches and stale demand.

II. THE TRIAL COURT PROPERLY APPLIED THE DOCTRINE OF LACHES AND THE DOCTRINE OF STALENESS OF DEMAND TO THE FACTS OF THIS CASE.

A. The trial court properly held that laches bars Appellants’ claim.

Laches is an equitable doctrine which arises upon the failure to assert a known right. 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) (quoting Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955)). Laches “is based on the injustice that might result from the enforcement of long neglected rights, the difficulty, if not the impossibility, of ascertaining the truth of the matters in controversy and doing justice between the parties, and on grounds of public policy, its aim

being the discouragement, for the peace and repose of society, of stale and antiquated demands.” Hemingway, 228 S.C. at 217, 89 S.E.2d. at 371-72 (quoting 30 C.J.S. Equity § 113).

Laches is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (citation omitted). Laches connotes not only an undue lapse of time, which is unreasonable and unexplainable, but also negligence and opportunity to have acted sooner. Bell, 191 S.C. at 124-25, 3 S.E.2d at 825. The elements of laches are: (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; and (5) prejudice to that other party if the right is now asserted. RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 735 (2007); Emery v. Smith, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004).

In Bell v. Mackey, the plaintiff sought an accounting against the administratrix of a deceased administrator and the surety. The administrator was appointed 19 years before the action was commenced and the final and only return was made 17 years prior to the commencement of the action. Most of the records had been lost or could not be found, the administrator had died, the probate judge had died, and there were other circumstances which rendered it inequitable to require an accounting. Taking into account all the circumstances, the Supreme Court held that the action was barred by laches. 191 S.C. at 105-25, 3 S.E.2d at 816-25.

In the companion cases of Robinson v. Estate of Harris, 388 S.C. 616, 698 S.E.2d 214 (2010); Robinson v. Estate of Harris, 388 S.C. 630, 698 S.E.2d 222 (2010); Robinson

v. Estate of Harris, 388 S.C. 645, 698 S.E.2d 229 (2010); and Robinson v. Estate of Harris, 389 S.C. 360, 698 S.E.2d 801 (2010), plaintiffs were alleged heirs of a former property owner asserting ownership claims to the property at issue in each case. In the companion cases, plaintiffs were seeking to quiet title and to set aside a prior quiet title action. In all of the cases, the Supreme Court found that laches barred plaintiffs' claims. Specifically, the Court held:

In reaching our decision, we have thoroughly considered and are empathetic to [plaintiffs'] plight. However, given the specific facts of the instant case, we are compelled to hold the doctrine of laches precludes [plaintiffs] from pursuing their claim. Here, [plaintiffs] *waited thirty-nine years* to assert their rights regarding the 1966 quiet title action. *We find such a flagrant and egregious delay represents the quintessential situation that the doctrine of laches was intended to protect.* For this Court to hold otherwise, we would have to affirmatively reject this well-established equitable doctrine. 388 S.C. at 628, 698 S.E.2d at 221; 388 S.C. at 643, 698 S.E.2d at 228-29; 388 S.C. at 657-58, 698 S.E.2d at 236; and 389 S.C. at 372-73, 698 S.E.2d at 808 (emphasis added).

In Robinson v. Estate of Harris, 391 S.C. 114, 705 S.E.2d 41 (2011), a subsequent companion case to the aforementioned Estate of Harris cases, the Supreme Court held that laches barred a quiet title action by plaintiffs who were challenging a conveyance of property that had occurred in 1946, which was over 55 years prior to the commencement of the current action. The lower court granted summary judgment against the plaintiffs and in favor of the defendants pursuant to S.C. Code Ann. § 15-3-340 (2005), because almost 60 years had passed since the conveyance in question and two related estates had been properly probated without any claims by the alleged heirs. The lower court in its order noted that the plaintiffs “sat idly [sic] by for a period in excess of fifty-five (55) years assumedly knowing that they may have a right in the real property of Ellis Pinckney.” Id. at 118-119, 705 S.E.2d at 43. In addition, the Supreme Court favorably cited the lower

court's following observation:

It has been almost sixty (60) years since the real property that is the subject of this action was conveyed to Ellis Pinckney. There is no provision in the Code of Laws of South Carolina that accords anyone the right, legally or equitably, to bring an action sixty (60) years after the fact. [Plaintiffs] knew of their rights well in advance of this day. It was incumbent upon the [plaintiffs] to file the appropriate action in a court of competent jurisdiction to have those rights adjudicated." *Id.* at 119, 705 S.E.2d at 43-44.

The Supreme Court held that plaintiffs' "inaction for *many decades* constitutes laches" and laches barred plaintiffs' quiet title action. *Id.* at 119, 705 S.E.2d at 44 (emphasis added).

The trial court properly held that Appellants' claim is barred by the doctrine of laches. As determined by the trial court, the elements of laches have been met in the following particulars. First, more than 150 years have passed since the Sub-Certificates were issued to Reverend Castles by Erskine. These Sub-Certificates were passed down through Reverend Castles' family to Appellants' father and then to Appellants in 1982. Appellants knew of the existence of the Sub-Certificates prior to 1982 and came into physical possession of the Sub-Certificates in 1982 upon the death of their father. (R. p. 400; p. 85, lines 9-22). The Appellants themselves allowed at least 26 years to pass before they took any action. Also collectively, Reverend Castles and all his heirs waited 154 years to present the Sub-Certificates. Under any review, there has been substantial delay and the first element of laches has been met.

Secondly, there is no explanation in the record as to why Appellants or their predecessors-in-interest did not attempt to redeem the Certificate and accompanying Sub-Certificates prior to 2008. Appellants themselves had the Sub-Certificates in their possession since 1982 and were aware of their existence prior to then. Yet, Appellants waited 26 years while the Sub-Certificates were in their physical possession prior to

making a demand of Erskine. Indeed, the Appellants were ages 49 and 54 before they filed this action and were 52 and 57 at the time of trial. (R. p.33, lines 16-20). Because the Sub-Certificates were passed through familial generations, Appellants and their predecessors-in-interest had knowledge of the Sub-Certificates for 154 years before attempting to act on them. Appellants argue that they and their predecessors-in-interest made a conscious decision to wait until their investments ripened, as if they were holding a publicly-traded stock. Appellants grossly mischaracterize the nature of the Sub-Certificates because, as set forth in the trial court's order and in Erskine's first argument above, the Sub-Certificates were issued to a Presbyterian minister who responded to the call to help a struggling church-sponsored college that was just beginning and whose mission was to not only provide an education but to also promote the Christian faith. The 1853 Endowment Plan was not similar to purchasing stock in a company because Erskine College is a not-for-profit or eleemosynary entity established by the church. Erskine was never started as a for-profit entity with a main objective to make money for its investors.

Moreover, negligence in the context of laches is the opportunity to have acted sooner. Emery, 361 S.C. at 215, 603 S.E.2d at 602. Black's Law Dictionary 1184 (4th ed. 1968) defines negligence as "[t]he omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do." A reasonable and prudent person would not have sat on the Sub-Certificates for the 26 years that Appellants themselves have been in physical possession of them. Further, a reasonable and prudent person throughout multiple generations of a family would not have waited more than 150 years prior to presenting them. In addition, the effects of the Civil War and

the subsequent de-valuation of the Certificates issued pursuant to the 1853 Endowment Plan clearly should have put a reasonable and prudent person on notice to assert a claim. Furthermore, there is absolutely no evidence that Erskine has recognized the Sub-Certificates issued pursuant to the 1853 Endowment Plan since the early to mid-1870s and a reasonable and prudent person would not believe that a valid claim still exists when more than 130 years have passed since Erskine apparently acknowledged a valid claim on the Sub-Certificates.

It is also worthy to note that the Appellants offered no evidence at trial to attempt to explain such delays. An affidavit of Appellant William K. Smith was offered but it only presented a cursory timeline as to how Appellants came to be in possession of the Sub-Certificates. However, no evidence was presented to explain their delay in presentation.

At the time of Appellants' demand in 2008, 26 years had passed since Appellants took possession of the Sub-Certificates and over 150 years had passed since the establishment of the 1853 Endowment Plan and the issuance of the Certificate to Reverend Castles. Such delay of greater than 150 years can only be described as unreasonable and negligent, especially as compared to the unreasonable delay of 17 years found in Bell, and 39 years and 55 years found in the Estate of Harris cases. Equity cannot allow parties such as Appellants and their predecessors to sleep on their rights for more than 150 years. In light of all the circumstances, the delay by Appellants and their predecessors-in-interest clearly is unreasonable and negligent. The second element of laches as to an unreasonable or unexplained length of time has been satisfied.

The third element of laches requires knowledge of rights by the party. Appellants do not deny that they or their predecessors had knowledge of the Sub-Certificates, but

merely argue that they had no duty to act prior to 2008. As discussed above, South Carolina law disfavors perpetual contracts and even negotiable instruments have some period of reasonableness within which rights must be asserted. See Morgan, 113 U.S. at 501, 5 S.Ct. at 598; Carolina Cable Network, 316 S.C. at 101, 447 S.E.2d at 201; Childs, 87 S.C. at 572, 70 S.E. at 298. As the trial court properly found, Appellants did not stumble upon the Certificate, but the Certificate was passed through familial generations and Appellants and their predecessors either knew or should have known their rights but chose to sleep on them making justice difficult at this late date. The third element of laches is satisfied.

As to the fourth element of laches, Erskine relied on the non-assertion of a claim by Appellants and their predecessors-in-interest. Erskine closed for the Civil War during the fall of 1861 and reopened in the fall of 1866. The Civil War and its aftermath wiped out the funds of the endowment. Thereafter, beginning in 1866, Erskine devalued the Sub-Certificates to such an extent that by 1872, Erskine credited subscribers with only one-fourth of the cost of tuition. (R. pp. 219, 222-223, 228 & 238). Notice of these changes to the 1853 Endowment Plan were published in several publications, and these publications were available to church men, such as Reverend Castles. (R. pp. 222-223, 228 & 238). There is no mention of the 1853 Endowment Plan in the Erskine catalogs after the early to mid-1870s, and thereby, there is no evidence that Erskine accepted the Certificates after that time. (App. R. pp. 401-403). Appellants and their predecessors-in-interest should have known by at least the mid-1870s that circumstances had changed that required action on their part, if any they could assert. Erskine has plainly relied on the inactions of Appellants and their predecessors-in-interest in not timely presenting the Sub-Certificates, and as such, Erskine has moved on and long-since changed its position of accepting such

Sub-Certificates, which is exactly the reason for applying laches in this case. See Chambers of S.C., Inc. v. County Council for Lee Cty., 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993) (“Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.”). This history of Erskine shows that there was “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.” (R. p. 8).

There is also detrimental prejudice to Erskine if the Sub-Certificates are allowed to be used by Appellants. The cost of one year’s tuition has grown exponentially over the last 160 years. In 1855, tuition for the preparatory department at Erskine was \$12.50 per term and tuition for college classes was \$16.00 per term. (R. p. 165). From 1866 through 1872, tuition was \$40 per term. (R. pp. 219, 222-223, 228 & 238). However, the cost of tuition today is drastically more. Tuition at Erskine for the term 2013-2014 was \$29,310. (App. R. pp. 401-403; R. p. 87, lines 22-24). Under Appellants’ theory of this case, each Sub-Certificate for one year’s free tuition would have been worth \$29,310 at the time of trial, and collectively the 25 Sub-Certificates would have been worth approximately \$732,750. (R. p. 87, lines 22-25). No records exist as to how many Certificates with accompanying Sub-Certificates might still exist. It is worth noting that Appellants’ Certificate shows the number 725. As the trial judge, sitting in equity, noted, the

uncertainty of the number of scholarship certificates and the possibility of their bankrupting the college clearly show Erskine has been prejudiced by the late presentment of the Appellants' Certificate. (R. p. 96, line 24-p. 97, line15). The unreasonable delay by Appellants and their predecessors-in-interest has allowed their potential recovery to multiply to an amount far beyond the contemplation of Reverend Castles or Erskine and to such an extent as to threaten Erskine's continued existence and to bring a windfall to Appellants if recovery was allowed.

Further, all the parties involved in the initial transaction are deceased and their testimony is unavailable. While Erskine does have some historical minutes and other documents from the period in question, the record is by no means complete. There are gaps in the documentation that would benefit from testimony by a party to the transaction and would help in ascertaining the intention of the parties to the Certificate. "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." Jones v. Leagan, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009). The only just result in this case, where Appellants and their predecessors-in-interest waited more than 150 years to assert a claim under Reverend Castles' Certificate, where all of the witnesses to the transaction are deceased, and where Erskine would be extremely prejudiced in having to accept 25 Sub-Certificates that were initially secured for \$100 but which can be viewed as being collectively worth approximately \$733,000, would be for the Court to affirm the trial court's ruling that the doctrine of laches bars Appellants' claim.

Even if the Court were to find the Certificate and Sub-Certificates are bearer coupon bonds that are unrestricted in duration, the doctrine of laches still bars Appellants' claim

as more fully set forth above. Laches is an equitable defense with “its aim being the discouragement, for the peace and repose of society, of stale and antiquated demands” and that “take[s] 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, 228 S.C. at 217-18, 89 S.E.2d. at 371-72 (citation omitted).

Also, Erskine has every right to assert such equitable defenses as laches and staleness of demand because Erskine has clean hands and has not acted unfairly toward Appellants or their predecessors-in-interest. Contra, Emery, 361 S.C. at 215, 603 S.E.2d at 602 (finding that ex-wife was not barred in receiving ex-husband’s retirement benefits under laches because her delay in receiving such benefits was caused by ex-husband’s failure to act pursuant to the divorce decree). Initially after the Civil War, Erskine attempted to recognize the Certificates, although on a reduced basis, but Erskine has openly not honored Certificates such as the one held by Appellants for over 130 years. Furthermore, the witnesses to the 1853 Endowment Plan have long since passed, and the tuition rates have drastically increased over the past 160 years. The failure to recognize the Certificates, the length of time that has passed, and the increase in tuition rates clearly establish a change in condition by Erskine that “would cause an unjust, inequitable, and potentially destructive effect on Erskine if these certificates were to be enforced.” (R. p. 9). Accordingly, the trial court’s finding that Appellants’ claim is barred by laches should be affirmed.

B. The trial court properly held that staleness of demand bars Appellants’ claim.

The trial court also held that Appellants’ claim was barred by the doctrine of stale

demand. A stale demand is 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.” Bell, 191 S.C. at 124-25, 3 S.E.2d at 824 (citing 21 C.J., 211); see also Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955) (finding the issue in that case came within the definition of “stale demand”); All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004) (finding a genuine issue of material fact existed as to whether defendant’s counterclaim was stale). Although staleness of demand implies a greater lapse of time than is necessary for laches, staleness of demand does not require a change in conditions as would render inequitable the enforcement of a claim. Bell, 191 S.C. at 124-25, 3 S.E.2d at 824. The doctrine of staleness of demand will be applied to bar recovery on a claim even where the statute of limitations has not yet run on the claim. Id.

In Presbyterian Church of James Island v. Pendarvis, the Court found that a trust established in 1713 had been repudiated no later than 1871 and any action to enforce the terms of the trust in 1955 was barred by the doctrine of stale demand. 227 S.C. at 59, 86 S.E.2d at 744. In Pendarvis, more than 80 years had lapsed between when the trust was purportedly repudiated and the subsequent action in which the Court found that any action to enforce the terms of the trust would be barred.

Here, Appellants and their predecessors-in-interest have waited 157 years to commence an action concerning the validity of Reverend Castles’ Sub-Certificates.

Appellants do not assert that Erskine in any way prevented them or their predecessors-in-interest from asserting this claim earlier, but merely that they did not wish to make an earlier claim because their investments had not ripened. Clearly, this unexplained delay by Appellants to assert a claim under the Sub-Certificates renders it difficult, if not impossible, for the Court to determine the truth of the matters related to the Certificate and accompanying Sub-Certificates and to do justice between the parties. Common sense dictates that the lapse of 157 years prior to Appellants commencing an action on the Sub-Certificates is indicative that a claim to enforce the Sub-Certificates, if any, is no longer valid and has been abandoned. A party knowing its rights to a claim, as Appellants contend they and their predecessors-in-interest did for 157 years, cannot slumber on those rights, but must act in a timely manner. Moreover, the passage of such a large amount of time along with the Civil War, two World Wars, and a Great Depression establish that Appellants have inexplicably sat on their rights to such an extent that it makes it difficult, if not impossible, for the Court to ascertain the true intent of Reverend Castles and Erskine in 1853 when the Endowment Plan began or 1854 when the Certificate was issued to Reverend Castles. Therefore, this Court should affirm the trial court's finding that the doctrine of stale demand bars Appellants' claim.

CONCLUSION

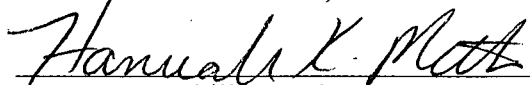
In accordance with the provisions of the 1853 Endowment Plan, the Certificate and accompanying Sub-Certificates in Appellants' possession expired many years ago and are no longer valid. The only reasonable interpretation of the contract between Reverend Castles and Erskine is that neither party intended for holders of a Certificate to slumber on their rights for 157 years. Reverend Castles was a Presbyterian minister who responded to

the call of the 1853 Endowment Plan in order to help Erskine, a struggling church-supported college. Certainly, he did not intend for the Certificate that he obtained to be used to economically devastate Erskine. Because Appellants and their predecessors-in-interest unreasonably waited 157 years prior to bringing an action to enforce the Certificate and its accompanying Sub-Certificates at issue in this case, the Appellants' action is barred by the doctrine of laches and the doctrine of staleness of demand and the trial court's ruling should be affirmed.

For the reasons set forth herein, Erskine asks the Court to uphold the trial court's finding that Appellants are barred from enforcing their Certificate and accompanying Sub-Certificates.

Respectfully submitted,

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April 14, 2016
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

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APR 18 2016
SC Court of Appeals

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

Robert E. Smith and William K. Smith Appellants,

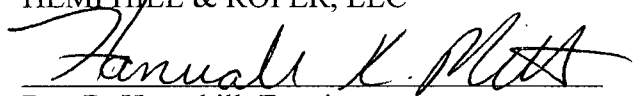
v.

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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Robert E. Smith and William K. Smith Appellants,

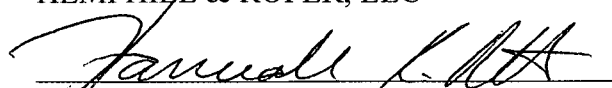
v.

Erskine College Respondent.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent to the attorneys for the Appellants, by placing it in the US postal mail, postage pre-paid on April 15, 2016, addressed to its attorneys of record, James Randall Davis, Esquire, W. Joseph Maye, Esquire, and Nikki G. Seztler, c/o Davis Frawley, LLC, P.O. Box 489, Lexington, SC, 29071.

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April 15, 2016
Greenwood, South Carolina