

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

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SC COURT OF APPEALS

Les Springob, Paul Trussell, Barton
Dumas, Stanley Harpe, and John Yenco,

Of Whom Paul Trussell, Barton Dumas, and John Yenco
are the Appellants,

v.

The University of South Carolina and
the University of South Carolina Gamecock
Club, Respondents.

RECORD ON APPEAL

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. McCulloch, Jr.', written over a horizontal line.

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October 31, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Les Springob, Paul Truessell, Barton
Dumas, Stanley Harpe and John Yenco,

Plaintiffs,

vs.

The University of South Carolina and
the University of South Carolina
Gamecock Club,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2008-CP-40-5518

ORDER

RICHLAND COUNTY
FILED
2011 DEC - 1 AM 11:45
JEANETTE W. McBRIDE
C.C.P. & O.S.

This matter comes before the Court by way of a Plaintiff's Rule 59(e) Motion to Reconsider this Court's October 18, 2011 Order. The Motion for Reconsideration was filed with the Clerk of Court on November 7, 2011.

In his Motion, Plaintiffs argue that the Court omitted reference to the Affidavits of Plaintiffs and the Affidavit of Mike Montgomery that were submitted to the Court. As noted in the Order, the Court had before it the following depositions: Plaintiffs Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe, John Yenco, Defendant Athletic Director Eric Hyman, Former Senior Associate Athletic Director Chris Massaro, Defendant University Office Manager Angie Shumpert, Former Senior Associate Athletic Director for Development and Executive Director of Defendant Gamecock Club Jeffrey Barber, and Michael Montgomery. These depositions were considered and reviewed extensively along with the pleadings, including the Motions for Summary Judgment and the documents attached to the motions. The Affidavits of the Plaintiffs and Michael Montgomery were attached to Plaintiffs Motion for Summary Judgment and were considered by the Court in reaching a decision.

Plaintiffs also argue that the "Defendants have offered no evidence of Chris Massaro's representations, written or verbal, that in any way refute Plaintiff's affidavits." While both parties may have intended an agreement, there is a clear dispute as to the definite terms of the agreement and, as such, no clear evidence of a contract, oral or written. The parties did not come

~~to an accord as to the length of the agreement and the payment following the fifth year.~~ The submitted affidavits of the Plaintiffs confirm the confusion between the parties. Each Plaintiff describes meeting with Chris Massaro, whether by phone or in person. None of the Plaintiffs mention in their affidavits that they specifically asked or discussed with Chris Massaro their obligations after the fifth year.

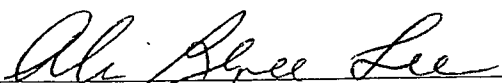
The Statute of Frauds is designed to protect both parties in situations like the case at bar. The absence of a signed writing by the party charged with the duty makes the agreement unenforceable. Plaintiffs argue that the Statute of Frauds does not apply because the agreement is capable of being performed within one year. As mentioned in the October 18, 2011 Order, "Under any reading of the agreement between the two parties, both Defendants and Plaintiffs were obligated to perform over several years. It is undisputed that at a minimum the agreement between the parties was at least five years. Clearly, it would be impossible for Defendants to perform a five year agreement within one year. A contract of this length must be in writing to be enforceable under the statute of frauds."

Plaintiffs argue that the brochure or cancelled checks should meet the Statute of Frauds requirement as a signed writing by the Defendants. While Plaintiffs allege that the logo of Defendant meets the writing requirement, a logo has never been found to suffice as a signature in South Carolina under the Statute of Frauds and would not apply in this case. A writing relied upon to comply with the Statute of Frauds must contain all the material terms of the agreement, and that it cannot be supplemented by parol evidence. Boozer v. Teague, 27 S.C. 348, 3 S.E. 551 (1887). The cancelled checks and brochures presented by the Plaintiff do not meet the writing requirement of the Statute of Frauds.

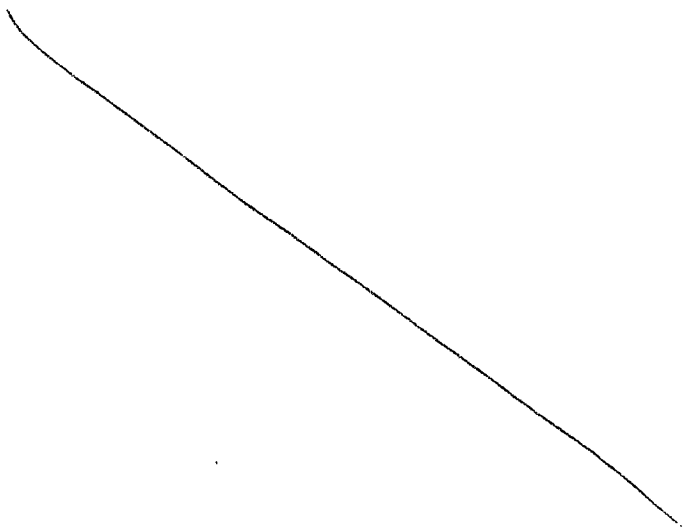
After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiffs' Motion pursuant to Rule 59(e) SCRPC to ~~Alter or Amend Judgment of this Court's Order filed October 18, 2011. Pursuant to Rule 59(f),~~ the Court is of the opinion that oral argument is not necessary.

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AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 30, 2011


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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Les Springob, Paul Truessell, Barton
Dumas, Stanley Harpe and John Yenco,

Plaintiffs,

vs.

The University of South Carolina and
the University of South Carolina
Gamecock Club,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2008-CP-40-5518

ORDER

JEANETTE W. McBRIDE
C.C.P. & C.S.

2011 OCT 20 AM 11:07

RICHLAND COUNTY
FILED

This matter came before the Court upon cross-motions for summary judgment by both Plaintiffs and Defendants. A hearing was held on September 4, 2009, at which the Plaintiffs were represented by Joseph M. McCulloch, Jr. and Defendants were represented by William Davidson.

BACKGROUND

Defendant University of South Carolina ("University") decided to construct on a new arena (The Colonial Center) for the University's basketball games and to provide a larger venue for shows and attractions. In or around 2002 as construction on The Colonial Center was being finished, Defendants distributed a promotional brochure to members of the University of South Carolina Gamecock Club ("Gamecock Club") whose donation level had been designated "Silver Spur" or higher. All of the Plaintiffs were of this designation. The brochure announced the availability of premium seats to Silver Spur members of the Gamecock Club. The document stated for a "five year term," Silver Spur members could donate an "up front premium of \$5,000 per seat in year one" followed by a "\$1500 premium years 2-5 per seat." Defendants appointed Senior Associate Athletic Director Chris Massaro ("Massaro") as their designee to enter into agreements regarding the premium seats.

The Plaintiffs interpreted the language of the brochure to mean that they would receive lifetime rights to seats at the Colonial Center if they paid an initial premium of \$5,000 per seat in

2002, paid \$1,500 per seat each year from 2003-2007, and paid their Gamecock Club dues. In his deposition, Plaintiff Paul Truessell testified that "it was discussed point blank that it was a five-year situation, and after that, all I had to do was buy my tickets." All Plaintiffs testified similarly. All Plaintiffs also testified that they never received a written confirmation of the agreement and no contracts were signed. Plaintiffs began payment to Defendants of \$5,000 per seat in 2002 and \$1,500 per seat each year thereafter.

Defendants have a vastly different understanding of the distributed document. University Athletic Director Eric Hyman testified that his "understanding was they made a commitment financially for five years and that allowed them to have those seats for five years." Angie Shumpert, an office manager for the Gamecock Club, testified that her understanding of the promotion was "they had to pay \$5,000 up front for the first year, which included their seat premium in that first year, the next four years, \$1,500 per year per seat. And then after that point in time, we reserved the right to reevaluate their pricing." Both witnesses testified that the seating plan was modeled after a similar plan in Defendants' football stadium. Massaro testified in his deposition that it was the University's intent to provide a "five year lease" to the seating with additional payments after the first five years. In explaining Defendants' rationale behind the payment plan Massaro explained, "[a] lot of the reason is because you have recurring expenses with some of the amenities. The McGuire Club – food, those kind of things, those are recurring costs. So why would we price something eventually that would be a financial loser if you're having costs without any revenue...?" Massaro, like Ms. Shumpert, expressed the desire by the Defendants to keep the seating plan in the basketball arena consistent with the seating plan in the football stadium. All parties agree that the Plaintiffs would be obligated to continue paying membership level dues and the ticket price after the first five years. Further, payment of the licensing fee in dispute in the sixth year would not guarantee specific seats to Plaintiffs if they did not keep their membership current and submit payment for the price of the ticket.

In August or September of 2007 (the beginning of the sixth year of the agreement), Defendants notified the Plaintiffs that they would need to forward \$1,500, representing a sixth year of premiums, to maintain their seats and would be expected to continue additional annual payments for that purpose. Plaintiffs Yenco, Harpe and Truessell sent their payment but later objected and requested a refund; while Plaintiffs Springob and Dumas refused to send their payments. Plaintiffs requested that Defendants review the policy and retract their demand for

payment. In December of 2007, Defendant Gamecock Club sent an email to Plaintiff Springob stating that after research into the topic and "interviewing former athletic department staff and current Founders Club members," Defendants came to the conclusion that "the premium was in fact locked in for five years, however, following the five years the premium will/may be increased. In short, the Founders Seat premium was always intended to be a yearly fee." Thereafter, Plaintiffs filed this action on July 31, 2008.

Plaintiffs' allege breach of contract and seek a remedy of specific performance. The alleged breach came in the form of Defendants attempting to collect payment for the seat premiums in the sixth year of the agreement between the parties. Plaintiffs claim that as a direct and proximate result of Defendants' breach of the agreement, the Plaintiffs have been deprived of seating access to events that cannot be compensated by monetary damages. Furthermore, Plaintiffs claim that they have been and will continue to be irreparably harmed by being deprived of their assigned seating and that specific enforcement of the agreement is the equitable remedy.

Plaintiffs move for summary judgment on the breach of contract claim. Defendants move for summary judgment as well, arguing any contract is unenforceable based on the Statute of Frauds; Plaintiffs failed to show specific performance is an appropriate remedy; and the action is barred by the applicable statute of limitations.

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). Along with the pleadings, the court had before it the following depositions: Plaintiffs Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe, John Yenco, Defendant Athletic Director Eric Hyman, Former Senior Associate Athletic Director Chris Massaro, Defendant University Office Manager Angie Shumpert, Former Senior Associate Athletic Director for Development and Executive Director of Defendant Gamecock Club Jeffrey Barber, and Michael Montgomery.

DISCUSSION

I. Breach of Contract Claim/ Statute of Frauds

Plaintiffs allege Defendants breached the contract between the parties by not allowing Plaintiffs to obtain permanent seating rights in the Colonial Center in 2007 and move for summary judgment on that claim. Defendants claim that even if the agreement between the parties was a contract, it would be unenforceable due to the Statute of Frauds. In response to the Statute of Frauds argument, Plaintiffs claim that part performance and/or estoppel prevent the Defendants from asserting a Statute of Frauds defense.

The Statute of Frauds, codified at S.C. Code Ann. § 32-3-10, requires certain contracts be in writing to be enforceable. The statute outlines five specific types of contracts required to be evidenced by writing, including contracts which cannot be completed within one year. More specifically, the statute states:

No action shall be brought whereby: to charge any person upon any agreement that is not to be performed within the space of one year from the making thereof...unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

S.C. Code Ann. § 32-3-10. The Statute of Frauds is a complete bar to a claim for damages based upon the breach of an oral contract that could not be performed within space of a year. Collins Music Co. v. Cook, 281 S.C. 580, 316 S.E.2d 418 (Ct. App. 1984). Moreover, the agreement must be signed by the party charged with the duty. S.C. Code Ann. § 32-3-10.

Under any reading of the agreement between the two parties, both Defendants and Plaintiffs were obligated to perform over several years. It is undisputed that at a minimum the agreement between the parties was at least five years. Clearly, it would be impossible for Defendants to perform a five year agreement within one year. A contract of this length must be in writing to be enforceable under the statute of frauds.

There is no evidence of such a writing in this case. The only document related to this agreement was a brochure published by the University which advertised premium seating at basketball games. This brochure describes the terms and conditions of the seats, describing the seat privilege as a "five year term." Defendant Athletic Director Hyman testified that the brochure was "literature explaining...the definitions of what a Courtside Club seat is and a

Founders Club seat.” This document is not sufficient to remove the alleged agreement from the Statute of Frauds. Additionally, the document was not signed by the Defendants.

“An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other. Graham v. Prince, 293 S.C. 77, 358 S.E.2d 714 (Ct. App. 1987). “The theory of the equitable doctrine of part performance...is that a court of equity will not permit a statute designed to prevent frauds to be used as an instrument to effect a fraud.” Aust v. Beard, 230 S.C. 515, 522-523, 96 S.E.2d 558, 562 (1957). “When there is no writing, but part performance is alleged to remove an oral contract from the Statute of Frauds, a court of equity must find the following factors before it may compel specific performance of the oral contract: (1) *clear evidence of an oral contract*, (2) the contract had been partially executed, and (3) the party who requested performance had completed or was willing to complete his part of the oral contract.” Settlemyer v. McCluney, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004) (emphasis added). In Scurry v. Edwards, 232 S.C. 53, 100 S.E.2d 812 (1957), the Court explained the part performance exception to the Statute of Frauds. Specific performance of an oral contract will be required where the *terms of the contract are clear, definite and certain* and are established by competent and satisfactory proof. (Emphasis added). Scurry, 232 S.C. at 61, 100 S.E.2d at 816-17.

Plaintiffs argue that part performance by the Defendants should remove the agreement between the parties from the Statute of Frauds. Utilizing the test articulated in Settlemyer, Plaintiffs fail to provide clear evidence of an oral contract where its terms are clear, definite and certain. The central dispute between the Plaintiffs and the Defendants are the unclear and undefined issues that stem from the vagueness of the discussions entered into by the parties in 2002. Plaintiffs and Defendants were unable to reach an accord as to the terms of the oral contract, most importantly the length. As such, there is no clear evidence of an oral contract and therefore there can be no relief from the Statute of Frauds by part performance.

As a response to Defendants’ assertion of the Statute of Frauds, Plaintiffs argue estoppel. “Our Supreme Court has acknowledged that, in a proper case, the doctrine of estoppel may be invoked to prevent a party from asserting the Statute of Frauds.” Collins, 281 S.C. at 580, 316 S.E.2d at 418. To overcome the Statute of Frauds, “the party asserting the estoppel must show that he has suffered a definite, substantial, detrimental change of position in reliance on the

contract, and that no remedy except enforcement of the bargain is adequate to restore his former position.” Id. South Carolina law requires that a valid and enforceable contract is only formed where there is a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. Id. at 893 (emphasis added). To put it another way, a contract is only binding when there is a mutual assent to all relevant terms. Edens v. Laurel Hill, Inc., 271 S.C. 360, 247 S.E.2d 434 (1978).

Plaintiffs argue their “definite, substantial, detrimental change of position” takes the form of the risk of loss of their seats at the Colonial Center. The five year agreement between Plaintiffs and Defendants required the payment of licensing fees to the University each year in addition to the payment of membership level dues and the actual price of the ticket of the seat. Plaintiffs, by all accounts, paid these amounts to Defendants for five years. In short, the purchase of the seat license advertised in Defendants’ brochure did not guarantee them their desired seats, it only guaranteed them the first right to purchase said seats.

This Court does not find Plaintiffs’ change of position definite and substantial enough to rule that the enforcement of the bargain between the parties is the only remedy adequate to restore Plaintiffs’ previous position. Furthermore, there was clearly no meeting of the minds between the parties with regard to all essential and material terms of the agreement for the basketball tickets. As such, there is no mutual assent to all of the material terms of the contract and the agreement formed by Plaintiffs and Defendants is not binding in contract.

Plaintiffs’ motion for summary judgment based on breach of contract is **DENIED**. Defendants’ motion for summary judgment based on the Statute of Frauds is **GRANTED**.

II. Statute of Limitations

Defendants move for summary judgment on the basis that the applicable statute of limitations has expired. South Carolina’s applicable statute of limitations states that an action upon a contract, obligation, or liability, express or implied must commence within three years. S.C. Code Ann. § 15-3-530. According to the “discovery rule,” the three-year statute of limitations begins to run when the underlying cause of action reasonably ought to have been discovered; the clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Martin v. Companion Healthcare Corp., 357 S.C. 570, 593 S.E.2d 624 (Ct. App. 2004).

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Plaintiffs were presented with the opportunity to purchase seating at the Colonial Center in 2002. There was no dispute between the parties until after the fifth year, when Defendants demanded payment for a sixth year of premiums from the Plaintiffs. After Defendants contacted the Plaintiffs and completed their subsequent investigation in 2007, this lawsuit was filed by Plaintiffs in September 2008, well within the three year statute of limitations. Defendants' assertion that the Plaintiffs' claims are barred by S.C. Code Ann. § 15-3-530 is **DENIED**.

III. Specific Performance

Plaintiffs submit that specific performance is appropriate in this case and they should be granted license to purchase Colonial Center tickets in perpetuity based on their understanding of the contract. An action for specific performance is one in equity unlike an action for breach of contract, which is in law. Clardy v. Bodolosky, 383 S.C. 418, 679 S.E.2d 527 (Ct. App. 2009). A trial court should only grant specific performance if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. Id.

Specific performance of the contract is not appropriate and is not equitable in light of the rulings regarding the interpretation of the contract. Plaintiffs' motion for summary judgment for specific performance is **DENIED**.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that based on the foregoing reasons Defendants' motion for summary judgment is granted and the Plaintiffs' motion for summary judgment is therefore denied. This action is therefore dismissed.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
October 18, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Les Springob, Paul Trussell,)
Barton Dumas, Stanley Harpe,)
and John Yenco,)

Plaintiffs,)

vs.)

The University of South Carolina)
and The University of South)
Carolina Gamecock Club,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-40-05518

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 NOV - 7 PM 3:05

RICHLAND COUNTY
FILED

After a careful review of this Court's written Order received by Plaintiffs on October 26, 2011, Plaintiffs submit this Motion for Reconsideration and ask the Court to reconsider its Order granting summary judgment for Defendants and against Plaintiffs for the following reasons:

(1) Standard of Review and Unopposed Affidavits

The Court notes in its "Standard of Review" on page 3 of the Order that "[a]long with the pleadings, the court had before it the following depositions. . . ." The Court makes no reference to the Affidavits of Plaintiffs and the Affidavit of Mike Montgomery that were submitted to the Court originally on July 30, 2009 and attached to Plaintiffs' Motion for Summary Judgment and subsequently also attached as Exhibit D to Plaintiffs' Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross-Motion for Summary Judgment filed September 3, 2009.

As the Court states in the “background” section of the Order on page one (1),

“Defendants appointed Senior Associate Athletic Director Chris Massaro (“Massaro”) as their designee to enter into agreements regarding the premium seats.” The only witnesses to the agreement between Defendants and Plaintiffs were Plaintiffs who had submitted affidavits, Mike Montgomery who submitted an affidavit, and the deposition of Chris Massaro where he testifies he cannot recall what he told individual plaintiffs. Importantly, **Defendants have offered no evidence of Chris Massaro’s representations, written or verbal, that in any way refute Plaintiffs’ affidavits.** Defendants, not denying the existence of an agreement, conducted a one year internal investigation “researching the intent of the Founders Club” but were unable to offer any documents or witnesses to impeach the Plaintiffs’ sworn statements of their meeting of the minds with the Defendants’ authorized agent, Chris Massaro. “Understandings” of the new Athletic Director Eric Hyman and others who were not at USC at the time these contracts were offered and accepted and/or who did not meet with Plaintiffs in forming the agreements are irrelevant and should not and may not be relied upon by this Court in reaching its decision.

(2) The “One Year” Rule Does Not Apply

This Court in its Order found that the statute of frauds applies because the agreement cannot possibly be performed within a year and there is no “agreement upon which such action shall be brought or some memorandum or note thereof . . . in writing” as required by §32-3-10. Contrary to those findings, the agreement was, on its face, capable of being performed in one year as the contract required a contingency. Specifically, had Plaintiffs chosen not to purchase season tickets which was a requirement of the contract each year, the contract would have been fully performed within a year. Conversely, if Plaintiffs had accelerated the proposed payment plan of 5 years and paid in the first year, then performance would have occurred within

the first year. "If there is a possibility of performance within a year, the contract is not barred by the Statute of Frauds. The fact that performance within a year is highly improbable or not expected by the parties does not bring a contract within the scope of this clause." Roberts v. Gaskins, 327 S.C. 478, 484, 486 S.E.2d 771, 774 (S.C. App. 1997)(internal citations omitted). Further, under South Carolina law, an arrangement or contract that is terminable at will falls outside the Statute of Frauds. Center State Farms v. Campbell Soup Co., 58 F.3d 1030 (4th Cir. 1995).

Even if the above were not the case, which it is, Plaintiffs fully performed their part of the agreement. As our Supreme Court has held:

... complete performance on the part [of promisee] takes the oral contract out of the statute of frauds and makes [promisor's] promise enforceable in spite of the fact that it could not be performed within a year. Our courts have long recognized the majority rule that full performance by one side will take the entire contract out of the one year clause of the statute of frauds.

Coker v. Richtex Corp., 261 S.C. 402, 406, 200 S.E.2d 231, 232 (S.C. 1973).

Furthermore, as addressed below, the brochure is an agreement, or at the very least, a memorandum or note thereof that along with the cashed checks from Plaintiffs and the subsequent letters from Defendants (see Exhibit F and G to Plaintiffs' Memorandum), should serve to take the agreement out of the Statute of Frauds. The Defendants themselves, in their Memorandum in Support of their own Motion for Summary Judgment concede:

It is undisputed that prior to the Carolina Center opening, the Defendants published and distributed a promotional brochure to the Gamecock Club members at the Silver Spur level and above announcing the opportunity for premium seating at basketball games at the new Carolina Center . . . The distributed brochure explained the included amenities and pricing information for a "five year term."

Defendants' Memorandum, pages 1-2. The Defendants have conceded the offer which included all material terms of the contract with the subsequent representations by Chris Massaro, the Defendants' agent, clarifying the Plaintiffs' understanding of a five year payout and thereafter no payments but vested ownership in the seating as is established in Plaintiffs' affidavits.

Based on these reasons, Plaintiffs request that this Court reconsider its Order and deny Defendants' Motion for Summary Judgment and grant Plaintiffs' motion for summary judgment and order Specific Performance.

(3) There is No Dispute there was an Agreement and the Brochure and Other Documents take the matter out of the Statute of Frauds

The necessary elements of a contract are an offer, acceptance, and valuable consideration. See Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 437 S.E.2d 122 (Ct.App.1993). Here, all three elements were met. There is no dispute that the promotional brochure was sent to Plaintiffs with an offer of courtside seating, there is no dispute that Plaintiffs contacted Defendants' authorized representative and entered into an agreement for courtside seating, and no dispute that Plaintiffs gave Defendants money in the form of checks which Defendants accepted. As seen in exhibits F and G of Plaintiffs' Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross-Motion for Summary Judgment, Defendants have not disputed the existence of an agreement. There is also no dispute that the Defendants, the offeror, decided not to memorialize the consummation of the agreement at the time of Plaintiffs' acceptance of the written offer although Defendants accepted the checks signed by Plaintiffs.

While this Court states on page 2 of the Order, "Defendants have a vastly different understanding of the distributed document [the brochure]," Defendants have been

unable to offer a single witness to dispute the Plaintiffs' sworn Affidavits and Mike Montgomery's sworn affidavit as to the clarifications of the brochure made by the Defendant's authorized representative. In a nutshell, this case boils down to the alleged ambiguity created by Plaintiffs in the promotional literature as to what would occur in year six with Defendants unable to dispute the Plaintiffs' sworn Affidavits.

Importantly, the promotional brochure contained all of the essential terms with an arguable ambiguity as to what would occur in year six and beyond: up front premium of \$5,000, an additional premium of \$1500 for years 2-5 per seat, and the requirement that it was for "Founders' Club or Courtside Club season ticket holders." There is no dispute that all parties have pointed to this brochure in their arguments as to the intent of the parties, and there is no dispute that Plaintiffs paid the premiums set out in the brochure for the seats for five years. Contrary to the finding in the Order that the document was not signed by Defendant, the USC logo which is featured on the middle and the last page of the brochure is the authorized signature of the University of South Carolina and is the quintessential signature of all official documents of Defendants. The offer and the authority to make the offer is not a disputed issue.

The printed literature of the University referred to an ambiguous 5 year term which the Plaintiffs fairly interpreted and confirmed with Defendants' agent, Massaro, as a five year payment plan after which Plaintiffs owned the seats subject to the USC condition that they maintain the Gamecock Club status requiring the payment of thousands of dollars each year and annually purchasing tickets equaling the number of seats acquired. The Defendants' authorized representative – Chris Massaro – has not disputed that he, as the Defendants' authorized representative, confirmed this interpretation with each plaintiff as he cannot recall what promises he made to Plaintiffs. This Court should find on reconsideration that the brochure along with

Plaintiffs' cancelled checks and subsequent numerous letters annually from USC confirming Defendants' rights to the seats at the payment time and requesting money (which Defendants then accepted), constitute, at the very least, "some memorandum or note thereof" in writing of the agreement between the parties.

This Court should also take cognizance of the subsequent written acknowledgement rule by which written acknowledgements signed by a party may satisfy the Statute of Frauds. Computer Servicers, Inc., of Greenville v. Beacon Mfg. Co., 328 F.Supp. 653,656 (D.S.C. 1970), aff'd 443 F.2d 906 (4th Cir. 1971)("It is well settled that subsequent written acknowledgement signed by the party to be charged on an oral contract is sufficient to satisfy the statute of frauds with respect to that earlier contract"); see Exhibit F and G attached to Plaintiffs' Memorandum.

Based on these reasons, Plaintiffs ask this Court to reconsider its grant of summary judgment on the issue of the Statute of Frauds and find that the Statute of Frauds does not apply and that Defendants breached the contract with Plaintiffs as Defendants have offered no evidence to refute Plaintiffs' Affidavit as to the agreement between the parties.

(4) Even if the Promotional Brochure and other Materials Do Not Constitute a Writing, Which They Do, Defendants are Estopped from Asserting the Statute of Frauds

Plaintiffs urge this Court to reconsider its Order and find that Defendants should be estopped from asserting the Statute of Frauds. "Our Supreme Court has acknowledged that, in a proper case, the doctrine of estoppel may be invoked to prevent a party from asserting the Statute of Frauds." Collins Music Co. v. Cook, 316 S.E.2d 418 (Ct. App. 1984) The crux of estoppel is the essential concept of fairness. Estoppel may overcome the Statute of Frauds where "the party asserting the estoppel must show that he has suffered a definite, substantial,

detrimental change of position in reliance on the contract, and that no remedy except enforcement of the bargain is adequate to restore his former position.” *Id.* Here, Plaintiffs rely upon the quaint but lawful notion of this equitable remedy. The facts support the application of this equitable axiom and rely upon several facts:

- The Defendants created the contractual opportunity and now seek to avoid their contractual agreements through an alleged ambiguity which is of Defendants’ creation and despite Defendants’ one year investigation, they were unable to dispute Plaintiffs’ interpretation.
- Defendants were the ones who determined to create the “ambiguous” offer through its ownership of the brochure, and Defendants allowed their authorized representative to explain the contract but make no other writings. Defendants made promises to Plaintiffs that Defendants are unable to refute, and each Plaintiff paid Defendants \$11,000 per seat over the five year period in addition to the thousands they paid to maintain their Gamecock Club status and season ticket seating in addition to the seat payments. These payments are memorialized in checks cashed by Defendants. Only after full performance by Plaintiffs did Defendants argue they are not bound by the agreements made.
- The Plaintiffs have submitted affidavits evidencing a “meeting of the minds” between Plaintiffs and Defendants’ authorized representative, Chris Massaro, which affidavits remain undisputed by Chris Massaro who at his deposition admitted he cannot recall what he told Plaintiffs on this issue.

Definite, Substantial, Detrimental Change of Position

In its Order, this Court did “not find Plaintiffs’ change of position definite and substantial enough to rule that the enforcement of the bargain between the parties is the only remedy adequate to restore Plaintiffs’ previous position.” However, the Court misconstrues the significance of this aspect of the overall argument. The substantial detrimental change of circumstance is not merely the loss of seating, but rather the 5 years of payments induced to be made by proven and unchallenged promises of the University, payments which would not have been made under a different offer. Why indeed would someone pay \$11,000.00 per seat to obtain a future right to pay more after 5 years?

The change of circumstance and detrimental reliance encompasses not just the loss of the bargain, but the fact that Plaintiffs would not have agreed to the “bargain” as Defendants now define it. Plaintiffs fell prey to a “bait and switch.” Furthermore, while this Court noted that there was no “meeting of the minds,” the Plaintiffs and the witness – who all submitted sworn affidavits – were consistent in what the Defendants’ authorized representative promised. Defendants’ authorized representative could not remember what he had promised Plaintiffs. While this Court appears to rely on the depositions of current Athletic Director Eric Hyman and University Officer Manager Angie Shumpert, these were individuals who were either not employed with Defendants at the time and/or had no involvement in discussions with Plaintiffs’ or with Plaintiffs’ agreements. As such, this Court should reconsider its Order and deny Defendants’ Motion for Summary Judgment and grant Plaintiffs’ Motion for Summary Judgment.

(5) Even if the Court finds the One Year Rule Applies, Whole and Part Performance Overcomes the Statute of Frauds and Specific Performance is Appropriate

Even if this Court finds that the one year rule applies and that the brochure and other documents do not constitute a writing, which Plaintiffs argue is not the case, Plaintiffs have fully performed under the contract and as set forth in the arguments above, this takes the agreement outside of the Statute of Frauds. Additionally, even part performance should remove the agreement from the Statute of Frauds. “The theory of the equitable doctrine of part performance . . . is that a ‘court of equity will not permit a statute designed to prevent frauds to be used as an instrument to effect a fraud.’ *Aust v. Aust*, 230 S.C. 515, 522-523, 96 S.E.2d 558, 562 (1957)(emphasis added); *see also Wright v. Trask*, 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997). A court may compel specific performance of an oral contract where: (1) there is

clear evidence of an oral contract; (2) the contract had been partially executed; and (3) the party who requested performance had completed or was willing to complete his part of the oral contract. Fesmire v. Digh, 2009 S.C. App. LEXIS 184 (May 20, 2009). Defendants have not disputed the fact that Plaintiffs made all payments for the five years including seat payments, Gamecock Club membership payments and season ticket payments which is the sum total of performance by Plaintiffs under the agreements shown to exist by Plaintiffs.

This Court found that "Plaintiffs fail to provide clear evidence of an oral contract where its terms are clear, definite and certain." To the contrary, Plaintiffs have submitted sworn affidavits setting forth the agreement between the parties, including the agreement as to what would occur after year five, and Defendants have no witnesses to the agreement who can dispute Plaintiffs' sworn affidavits and the affidavit of the third-party witness. The only witnesses Defendants can offer are those who had either no connection to the University at the time the contracts were entered or who had no involvement in the creation of the agreements with Defendants.

The evidence establishes the University through its written solicitations and the face to face "meeting of the minds" by USC Agent Massaro - a person with authority to do so as Assistant AG - entered into a contract with Plaintiffs. Plaintiffs submitted sworn Affidavits which are unchallenged by Defendants' only authorized representative to these transactions, Chris Massaro. As this Court correctly observed, "An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other." Graham v. Prince, 293 S.C. 77, 358 S.E.2d 714 (Ct. App. 1987).

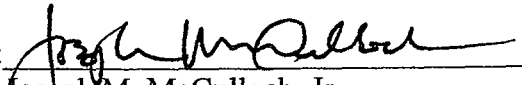
The performance of the Plaintiffs – each and every one was not merely partial but complete insofar as their obligations, as shown by the evidence. Every Plaintiff made the required payments over the 5 year term and each year and through the years of this litigation, though not part of the record, the Plaintiffs continued to make additional payments to maintain their required Gamecock Club status and annually purchase their required season tickets. The evidence is uncontroverted that the Plaintiffs fully performed in support of their acceptance of the clear terms – as explained by Defendants’ Massaro - of the Defendants’ offer. The Defendants’ “buyers’ remorse” under a new athletic administration not around at the time of the formation of these contracts, which occurred under the prior McGee administration, should not be rewarded or permitted by law or equity to defeat Plaintiffs’ right to enforce the Defendants’ clear agreements.

CONCLUSION

For the reasons set forth above, Plaintiffs urge this Court to reconsider its Order and DENY Defendants’ Motion for Summary Judgment, GRANT Plaintiffs’ Motion for Summary Judgment, and GRANT specific performance of the contract.

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By:


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November 7, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Les Springob, Paul Trussell,
Barton Dumas, Stanley Harpe,
and John Yenco,)

Plaintiffs,)

vs.)

The University of South Carolina)
and The University of South)
Carolina Gamecock Club,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-40-05518

**SUPPLEMENT TO
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

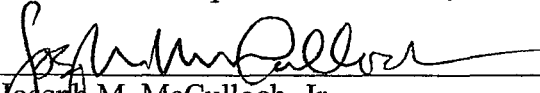
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

2011 NOV 10 AM 9:35

RICHLAND COUNTY
FILED

In supplement to Plaintiffs' Motion for Reconsideration and for clarification,
please consider the Motion for Reconsideration filed today (November 7, 2011) as a request for
the Court to alter or amend judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil
Procedure.

Law Offices of Joseph M. McCulloch, Jr.

By: 

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Les Springob, Paul Trussell,
Barton-Dumas, Stanley Harpe,
and John Yenco,)

Plaintiffs,)

vs.)

The University of South Carolina)
and The University of South)
Carolina Gamecock Club,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-40-05518

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR SUMMARY
JUDGMENT**

JEANE C. BRIDE

2009 SEP -3 PM 1:37

RICHLAND COUNTY
FILED

Plaintiffs submit the following Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Cross-Motion for Summary Judgment.

UNDISPUTED FACTS

For over 100 years, the University of South Carolina has striven for national standing in the college and university rankings. In pursuit of that goal, USC has worked to advance its athletic program and garner financial support among South Carolina Gamecock fans.

For many years, Defendants have reached out to sports fans (boosters) to enter into a relationship of giving and support to the athletic programs with the representations that the support, and the longevity of continuing support by boosters, would be a primary consideration for the Defendants' grant of certain prerequisites, including but not limited to preferred seat assignments. Over the many years of the ups

and downs of the athletic program, there has been a steady succession of athletic directors attempting to find new vehicles and methods for fundraising and creating revenue.

The present lawsuit originates from a fundraising effort specific to the period around 2001-2002 during the construction of the Colonial Center Basketball Arena which was intended to replace the old Carolina Coliseum. The Colonial Center was meant to double the seating capacity and to be a show-place for the basketball program. The size and cost of the facility presented both financial and re-seating difficulties and resulted in a new round of promotional offers being presented to various levels of boosters as new support opportunities.

At issue here is the Founders Club/Courtside Seating opportunity. In or around 2002 as construction on the Colonial Center was being finished, Defendants distributed promotional brochures to a variety of Camecock Club level donors including the Silver Spur, Golden Spur, and Lifetime Levels with an offer of newly available courtside seats, i.e. folding seats placed on the actual basketball floor offering the seat holder the "reach out and touch the game" seating experience. The promotional brochure at issue is attached as Exhibit A; *see also* Barber Dep. at 22:16-23:20, attached as Exhibit B. The brochure went on to tout the opportunity to purchase this "too good to be true" deal to hard-core USC basketball fans, including statements such as:

- "There's never been a seat like this before!"
- "... the ultimate basketball experience"
- "Like to be able to choose your own seat? Want the premium view in your court ... with these prime seats, you'll actually feel like you're a part of the big time action!"
- "Sound too good to be true?"

Exhibit A. The brochure goes on to refer to a “five year term” with up front premiums of \$5,000 per seat in year one and additional \$1500 premiums for years two through five per seat. ~~No further payments are referenced or hinted at in the promotional literature.~~ For those donors who were Golden Spurs – and *none of these Plaintiffs fall within this category*, the brochure suggested they would be automatically given two seats with no upfront premiums and a renewable option in year six. *Id.* At the time, Golden Spurs were paying \$12,000 with increases over a three year period to \$15,000 for their Gamecock Club membership alone “and that automatically qualified them for the right to sit in these seats. And we [Defendants] offered them, as you know, as you see there, two complimentary seats that they didn’t have to pay outside of that.” Barber Dep. at 24:16-25:3, Exhibit B. Qualified members falling outside of the Golden Spurs category – which includes all of the Plaintiffs – had to pay the premium. Barber Dep. at 25:4-9, Exhibit B. Silver Spurs, of which many of the Plaintiffs were members, paid \$3,000 annually to be a Silver Spur member. Barber Dep. 25:4-12, Exhibit B; Exhibit D. While the brochure sets out various amenities, the essence of the promotional brochure was the right to specific seating after premium payments for five years. Exhibit A.

As seen on the last page of the brochure, Defendants appointed Chris Massaro (“Massaro”), the Senior Associate Athletic Director, to be one of two persons meeting with donors and authorized to enter into these Founders Club/Courtside Seating agreements with donors on behalf of Defendants. There is no dispute that by sometime in 2002, all of the Plaintiffs had met with Massaro. Massaro Dep. at 52, 58, 59, 61-62, Exhibit C; Affidavits of Plaintiffs, attached to motion for summary judgment and Exhibit D. As Plaintiff John Yenco testified, “The brochure is what prompted me. I called the

Gamecock Club and said I wanted to talk to somebody about the courtside seats, and they directed me to Chris [Massaro]." Yenco Dep. at 7:16-19, Plaintiffs Depositions attached as Exhibit E.

~~Each plaintiff was given a consistent and similar "sales pitch" by Massaro.~~

Exhibit D. As John Yenco testified, he specifically asked Massaro to explain what was meant in the brochure by "five year term." Yenco Dep. at 9:13-16, Exhibit E. Massaro explained it was a five year "commitment." Id. at 6:15-17. The explanation by Massaro, as testified to consistently by Plaintiffs, was that in exchange for a one-time fee of \$5,000 per seat in the first year and \$1500 per seat for the next four years, no more seat fees would be required for Plaintiffs to keep their seats so long as they paid their annual Gamecock level dues and paid for season tickets at the generally announced price.

Exhibit D. As Plaintiff Stan Harpe testified, the agreement with the University as set by Massaro was "specifically that as long as I kept the maintenance, as you described it, of my scholarship and I paid for my tickets, at the end of the fifth year, I was done." (Harpe Dep. at 7:8-12, Exhibit E). As Plaintiff Paul Trussell confirmed, "It was discussed [with Massaro] point blank that it was a five-year situation, and after that, all I had to do was buy my tickets." (Trussell Dep. at 13:8-14, Exhibit E). When Plaintiff Les Springob, accompanied by local attorney Mike Montgomery, asked for a written agreement, Massaro stated, "Your check will be your receipt." Springob Dep. at 14:13-19, Exhibit E.

Massaro explained that in terms of the new Carolina Center, Defendants were trying to figure out "what assets we had to sell" and knew that the seats were one of the assets. (Exhibit C at 13:13-14:4). Defendants were concerned with generating as much revenue as they could, and Massaro was assigned to actively promote the sale of the courtside seat opportunities. (Exhibit C at 42:10-12, 46:9-19). Massaro testified that

the promotional brochure for the Courtside Seats was mailed out to Silver Spur members and above. (Exhibit C at 29:1-4). Massaro testified that during the meetings with Plaintiffs, he explained to each plaintiff that \$5,000 was required in the first year and \$1500 per seat for the remaining four years. Massaro — the Defendants' only witness to these agreements, does not remember what he agreed nor what he represented to the Plaintiffs to as to year six and beyond. As Massaro testified:

McCulloch: Did [Plaintiff Barton Dumas] ultimately agree to enter into some agreement with the university or through you, with you?

Massaro: Yes

McCulloch: And did you discuss with him what the terms of the agreement were?

Massaro: I did.

McCulloch: Now, in all these many conversation with Mr. Dumas, did you or did you not ever tell him there would be expected of him payments annually after the fifth year? I think you've said no. I'm simply asking the question once more. This is not a trick question. I want to make sure, because —

Massaro: **I don't remember specifically if I've said that specifically to Barton Dumas.**

Exhibit C at 52:7-13, 57:16-25. Mr. Massaro had similar meetings with the other Plaintiffs:

McCulloch: Did you talk with Mr. Harpe about the financial obligation that the university expected of him?

Massaro: Sure.

McCulloch: Do you remember whether you and Mr. Harpe discussed the specifics of payments expected of Mr. Harpe in the sixth and thereafter years?

Massaro: **I don't remember specifically.**

McCulloch: Do you remember — in any of your meetings with Mr. Springob and Mr. Montgomery, do you remember at least Mr. Springob, ever having discussions with him about the expectation of the university or the requirement of payments after the fifth years?

Massaro: **No, I don't remember.**

McCulloch: And the same question I asked you before, do you recall discussing with Mr. Trussell the specific issue of whether or not payments to him would be required in the sixth year and thereafter? Do you know whether that discussion was had with Mr. Trussell?

Massaro: **I don't know the specifics.**

(Exhibit C at 58:22-59:5, 61:4-10).

Defendants' Massaro set-up all of the Courtside Seat agreements with Plaintiffs as oral contracts. As Angie Shumpert, the Office Manager of the Gamecock Club testified:

Q: " – are you aware of any written agreements that the Gamecock Club had with donors when they entered into this Founders Club agreement?"

A: No.

Q: How about the same question as to the Courtside Seats?

A: No, sir. Those are really one in the same."

Angie Shumpert Dep. at 16:7-14, Exhibit H.

Q: In your discussions with Mr. Barber or Mr. Massaro or anyone else with the University, do you know who made the decision not to have a written agreement for the Founders Club?

A: I do not.

Id. at 23:11-15.

As Defendants' the Senior Associate Athletic Director for Development and Executive Director of the Gamecock Club, Jeffrey Barber, testified:

Q: Do you know of any reason why the University determined not to have a written understanding, a written agreement or a written contract for these Founders Club and Courtside seating?

A: I do not. I would assume – I’m really surprised that there wasn’t one, to be honest with you.

Q: Was it protocol or was it a policy of the athletic department or the University at large that there be written agreements or understandings-in-contracts, do-you-know?

A: You know, I would just say it probably was more protocol than policy. I don’t remember ever seeing anything written nor passed down to us that you, you know, had to, but we just did it, it’s good business, but, you know, it was – so, no, I don’t know, I don’t know why they wouldn’t have done it.”

Barber Depo. at 39:18-23; 40:4-13, Exhibit B.

When told to investigate the matter by Defendants’ Jeff Barber, Angie Shumpert found only the brochure and “there were not any written records signed by anyone that we could locate.” Exhibit H at 38:19-24. Angie Shumpert’s “investigation” consisted of a single e-mail she sent to Jeff Barber and Chris Massaro with no follow-up. Id. at 39:10-42:4; Exhibit I. While Defendant’s Jeff Barber – who never met with Plaintiffs – responded that he believed there was a signed lease – it is undisputed that there is no such signed lease. Id. at 38:19-24; 39:10-42:4. Defendant’s Chris Massaro responded that “[w]e told them that there was a great possibility after the term that the premium would increase,” his sworn testimony, as set forth above, is that he really does not remember what he told the Plaintiffs. Exhibit C and I.

In addition to the specified courtside seating purchased by Plaintiffs, Defendants promised them a series of perquisites, and the evidence is undisputed that Defendants have failed to continue to offer some of those perquisites. Exhibit D. After the meeting with Massaro and based on the Defendants’ offer as communicated by Massaro, Plaintiffs entered into these oral agreements with Defendants, made all required payments over the five years, maintained their Gamecock level dues, and paid for seat

season tickets. Defendants readily accepted these payments. Id. All five plaintiffs made this payments annually and annually received their tickets from Defendants. Id.

In August or September of 2007 (the sixth year), the athletic department notified the Plaintiffs and presumably a host of others with courtside seats that they would need to forward a sixth year of premiums to maintain their seats and would be expected to continue additional annual payments for that purpose, all in violation of the agreement between Defendants and Plaintiffs. Exhibit D. Some members of the group of Plaintiffs and other Founders Club members forwarded the annual payment without question or consideration of the validity of the demand, only later discovering their mistake. Others, including some other members of the Plaintiffs' group, objected to being required to make a payment and demanded the University review their agreements and retract the demand for payments. Id. In or around the summer of 2007, the Athletic Department indicated to Plaintiffs that the matter was under review, and sent out a letter in November 2007. Exhibit F. In December 2007, a memorandum authored by Chris Wyrick of the Athletic Department ticket office, attached as Exhibit G, indicated that after "researching the intent of the Founders Club," the Defendants had determined the Plaintiffs were mistaken in their understandings and that those who had withheld their payments would not be allowed access to their seats for the first home SEC basketball game unless payment was forthcoming.¹ After Plaintiffs were unable to resolve the controversy, and after waiting over a year for resolution this lawsuit followed.

LEGAL ANALYSIS

"Summary judgment is appropriate when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of

¹ Per agreement between the parties, Plaintiffs currently maintain their seats pending the outcome of this litigation.

law.” Prestwick Golf Club, Inc. v. Prestwick Ltd. Partnership, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998).

I. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THEIR BREACH OF CONTRACT CLAIM.

The evidence is undisputed that in 2002, Defendants sent out an invitation/promotional brochure for Courtside Seating to Plaintiffs who were qualified Gamecock Club members. Defendants invited the agreement with Plaintiffs and designed the agreement to be oral with Massaro as an authorized representative. **There is no dispute that there was a contract** with clearly delineated terms which have all been acknowledged by Massaro and Barber, the Defendants’ agents, except as to the five year limitation of premium payments established by Plaintiffs. Defendants have submitted no affidavits and produced no testimony to dispute Plaintiffs’ (and Mike Montgomery, member of the Richland County Bar, as a witness) testimony and affidavits that they each entered into an oral contract with the University for basketball courtside seating whereby if they paid a \$5,000 per seat premium in the first year and \$1500 per seat thereafter for four years, the seats were theirs so long as they bought season tickets and kept up their donor level.² All Plaintiffs and an independent witness are consistent and firm that “it was discussed [with Massaro] point blank that it was a five-year situation, and after that, all I had to do was buy my tickets.” Trussell Dep. at 8-14, Exhibit E.

The only other witness to these agreements, Massaro, cannot recall what he told Plaintiffs in terms of a payment after year six. Exhibit B. While the University now claims they “intended” for the Plaintiffs to continue paying each year for the seats – even after year five – that “intent” was never manifested or communicated to these

² This premium payment concept to obtain a right to a specific seat was very similar to other college and professional sports programs across the country that were occurring at the time – such as Panthers Football arena in Charlotte.

Plaintiffs. Massaro has testified that he doesn't know what he promised but he knows what he meant to be intended. The law is clear that intent is not relevant unless it is communicated and agreed to by the other contracting party. "[The] 'meeting of minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known." Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989).

Moreover, "[W]hen a written contract is ambiguous in its terms . . . parol and other extrinsic evidence will be admitted to determine the intent of the parties. " Charles v. King, 234 S.C. 15, 18, 106 S.E.2d 455 (1959); see also Duncan v. Little, 2009 S.C. Lexis 327 (S.C. August 10, 2009)("[W]here a contract is ambiguous, the fact finder must ascertain the parties' intentions from the evidence presented."); Williams v. Teran, Inc., 266 S.C. 55, 221 S.E.2d 526 (1976)("When the agreement is ambiguous the court may take into consideration the circumstances surrounding its execution in determining the intent.") Moreover, it is axiomatic in contract law that ambiguities are construed against the drafter. McGill v. Moore, 381 S.C. 179, 186, 672 S.E.2d 571 (2009). As the Court stated in Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981)(quoting 17A C.J.S. Contracts § 324:

[A]mbiguous 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.

Id.

After the contracts were entered into, the Plaintiffs each completed their premium payment obligations over five years, and Defendants accepted the payments for five years. Exhibit D. Each Plaintiff asserts he made the annually required premium payments, and each Plaintiff received his tickets each year of the five-year term. Id. Plaintiffs conformed to the oral agreements in every other respect as well. Id. In year six, Defendants materially breached the contract by demanding the continual payment of money after year five and threatened they would remove Plaintiffs from their seats. Exhibit F.

Defendants now argue they do not have to live up to their bargain because of the Statute of Frauds or the statute of limitations, based upon the Plaintiff's Motion for Summary Judgment. For reasons set forth more fully below, this contract easily falls outside of the Statute of Frauds due to Plaintiffs' part and full performance and estoppel. There is no dispute there was a contract, Plaintiffs performed per the terms of the contract to the Defendants benefit, and Defendants accepted the performance by Plaintiffs. Defendants thereafter materially breached the contracts by requiring 6th year payments, and this Court should grant summary judgment in favor of Plaintiffs.

II. THE CONTRACT AT ISSUE FALLS OUTSIDE OF THE STATUTE OF FRAUDS

A. Part and/or Full Performance

"An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other." Graham v. Prince, 358 S.E.2d 714 (Ct. App. 1987); see also Parr v. Parr, 231 S.E.2d 695 (1997). "The theory of the equitable doctrine of part performance . . . is that a 'court of equity will not permit a statute designed to prevent frauds to be used as an instrument to effect a fraud.'"

Aust v. Aust, 230 S.C. 515, 522-523, 96 S.E.2d 558, 562 (1957)(emphasis added); *see also* Wright v. Trask, 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997). A court may compel specific performance of an oral contract where: (1) there is clear evidence of an oral contract; (2) the contract had been partially executed; and (3) the party who requested performance had completed or was willing to complete his part of the oral contract. Fesmire v. Digh, 2009 S.C. App. LEXIS 184 (May 20, 2009).

Here, there is clear evidence of an oral agreement and the testimony of the terms of the agreement are consistent and non-contradictory. All five plaintiffs and one independent witness heard consistently from Defendants' Chris Massaro that no premium payments were required in the sixth year. Exhibit D. Chris Massaro – the only other witness to the terms of the contract – cannot contradict the Plaintiffs as Massaro cannot remember what he told the Plaintiffs. Exhibit C. Moreover, the agreement has been fully or, at the very least, partially carried out by Plaintiffs with Defendants willingly receiving five years of payments. Plaintiffs' performance of the oral agreement resulted in a huge monetary loss to them and a significant benefit to Defendants. Plaintiffs' paid not only these seat premiums (\$5000 per seat in the first year and \$1500 per seat in years two to five) but continued paying for expensive Gamecock Club levels and season tickets (for instance, Silver Spurs was \$3,000 annually), and Plaintiffs remain willing to do so. Furthermore, Defendants set these agreements up as oral contracts and now seek to benefit by the oral nature of the agreements they devised!! When asked for a written contract, Defendants' Chris Massaro told one of the plaintiffs, "your check is your receipt." As such, this Court should find full or part performance of the contract by Plaintiffs and award Plaintiffs summary judgment.

B. Estoppel

Estoppel is pertinent as to Defendants' assertion of both the Statute of Frauds and Statute of Limitations. "Our Supreme Court has acknowledged that, in a proper case, the doctrine of estoppel may be invoked to prevent a party from asserting the statute of frauds." Collins Music Co. v. Cook, 316 S.E.2d 418 (Ct. App. 1984) The crux of estoppel is the essential concept of fairness. Estoppel may overcome the statute of frauds where "the party asserting the estoppel must show that he has suffered a definite, substantial, detrimental change of position in reliance on the contract, and that no remedy except enforcement of the bargain is adequate to restore his former position." Id; see also Atlantic Wholesale Co. v. Solondez, 320 S.E.2d 720 (1984) ('estoppel to assert the statute of frauds as a defense is available in action at law' despite the equitable origins of the doctrine of estoppel'); Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989).

In the case at bar, Defendants initiated the oral contracts, Defendants made the decision to set these up as oral contracts, and they chose not to follow up with any written form or letter as to the terms. As Defendants' the Senior Associate Athletic Director for Development and Executive Director of the Gamecock Club, Jeffrey Barber, testified:

Q: Do you know of any reason why the University determined not to have a written understanding, a written agreement or a written contract for these Founders Club and Courtside seating?

A: I do not. I would assume – I'm really surprised that there wasn't one, to be honest with you.

Q: Was it protocol or was it a policy of the athletic department or the University at large that there be written agreements or understandings in contracts, do you know?

A: You know, I would just say it probably was more protocol than policy. I don't remember ever seeing anything written nor passed

down to us that you, you know, had to, but we just did it, it's good business, but, you know, it was – so, no, I don't know, I don't know why they wouldn't have done it.”

Barber Depo. at 39:18-23; 40:4-13, Exhibit B.

Although Defendants set up the oral contracts, they now want to take advantage of the oral nature of the contracts by hiding behind the Statute of Frauds. When Plaintiff Springof asked for a written agreement given the large amounts of money, he was told by Defendants' Chris Massaro, “Your check will be your receipt.” Springob Dep. at 14:13-19, Exhibit D. The brochure intentionally avoided any explanation of what would happen in year six to non Golden-Spur donors creating an opportunity for Massaro to create in Plaintiffs' minds the understanding that there would be no additional seat premiums required after year five. Massaro testified that they hadn't sold all of the seats and were selling even as the season began. Massaro Dep. at 75-76, Exhibit C. His representation to Plaintiffs at the time of the formation of the contract is reason enough to apply estoppel. Plaintiffs have suffered a definite, substantial, detrimental change of position in reliance on the contract as they have expended great sums of money and now risk the loss of very valuable and unique seats. There is no remedy except enforcement of the bargain that is adequate to restore them to their former positions. Plaintiffs' motion for summary judgment should be granted, and Defendants' cross-motion denied.

III. THERE IS NO STATUTE OF LIMITATIONS ISSUE

In their cross-motion for summary judgment, Defendants allege the statute of limitations as a basis for their motion. Defendants' material breach of the contract by requiring a sixth year payment occurred in the summer of 2007, well within the three year statute of limitations as the lawsuit was filed in September 2008.

Indeed, as soon as the breach occurred, Plaintiffs put Defendants on notice. The controversy first arose when USC sent a sixth year bill to all Founders Club members. Some paid later requesting their money back when they realized the error, some objected. The University in the summer of 2007, per a promise to Plaintiffs, began "its investigation" which consisted of two e-mails to the former executive director of the Gamecock Club Jeff Barber and former ticket manager, Chris Massaro, which only revealed recollections of what was intended, not what was done. The University continued to claim they were "investigating" despite Plaintiffs repeated demands for resolution, ultimately requiring the filing of this lawsuit in September of 2008. The University should not benefit by its argument of statute of limitations. "It is sufficient that the aggrieved party reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire." Dillon County v. Lewis Sheet Metal, 332 S.E.2d 555 (Ct. App. 1985).

The essence of the bargain here is premium seating. Exhibit D, Exhibit A. To the extent the Defendants will attempt to claim that minor breaches as to certain benefits under the contract (access to McGuire room, etc.) caused the running of the statute of limitations, minor breaches do not trigger the statute of limitations as they do not justify repudiation of a contract. See Ackerman v. McMillan, 442 S.E.2d 618 (Ct. App. 1994) ("in order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract."); see also Gibbs v. G.K.H., Inc., 427 S.E.2d 701 (Ct. App. 1993). If it were otherwise, then any minor breach would allow a company to get out of a contract by making minor breaches once they had received their benefit. Here, the side benefits – McGuire room, etc. – were all minor benefits. The essence of this contract is court-side seating at the men's games. The first material breach

by USC was when they refused to abide by the contract and demanded money in year six, the 2007-2008 season.

Moreover, Defendants are estopped from asserting the statute of limitations as to their minor breaches. ~~“A defendant will be estopped to assert the statute~~ of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct.” Here, the minor breaches were caused by Defendants. Defendants are further estopped as USC was made aware of the controversy, conducted no real investigation (the investigation consisted on one e-mail) and told Plaintiffs for one year that the matter was under investigation and continued to look into the situation from the summer of 2007 until Plaintiffs filed the lawsuit in September 2008. Exhibit H; Letter to Terry Parham, attached as Exhibit J. As such, Defendants' cross-motion for summary judgment should be denied.

IV. **SPECIFIC PERFORMANCE IS THE APPROPRIATE REMEDY IN THIS MATTER**

Plaintiffs believe they are entitled to and the Court should require Defendants to specifically perform, i.e. to require the Defendants to provide the specified seats to Plaintiffs without any additional per seat payments after the fifth year. “Specific performance may be granted where there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” Campbell v. Carr, 361 S.C. 258, 603 S.E.2d 625 (Ct. App. 2004). Here, given the unique nature of the seats, there is no adequate remedy at law and specific enforcement is equitable. As the brochure itself describes, “there's never been a seat like this before!,” “with these prime seats, you'll actually feel like you're a part of the big time action!,” “the ultimate basketball experience,” and “sound too good to be true?” Exhibit A. The brochure and indeed,

Massaro's pitch to Plaintiffs, focused on the seating experience and the unique nature of the seating experience.

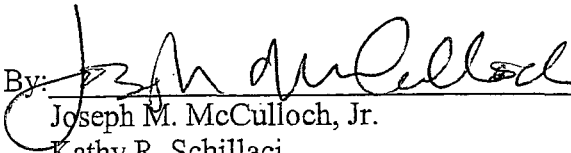
Specific performance may take be compelled where there is "(1) clear evidence of an agreement, (2) that the agreement has been partly carried into execution on one side with the approbation of the other; and (3) that the party who comes to compel performance has performed on his part, or has been and remains able and willing to perform his part of the contract." Gibson v. Hrysikos, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987).

Here, there is clear evidence of an agreement and the agreement has been fully or, at the very least, partially carried out by Plaintiffs with Defendants willfully receiving five years of payments, and Plaintiffs remain willing and able to continue with the purchase of season tickets and maintaining their Gamecock Club membership levels. Therefore, Plaintiffs are entitled to summary judgment as a matter of law, and Defendants' cross-motion should be denied.

CONCLUSION

Based on the foregoing Memorandum of Law, Plaintiffs are entitled to an Order Granting Summary Judgment and denying Defendants' cross-motion for summary judgment. There is clear evidence the University determined not to put the deal in writing. There is clear evidence that the University kept no records memorializing a written agreement. Defendants conducted no real investigation and delayed the Plaintiffs for over a year while Defendants vacillated and now seek to assert the Statute of Frauds – a condition they chose to create- or in the alternative, Defendants argue the Statute of Limitations – a delay created by Defendants. As such, Defendants' cross-motion for summary judgment should be denied.

Law Offices of Joseph M. McCulloch, Jr.

By: 
Joseph M. McCulloch, Jr.
Kathy R. Schillaci
1426 Richland Street
P.O. Box 11623
Columbia, SC 29211
(803) 779-0005
Attorneys for Plaintiffs

Columbia, South Carolina

September ____, 2009

EXHIBIT A

GET CLOSE TO THE ACTION

IF YOU REALLY WANT TO MAKE A SLAM DUNK IMPRESSION, THEN THE FOUNDERS' AND COURTSIDE CLUB SEATS ARE RIGHT UP YOUR LANE. FROM THESE PRIME SEATS, YOU'LL ACTUALLY BE A PART OF THE BIG TIME ACTION. NOT ONLY WILL YOU BE CLOSE TO THE MAIN EVENT, BUT YOU'LL ALSO RECEIVE ACCESS TO A HOST OF OTHER SPECTATOR AMENITIES.

With these big time seats come plenty of big time amenities. Access via private escalator to the McGuire Club during men's basketball games. And first priority to purchase tickets for other Carolina Center events and attractions.

Sound too good to be true? It's all yours when you're a Founders' Club or Courtside Club season ticket holder. If you want to get in on the big time seats and big time fun, call now! These premium seats will not last long.

CLUB SEAT AMENITIES INCLUDE:

MEN'S BASKETBALL

- You choose your seats within your Gamecock Club priority
- Preferred parking
- Access via private escalator to The McGuire Club
- Light snacks provided (The McGuire Club)
- Televisions (The McGuire Club)
- Premier view of the playing floor

WOMEN'S BASKETBALL

- Preferred parking
- Reserved seating
- Access to concourse hospitality lounge for most women's basketball games
- Light snacks provided (The McGuire Club)
- Televisions (The McGuire Club)
- Premier view of the playing floor

OTHER ARENA EVENTS

- First opportunity to purchase best available seats before public sale for events
- Option to purchase preferred parking for selected events other than Carolina athletic events
- One stop shopping for all Arena events

COURTSIDE CLUB SEATS

THERE'S NEVER BEEN A SEAT LIKE THIS BEFORE! THE FIRST TWO ROWS, FACING THE TEAM BENCHES, WHERE THERE'S ABSOLUTELY NOTHING BETWEEN YOU AND THE ACTION.

How would you like a seat where there's absolutely nothing between you and the action? Where you're just a few feet from the court and can see every pick, pump, bump and dunk! It's the ultimate basketball experience. It's all a reality with Courtside Club Seats in The Carolina Center.

FIVE YEAR TERM *

- Up front premium of \$5,000 per seat in year one
- \$1500 premium years 2-5 per seat
- Golden Spurs automatically assigned two Founders' Club Seats or second row of Courtside Club Seats without upfront premium, and with option to purchase additional seats for \$1500 premium per seat, with renewable option in year six

FOUNDERS' CLUB SEATS

CENTER COURT AND DIRECTLY BEHIND BOTH TEAM BENCHES WHERE ALL THE ACTION IS FRONT AND CENTER.

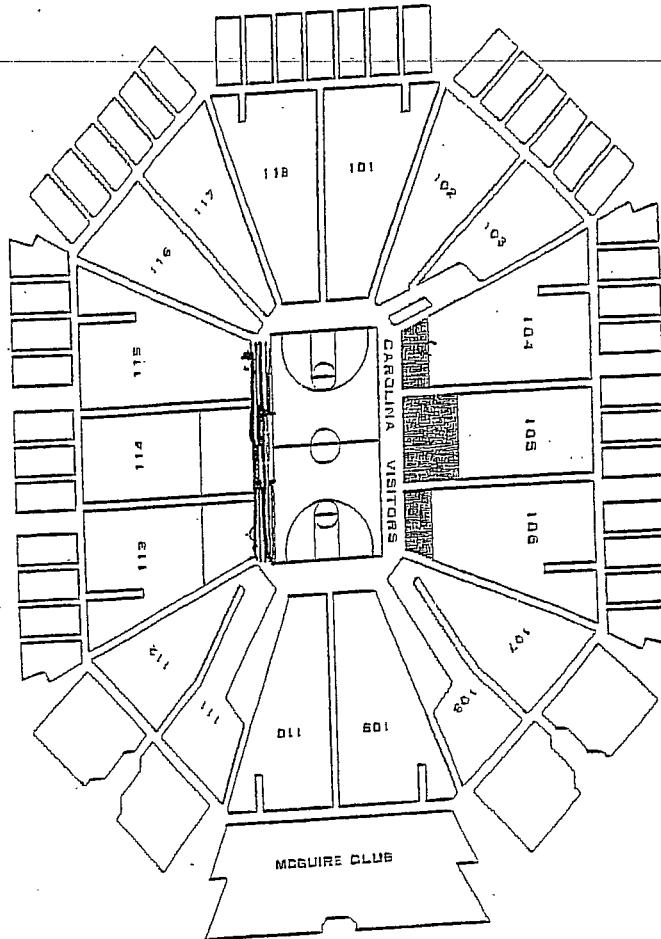
Like to be able to choose your own seat? Want the premium view in your court—where all the action is front and center? It's all possible with Founders' Club Seats in the Carolina Center. With these prime seats, you'll actually feel like you're a part of the big time action!

FIVE YEAR TERM *

- Up front premium of \$5,000 per seat in year one
- \$1,500 premium years 2-5 per seat
- Golden Spurs automatically assigned two Founders' Club Seats or Courtside Club Seats without upfront premium, and with option to purchase additional seats for \$1500 premium per seat, with renewable option in year six

* Since 1988, contributions to donor groups have been governed by a specific IRS tax rule that says 80% of the value of such gifts is deductible. Consult your tax advisor to accurately determine the deductibility of your contribution.

7900-A-010



-  FOUNDERS CLUB SEATS
-  COURTSIDE CLUB SEATS
-  TV/RADIO
-  PRESS ROW

7900-A-D11

MAIL THIS CARD FOR MORE INFORMATION

NAME
ADDRESS
HOME PHONE
BUSINESS PHONE
E-MAIL ADDRESS
GAMESCOCK CLUB NUMBER (if applicable)

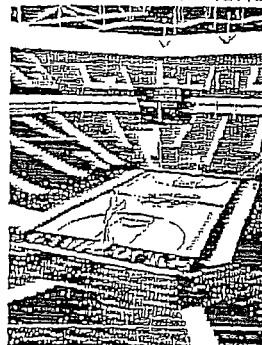
- ☐ PLEASE CONTACT ME WITH MORE INFORMATION ON THE FOUNDERS' CLUB SEATS.
- ☐ PLEASE CONTACT ME WITH MORE INFORMATION ON THE COURTSIDE CLUB SEETS.

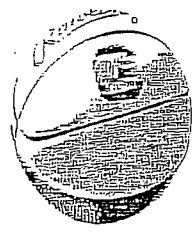
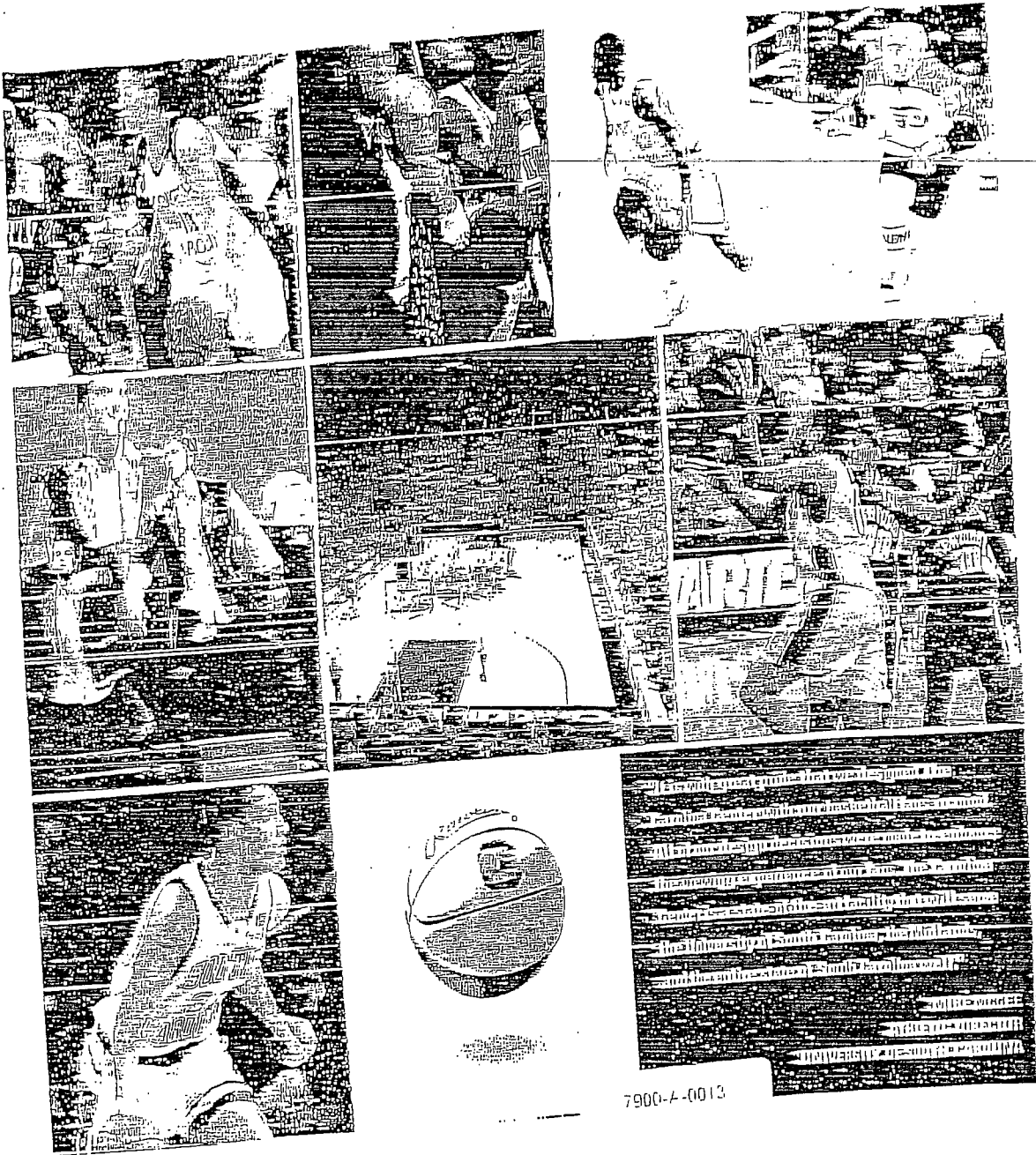


7900-A-012

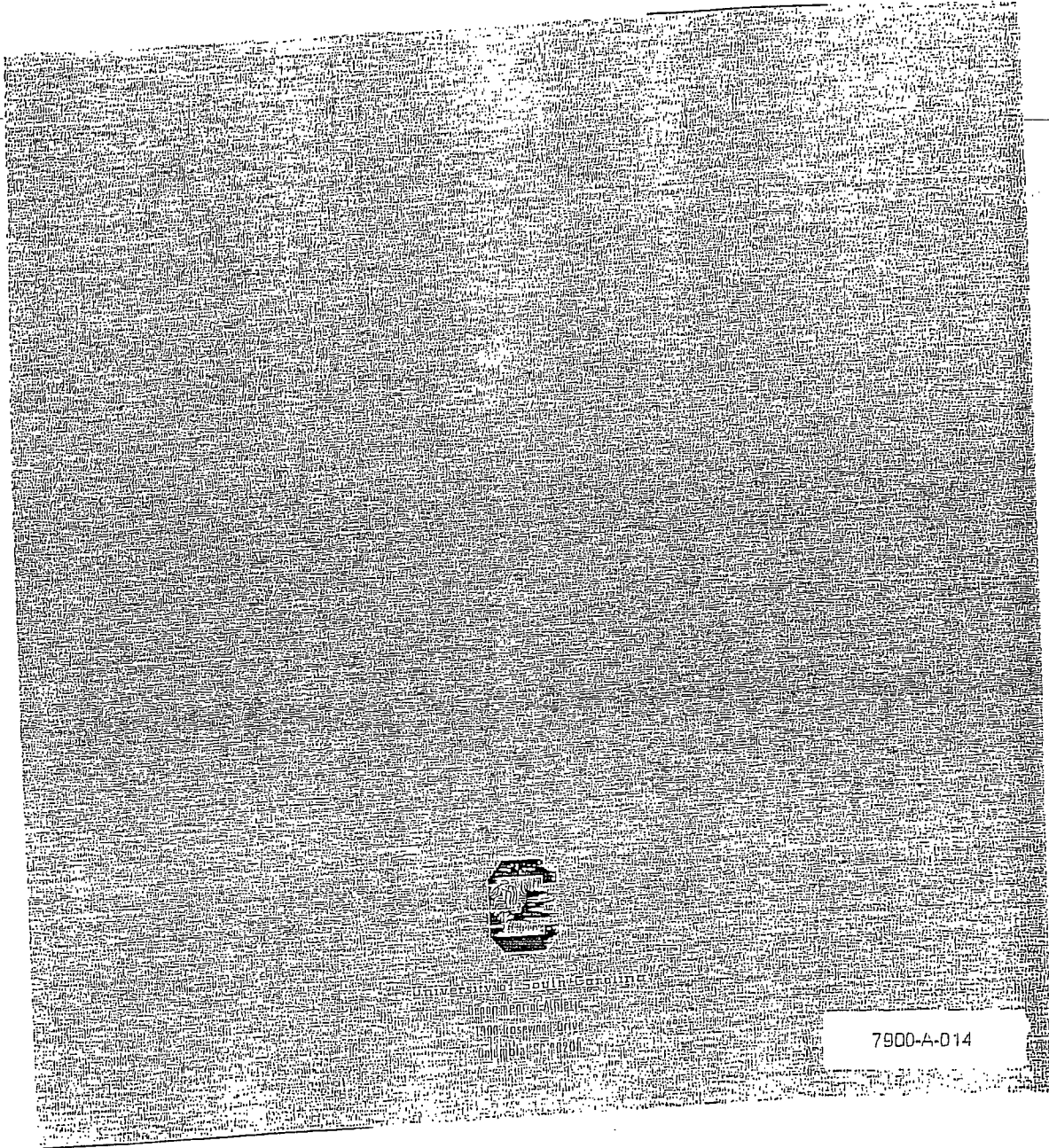
Please send completed form to: The Carolina Gamedeck Premium Suite • 1300 Rosewood Drive • Columbia, SC 29208
or Fax (Please make a copy first) to: 803-777-1071 *Do not mail form if taxed

FOR TICKET INFORMATION: JEFF BARBER 803-777-4270 OR CHRIS MARRANO 803-777-4274





7900-4-0013



University of South Carolina
Department of Art
1000 University Drive
Columbia, SC 29208

7900-A-014

EXHIBIT F



Mr. Les Springob
20 Tiftgreen Circle
Columbia, SC-29223

Dear Mr. Springob,

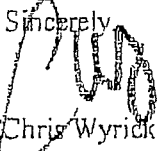
The goal of the Gamecock Club is to provide South Carolina student-athletes with a quality college education while enjoying athletic competition in the premier collegiate athletic conference in the nation. In addition, Gamecock Club members provide the financial support which will ultimately bring conference and national championships to the University of South Carolina and its fans. Your generosity plays a vital role in bringing all the parts together for athletic success.

Now that basketball season is here, the Gamecock Club staff has worked diligently to provide an exceptional game day experience at the Colonial Center. In preparation for the season several questions regarding Founders Club seating and the associated cost have surfaced. We are currently in a very rapid period of examination to ultimately determine and finalize the intent of the Founders Club. To provide the most accurate answers, the Gamecock Club staff has been in contact with former athletics department staff who developed the Founders Club at the Colonial Center. The most important question which was answered by former colleagues is that all Colonial Center Founders Club seats do in fact have a yearly premium. However, to be 100% certain, the office staff is further researching historical documents for these answers.

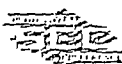
Chris Wyrick and Eric Hyman have instructed the ticket office to provide your Founders Club seats for the 2007-2008 season as we do our due diligence. Please understand that if the previously stated facts are corroborated by our research, you will immediately be required to pay in full the premium for your Founders Club seats. Should you choose not to pay the premium, your tickets will be invalidated for the remainder of the season. Naturally, we will notify you in advance of our findings.

As always, we truly appreciate your support of the Gamecocks and the University of South Carolina.

Sincerely,


Chris Wyrick
Gamecock Club Executive Director

CC: Eric Hyman
Kent Hegenauer



7900-B-020

EXHIBIT G



UNIVERSITY OF SOUTH CAROLINA

Memorandum

To: Mr. Les Springob
From: Chris Wyrick
CC: Kent Hegenauer
Date: 12/19/2007
Re: Founders Seats

Mr. Springob:

After further researching the intent of the Founders Club, we have come to the conclusion that the premium was in fact locked in for five years, however, following the five years the premium will/may be increased. In short, the Founders Seat premium was always intended to be a yearly fee.

After interviewing former athletic department staff and current Founders Club members, we can say with complete confidence that members were made aware of this at the time of purchase by either Chris Massaro or Jeff Barber. There were no written documents signed by either the athletic department or the donor.

As stated in our previous letter, your Founders Club seats for the 2007-2008 season would be provided while we did our due diligence with the understanding that if our facts are corroborated by our research, you will immediately be required to pay for your Founders Club seats. Thus, your premium must be paid in full by the first scheduled Southeastern Conference game on January 12, 2008 against Tennessee. Should you choose not to pay for the premium, your tickets will be invalidated for the remainder of the season.

As always, we truly appreciate your support of the Gamecocks and the University of South Carolina.

Sincerely,

Chris Wyrick

Gamecock Club Executive Director





UNIVERSITY OF
SOUTH CAROLINA



7006 3450 0003 4400 7319

Mr. Les Springob
20 Tiftgreen Circle
Columbia, SC 29223

LW
ESL#2308
11-13-07



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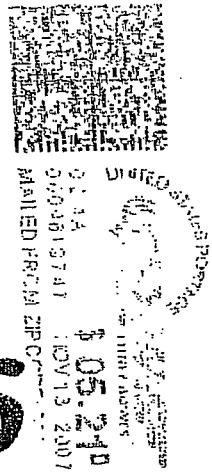
- ☐ INSUFFICIENT ADDRESS
- ☐ ATTEMPTED NOT KNOWN
- ☐ NO SUCH NUMBER/ STREET
- ☐ NOT DELIVERABLE AS ADDRESSED
- ☐ UNABLE TO FORWARD

☐ OTHER

RTS
RETURN TO SENDER



Gamecock Athletics • 1300 Rosewood Drive • Columbia, S
2922



7900-B-024

EXHIBIT I

Premium

From: "Barber, Jeff (Director of Athletics)" <jbarber2@liberty.edu>
To: "Angie Shumpert" <Angies@gwm.sc.edu>
Date: 10/12/2007 12:14:01 PM
Subject: RE: Hey Jeff! Question for you...

Hey...I do remember. They signed a 5- year lease with the understanding that the cost would go up after that period of time...similar to what we do in football. It is obviously crazy for anyone to think the premiums would go away. Better watch out for Springob.....

We are open this weekend and Jay and I are going to see the Gamecocks beat up on the Tarheels!

Hope you and your family are doing well. Tell them hello for me!

Take care,

Jeff

-----Original Message-----

From: "Angie Shumpert" <Angies@gwm.sc.edu>
To: "Barber, Jeff (Director of Athletics)" <jbarber2@liberty.edu>
Sent: 10/12/2007 12:01 PM
Subject: Hey Jeff! Question for you...

Hey Jeff,

I hope you're doing well. I saw the ask the AD thing on Liberty's website. That's a good idea! I even read some of the questions and responses.

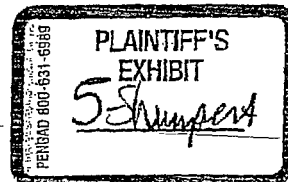
I'm actually writing today to pick your brain. Do you remember what the deal was with Founder's seats in the Colonial Center? Les Springob and someone else are saying that they no longer have to pay the annual premium to sit in the Founder's Seat area. They said they only had to pay for 5 years and that was up last year. Do you remember anything about that? I thought the premium was an annual gift to sit in that area and to receive the benefits that come with sitting in that area? Of course I can't find any paperwork on it here. It was really something Chris handled. I've emailed him also in hopes of getting some idea of what is going on.

If you can find the time to respond, I would appreciate it. Take care and tell Donna and the children I said hello!

Angie

\$6,000.00

Les Springob



7900-B-017

055

From: "Chris Massaro" <cmassaro@mtsu.edu>
To: "Angie Shumpert" <Angies@gwm.sc.edu>
Date: 10/12/2007 12:10:30 PM
Subject: Re: Hello from South Carolina

Angie,

It is great to hear from you. The premium was always an annual deal. We told them that there was a great possibility after the term that the premium would increase. The premium was never to go away--much like football. If they felt different, they only heard what they wanted to hear. I tried to be as clear as possible and I know Jeff was as well. I hope this helps.

How are your kids doing? Mine are busy with soccer, football and swimming. All we do in the evenings is run a taxi service. Congratulations on a great football season thus far.

Don't ever worry about contacting me. I am happy to help. Please say hi to everyone.

Chris

----- Original Message -----

From: "Angie Shumpert" <Angies@gwm.sc.edu>
To: <cmassaro@mtsu.edu>
Sent: Friday, October 12, 2007 10:54 AM
Subject: Hello from South Carolina

- > Hey Chris,
- >
- > It's been a long time since I spoke to you. I hope everything is going
- > well. I have no doubt you're doing a great job up there.
- >
- > I hate to write with something business related and I know it's been a
- > long time since you've dealt with anything here; however, some of the
- > Founders seat people at the Colonial Center are saying that they no
- > longer have to pay a premium for their seating and we can't find any
- > documentation from when they first signed up. Do you remember what the
- > deal was? I know they paid an upfront \$5000 per seat and then an annual
- > \$1,500 premium. They just think they no longer have to pay the premium.
- > I was under the impression that the premium was annual until they no
- > longer wanted that seat, but I didn't have much to do with it.
- >
- > Any insight you could offer would be appreciated. Thanks again and I'm
- > sorry to write you about something from back here. I know you have
- > enough on your plate running your own Department.
- >
- > Take Care and tell Cindy and the children we said hello.
- >
- > Angie
- >
- >
- >

- > Angie Shumpert
- > University of South Carolina



7900-B-018

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#306.00 LL
#244.00 Upper
1st 4 Rows

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) Civil Action No. 2008-CP-4005518

Les Springob, Paul Trussell,
Barton Dumas, Stanley Harpe,
and John Yenco.

Plaintiffs,

The University of South Carolina
and The University of South
Carolina Gamecock Club,

Defendants,

Motion for Summary Judgment

JEANETTE N. HERRIDGE
C.C.P. & G.S.
2009 JUL 30 AM 8:49

Plaintiffs, by and through their undersigned attorney, hereby file this Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The grounds for this motion are that there is no genuine issue as to any material fact that these Defendants are entitled to judgment as a matter of law for the following reasons:

- 1) Defendants issued promotional information to Gamecock Club Members offering courtside seating opportunities in 2002;
- 2) These seating opportunities were available only to certain level Gamecock members and Plaintiffs all were qualified to purchase courtside seats under this condition;
- 3) Plaintiffs paid all sums as agreed for the (5) five (5) year period;
- 4) Defendants have produced no written memoranda or written contract for these Courtside seat agreements as these were oral agreements;

5) These agreements were entered into between each Plaintiff individually and Chris Massaro, a representative of the Defendants, who was authorized to enter into such agreements for defendants;

~~6) Plaintiffs submit that the attached affidavits to establish that Plaintiffs were each~~
orally offered courtside seats in exchange for specific payments to be made over a term of five (5) years, after which no further payments per seat would be required, except the maintenance of the required Gamecock Club membership level and annual purchase of season tickets per seat, which were required both during the five (5) year term and after.

7) Plaintiffs were promised a series of perquisites in addition to the specified seats purchased by Plaintiffs, and Defendants have failed to continue to offer some of those perquisites which constitute a breach of the terms of the oral agreements.

8) Plaintiffs each made the payments over five (5) years as required under the oral agreements with Defendants and conformed to the oral agreements in every other respect.

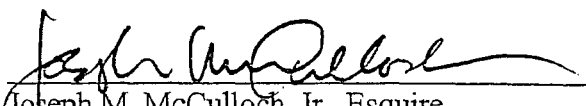
9) Plaintiffs believes they are entitled to and the Court should require Defendants to specifically perform, i.e. to require the Defendants to provide the specified seats to Plaintiffs without any additional per seat payments after the fifth year and Defendants should be required to return any seat monies paid by any Plaintiff by reason of the Defendants improper demand in the 6th year. Further, the Plaintiffs are entitled to a determination of the value of the perquisites not being provided to plaintiffs as promised and for money damages for those accompanying breaches of contract.

This motion is supported by the Affidavits filed contemporaneously herewith and attached hereto, which includes four (4) of the five (5) Plaintiffs and a witness who was present during the formation of the Springob contractual agreement.

~~Plaintiffs also rely on the pleadings, discovery responses, depositions, and any~~
memorandum of law that may be submitted to the Court at or prior to the hearing in this matter.

These Plaintiffs request the Court grant summary judgment in this matter.

Respectfully Submitted:


Joseph M. McCulloch, Jr., Esquire
1426 Richland Street
Post Office Box 11623
Columbia, South Carolina 29211
(803) 779-0005

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

this _____ day of July, 2009.

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF JOHN YENCO

2009 JUL 30 AM 8:15
JEANETTE WILSON
C.C.P.A.

2009 JUL 30 AM 8:49

[illegible]

payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. The Affiant made that payment but believes he is entitled to a refund of that amount.

3. The Affiant states that he has complied with the original agreement as explained by Chris Massaro on behalf of the USC Athletic Department and/or Gamecock Club in every respect for the required period of five years and is and has been in compliance by his retention of his Gamecock Club level and the purchase of season tickets each year for the very seats at issue.

This 29 day of July, 2009.

John Yenco
John Yenco

SWORN to and SUBSCRIBED before me
This 29th day of July, 2009.

Jennifer Barber
Notary Public for South Carolina

My Commission Expires:
My Commission Expires May 7, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF LES SPRINGOB

Personally appeared before me Les Springob, who being duly deposed
swears and states:

1. Affiant has for many years been a member of University of South Carolina Gamecock Club and a conscientious supporter of its athletic and academic programs. In 2002, prior to completion of the Colonial Center Arena, Affiant received a solicitation from the University of South Carolina's Athletic Department and/or the University's Gamecock Club in which they offered Gamecock Club members an opportunity to enter into an arrangement by which the Gamecock Club member who agreed to pay the sum of \$5000.00 per seat for the first year and \$1,500 per seat for the next four years (for an approximate total investment of \$11,000 per seat) would receive arena courtside seats and would be entitled to those seats indefinitely so long as Gamecock Club status was continued and season tickets purchased (although the phrase "licenses" was not utilized in the solicitation). The offer included complimentary women's basketball tickets, entry to a banquet facility serving food and alcohol called the McGuire Suite, entitlement to preferential parking, and preferential ticket opportunities for other Colonial Center events. At the end of the five year term of payments, the purchaser was required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat in order to retain the seats annually. The Affiant entered this arrangement after having the offer explained to him by Chris Massaro of the USC Athletic Department in the presence of Mike Montgomery in a face to face meeting in Chris Massaro's office. Since the Affiant's agreement to this arrangement, the Affiant has made all payments required, and has maintained his Gamecock Club status, has purchased season tickets annually, and has complied with all conditions of the agreement entered into with the University and/or Gamecock Club originally.

2. Some of the perquisites promised by the University and/or Gamecock Club ceased to be provided as promised by USC including complimentary women's basketball tickets, and McGuire Suite opportunities at women's basketball games. The opportunity to purchase preferential seating at non-athletic events at the Colonial Center was also discontinued. In approximately September 2007, the Affiant received a written notification from the University's Athletic Department and /or University Gamecock Club in which the University indicated that the University expected the Affiant to make a sixth year payment of \$1500.00 per seat and that such payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. Affiant contacted the Athletic Department and/or Gamecock Club indicating that the Affiant believed his obligation to be fulfilled and that the only further requirements for the retention of the pertinent seats should be as originally promised: the payment for the appropriate Gamecock Club level and the purchase of the season tickets, all conditions

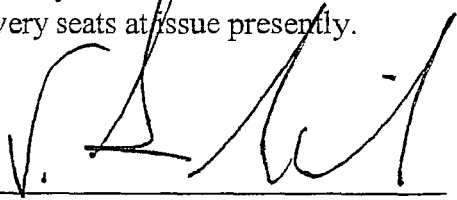
JEANETTE
C.O.P.
2009 JUL 30 AM 8:49
RICHLAND COUNTY

which were complied with by the Affiant. The response by the Athletic Department and/or Gamecock Club was that they would investigate the matter.

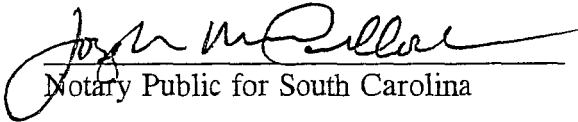
3. In late December 2007, the Affiant received further notice from the Athletic Department and/or Gamecock Club indicating that the University had investigated the matter and concluded the Affiant interpretations were incorrect and in order to maintain the seat placement the Affiant had purchased, he would be required to pay the annualized per seat premium of \$1,500 forever or at least until the University determined to increase that fee. The University's notification to Affiant in late December advised the Affiant that if he did not comply with the University's demand in these regards, the Affiant would be barred from his seats as of the January 12, 2008 game.

4. The Affiant states that he has complied with the original requirements of the agreement with the Athletic Department and/or Gamecock Club in every respect for the required period of five years and is in compliance by his retention of his Gamecock Club level and the purchase of season tickets for the very seats at issue presently.

This 29th day of July, 2009.


Les Springob

SWORN to and SUBSCRIBED before me
This 29 day of July, 2009.


Notary Public for South Carolina

My Commission Expires:

Oct 17, 2016

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF STAN HARPE

RICHLAND COUNTY

JUL 30 AM 8:49

2009 JUL 30

JEANETTE M. C.P.

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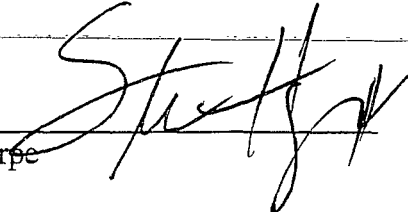
e Colonial

1. Affiant has for many years been a member of University of South Carolina Gamecock Club and a conscientious supporter of its athletic and academic programs. In 2002, Affiant received a solicitation from the University of South Carolina's Athletic Department and/or the University's Gamecock Club in conjunction with the Colonial Center Arena in which they offered Gamecock Club members an opportunity to enter into an arrangement by which the Gamecock Club member who agreed to pay the sum of \$5000.00 per seat for the first year and \$1,500 per seat for the next four years (for an approximate total investment of \$11,000 per seat) would receive arena courtside seats and would be entitled to those seats indefinitely so long as their Gamecock Club status was continued and season tickets purchased (although the phrase "licenses" was not utilized in the solicitation). The offer included complimentary women's basketball tickets, entry to a banquet facility serving food and alcohol called the McGuire Suite, preferential parking, and preferential ticket opportunities for other Colonial Center events. At the end of the five year term of payments, the purchaser was required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat in order to retain the seats annually. The Affiant entered this arrangement after viewing the seat locations and having the offer explained to me by Chris Massaro, an official of the USC Athletics Department in a face to face meeting. Since the Affiant's agreement to this arrangement, the Affiant has made all payments required, has maintained his Gamecock Club status, has purchased season tickets annually, and has complied with all conditions of the agreement entered into with the University and/or Gamecock Club originally.

2. Some of the prerequisites promised by the University and/or Gamecock Club ceased to be provided by USC as promised including complementary women's basketball tickets, McGuire Suite opportunities at women's basketball games, and the opportunity to purchase preferential seating at non-athletic events at the Colonial Center. These prerequisites were "discontinued" by USC. In approximately September 2007, the Affiant received a written notification from the University's Athletic Department and/or University Gamecock Club in which the University indicated that the University expected the Affiant to make a sixth year payment of \$1500.00 per seat and that such payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. The Affiant made that payment by mistake but subsequently believes he is entitled to a refund of that amount.

3. The Affiant states that he has complied with the original agreement as explained by Chris Massaro on behalf of the USC Athletic Department and/or Gamecock Club in every respect for the required period of five years and is and has been in compliance by his retention of his Gamecock Club level and the purchase of season tickets each year for the very seats at issue.

This 29 day of July, 2009.


Stan Harpe

SWORN to and SUBSCRIBED before me
This 29 day of July, 2009.


Notary Public for South Carolina

My Commission Expires:

Oct 17, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
_____)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF BARTON DUMAS

Personally appeared before me Barton Dumas, who being duly depose,
swears and states:

1. Affiant has for many years been a member of University of South Carolina Gamecock Club and a conscientious supporter of its athletic and academic programs. In 2002, Affiant received a solicitation from the University of South Carolina's Athletic Department and/or the University's Gamecock Club in conjunction with the Colonial Center Arena in which they offered Gamecock Club members an opportunity to enter into an arrangement by which the Gamecock Club member who agreed to pay the sum of \$5000.00 per seat for the first year and \$1,500 per seat for the next four years (for an approximate total investment of \$11,000 per seat) would receive arena courtside seats and would be entitled to those seats indefinitely so long as their Gamecock Club status was continued and season tickets purchased (although the phrase "licenses" was not utilized in the solicitation). The offer included complimentary women's basketball tickets, entry to a banquet facility serving food and alcohol called the McGuire Suite, preferential parking, and preferential ticket opportunities for other Colonial Center events. At the end of the five year term of payments, the purchaser was required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat in order to retain the seats annually. The Affiant entered this arrangement after viewing the seat locations and having the offer explained to me by Chris Massaro, an official of the USC Athletics Department in a face to face meeting. Since the Affiant's agreement to this arrangement, the Affiant has made all payments required, has maintained his Gamecock Club status, has purchased season tickets annually, and has complied with all conditions of the agreement entered into with the University and/or Gamecock Club originally.

2. Some of the perquisites promised by the University and/or Gamecock Club ceased to be provided by USC as promised including complementary women's basketball tickets, McGuire Suite opportunities at women's basketball games, and the opportunity to purchase preferential seating at non-athletic events at the Colonial Center. These prerequisites were "discontinued" by USC. In approximately September 2007, the Affiant received a written notification from the University's Athletic Department and/or University Gamecock Club in which the University indicated that the University expected the Affiant to make a sixth year payment of \$1500.00 per seat and that such payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. The Affiant refused to make the sixth year payment.

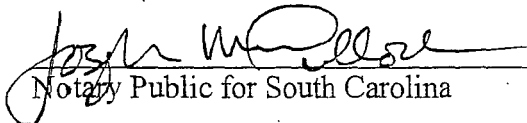
3. The Affiant states that he has complied with the original agreement as explained by Chris Massaro on behalf of the USC Athletic Department and/or Gamecock Club in every respect for the required period of five years and is and has been in compliance by

his retention of his Gamecock Club level and the purchase of season tickets each year for the very seats at issue.

This 29th day of July, 2009.


Barton Dumas

SWORN to and SUBSCRIBED before me
This 29 day of July, 2009.


Notary Public for South Carolina

My Commission Expires:

Oct 17, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) AFFIDAVIT OF MICHAEL H. MONTGOMERY
_____)

Personally appeared before me Michael H. Montgomery, who first being sworn, states as follows:

I reside at 145 Kerryton Road in Columbia, South Carolina. I graduated from the University of South Carolina with a B.S. Degree in Business Administration (Accounting) in 1982 and a Juris Doctor Degree in 1985. I am currently an attorney, licensed to practice in the State of South Carolina. I am, among other organizations, a member of the South Carolina and Richland County Bar Associations. I was a Full Scholarship donor member of the Gamecock Club and a previous season ticket purchaser for University of South Carolina football and basketball for a number of years.

Sometime during 2002, at the request of Les Springob who came by my office and asked me to join him, I attended a meeting with Mr. Springob and Chris Massaro, who I understood was an authorized representative of the USC Athletic Department. The meeting occurred at the USC Roundhouse. Mr. Springob, with whom I have been acquainted since 1979, asked me to go with him to the meeting in order to listen to the presentation and because he was trying to convince me that I should join him in purchasing courtside seats. Mr. Springob had such seats in the Carolina Coliseum and was interested in acquiring the same in the Colonial Center.

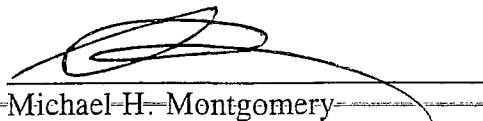
Prior to the meeting I had received promotional literature via mail from the Gamecock Club and knew of Mr. Springob's interest. During the meeting, I recall Mr. Massaro explaining that the courtside seating opportunity was available only to certain Gamecock Level members in exchange for payments (to wit: \$5000 per seat in the first year and \$1500 per seat for 4 years thereafter) over a period of five years, and the purchase of season tickets for each seat while maintaining the existing Gamecock Club Membership Level. I recall Mr. Springob confirming with Mr. Massaro that the \$11,000.00 per seat fee would allow the purchaser to retain his seats indefinitely so long as he continued his Gamecock Club giving level and purchased the tickets at the regular ticket price.

I left the meeting with the understanding that the \$11,000.00 per seat charge was essentially a permanent seat license very similar to the Panther football PSLs being offered in Charlotte during the Panthers' organization, and that the \$11,000.00 per seat payment amounted to a lot of money - more than I was interested in paying to have Courtside seats for the rest of my life.

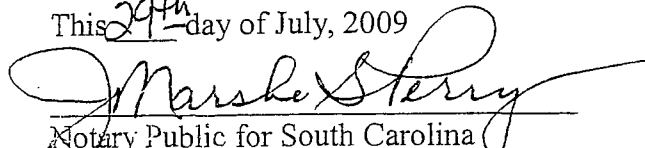
I clearly understood Mr. Massoro's presentation to be that there would be no per seat payments required after the fifth year, and that the right to the seats would continue

unless you allowed your Gamecock Club Level to lapse, fell below the required club level, or stopped paying for season tickets.

Further affiant sayeth not.


Michael H. Montgomery

SWORN to and SUBSCRIBED before me
This 29th day of July, 2009


Notary Public for South Carolina
My Commission Expires:
2-11-2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Les Springob, Paul Truessell, Barton
Dumas, Stanley Harpe and John Yenco,

Plaintiffs,

v.

The University of South Carolina and
the University of South Carolina
Gamecock Club,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-40-5518

NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT ON BEHALF OF
DEFENDANTS

JEANETTE W. McBRIDE
C.C.P. & G.S.

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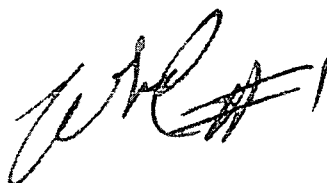
FILED

TO: JOSEPH M. MCCULLOCH, JR. ESQUIRE, ATTORNEY FOR PLAINTIFFS.

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants, The University of South Carolina and the University of South Carolina Gamecock Club, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Courthouse, Columbia, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 56, SCRPC, granting summary judgment to the Defendants, The University of South Carolina and the University of South Carolina Gamecock Club, and dismissing the Plaintiffs' Complaint with prejudice.

The Defendants' motion is based on the following grounds:

- 1) The Plaintiffs cannot set forth sufficient evidence to support their claim for breach of contract. Therefore, as a matter of law, this claim must be dismissed.
- 2) The Plaintiffs' claims are barred by the applicable statute of limitations.
- 3) The Plaintiffs have failed to prove their breach of contract claim, as no writing exists to evidence the terms of a contract.

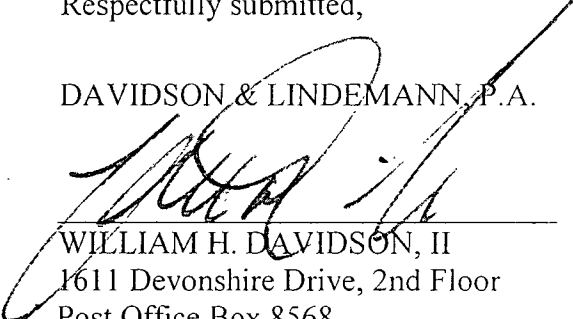


4) The Plaintiffs have failed to show that Specific Performance would be an appropriate remedy, as the terms of the alleged contract which the Plaintiffs are attempting to enforce are ambiguous, and the Plaintiffs have failed to show that Specific Performance would be the only adequate and equitable remedy.

This motion is based upon the rules of court; the pleadings in this matter; documents produced during discovery in this case; discovery responses; the deposition of Chris Massaro dated May 21, 2009; and such other matters as may be properly presented to the Court at the time of the hearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.



WILLIAM H. DAVIDSON, II
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
wdavidson@dml-law.com
T: 803-806-8222
F: 803-806-8855

ATTORNEYS FOR DEFENDANTS

COLUMBIA, SOUTH CAROLINA
AUGUST 13, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Les Springob, Paul Truessell, Barton
Dumas, Stanley Harpe and John Yenco)

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-40-5518

Plaintiffs,)

v.)

The University of South Carolina and
the University of South Carolina
Gamecock Club,)

Defendants.)

ANSWER TO AMENDED COMPLAINT
ON BEHALF OF DEFENDANTS

(Jury Trial Demanded)

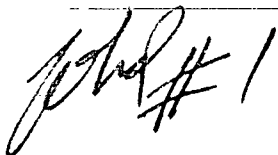
The Defendants answer the Amended Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The Amended Complaint fails to state a claim for which relief can be granted.

FOR A SECOND DEFENSE

2. The Defendants would deny each and every paragraph not hereinafter admitted, qualified, or explained.
3. That as to paragraph 1, the Defendants would admit that the Plaintiffs are citizens and residents of South Carolina and members of the University of South Carolina Gamecock Club.
4. That as to paragraph 2, the Defendants would admit same upon information and belief.
5. That as to paragraphs 3 and 4, the Defendants would deny same and demand strict proof thereof. By way of explanation, the Defendants would allege that the University of South Carolina Gamecock Club is a part of the University of South Carolina and is not a separately chartered, non-profit corporation. The Defendants would further admit that as part of the



University, the Gamecock Club's goal is to support the University and its Athletic Department through donations obtained from University athletic supporters.

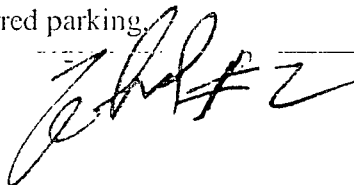
6. That as to paragraph 5, the Defendants would deny same as stated and demand strict proof thereof.

7. That as to paragraph 6, the Defendants would admit that there are various levels of membership within the University's Gamecock Club and that each level requires certain financial contributions which results in certain benefits and privileges being offered to the members subject to the terms and conditions of such offers.

8. That as to paragraph 7, the Defendants would admit that supporters of the Gamecock Club provide annual dues and that some members in prior years have been offered the opportunity to become lifetime members.

9. That as to paragraph 8, the Defendants would admit, upon information and belief, that the University, through its Athletic Department, offered Founders Club and Courtside Club seating to members of the Gamecock Club for the upcoming inaugural season at the Colonial Center and that such offer was made through written promotion with explanations being provided where necessary.

10. That as to paragraph 9, the Defendants would admit that upon a payment of upfront premium of \$5,000.00 per seat in year one and a \$1,500.00 premiums for years two through five per seat with a renewable option in year six the individuals interested in obtaining either Courtside Club seats or Founders Club seats were provided the opportunity to obtain such seating. The Defendants would further admit that other arena events were offered on a first opportunity to purchase best available seats and further that certain access was provided to the McGuire Club and to Lady Gamecock basketball events along with preferred parking.

A handwritten signature in black ink, appearing to be "John F. Z", is written over the bottom of the page.

11. That as to paragraph 10, the Defendants would deny same as stated and demand strict proof thereof.

12. That as to paragraph 11, the Defendants would admit that the seat owners did make certain payments.

13. That as to paragraph 12, the Defendants would deny as stated and demand strict proof thereof.

14. That as to paragraph 13, the Defendants would admit that at the end of year five, the Plaintiffs were provided with the renewable option for year six and that those individuals paying the sixth installment did so in accordance with the understanding of the Founders Club seats and Courtside Club seats.

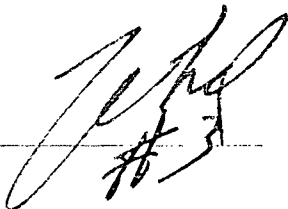
15. That as to paragraph 14, the Defendants would deny same as stated and demand strict proof thereof.

16. That as to paragraph 15, the Defendants would reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim.

17. That as to paragraph 16, the Defendants deny same as stated and demand strict proof thereof.

18. That as to paragraphs 17, 18, and 19 the Defendants would deny same as stated and demand strict proof thereof.

19. That as to paragraph 20, the Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

A handwritten signature, possibly reading "J. H. #3", is written in black ink over a horizontal line.

20. That as to paragraph 21, the Defendants would admit that USC basketball is a sporting event offered through the University which provides an opportunity for University of South Carolina fans to view basketball.

~~21. That as to paragraph 22, 23, and 24 the Defendants would deny same and demand~~
strict proof thereof.

FOR A THIRD DEFENSE

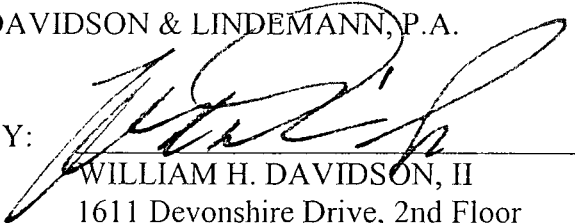
22. This action is barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

23. This action is barred by the statute of frauds.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiffs, the Defendants pray that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

WILLIAM H. DAVIDSON, II
1611 Devonshire Drive, 2nd Floor
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Columbia, South Carolina 29202
wdavidson@dml-law.com
(803) 806-8222
(803) 806-8855

ATTORNEY FOR DEFENDANTS

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 30, 2008

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	Civil Action No. 2008CP4005518
Les Springob, Paul Trussell,	)	
Barton Dumas, Stanley Harpe,	)	
and John Yenco.	)	
	)	
	)	AMENDED COMPLAINT
Plaintiffs,	)	Jury Trial Demanded
	)	
The University of South Carolina	)	
and The University of South	)	
Carolina Gamecock Club,	)	
	)	
Defendants,	)	
	)	

2008 AUG -1 PM 4:18
 CLERK OF COURT
 C.C.C. & G.S.

The Plaintiffs, complaining of the Defendants herein, would respectfully allege as follows:

1. Plaintiffs are each citizens and residents of Richland County, South Carolina and each plaintiff is a long standing supporter of the University of South Carolina and a member of the University of South Carolina Gamecock Club. Plaintiffs are hereinafter referred to as "Seat Owners."

2. Defendant, the University of South Carolina (hereafter referred to as "USC"), is a state university and an agency of the State of South Carolina with its principal campus and offices in Richland County, South Carolina. USC conducts wide-ranging intercollegiate sports activities through its "Athletic Department," a subdivision of USC.

3. Defendant, the University of South Carolina Gamecock Club (hereafter referred to as "Gamecock Club") is a separately chartered, non-profit corporation with its principal offices located in Richland County, South Carolina, which exists for the promotion and support of the USC Athletic Department intercollegiate programming and events, and operates as a fund raising arm of USC through event ticket sales and sales of varying levels of Gamecock Club memberships with differing levels of perquisites, benefits, and opportunities.

4. On information and belief, the Gamecock Club operates as the alter ego of USC and its Athletic Department, having common goals and interlocking officers and employees. The Gamecock Club membership levels are determined and agreed upon by all Defendants and these membership levels are offered to the public, i.e. to boosters, as voluntary opportunities to make certain payments to Defendants to achieve preferential seating and attendance

opportunities at USC athletic events and other perquisites and benefits as a demonstration of the boosters' level and support for Defendants.

5. Traditionally, and for nearly one hundred years, the Defendants have predicated the perquisites of Gamecock Club membership on an evaluation of the longevity of loyalty through membership and the extent of the booster's annual level of financial support. That historical precept now appears to be changing.

6. The Defendants have recognized and offered various levels of membership in the Gamecock Club, i.e. Century Club to Diamond Spur in 2008, each level requiring a higher level of annual contribution with a concomitant series of benefits and perquisites including preferential seating.

7. These levels of giving are generally obtained by boosters on an annual or seasonal basis and must be renewed from year to year in order to maintain such privileges or move to another class or level where the benefits are greater or lesser, based on the amount of the supporter's contribution, including such levels referred to as Lifetime Founders Level. At the highest level which is the Lifetime Level, a lump sum one time gift is contemplated which results in lifetime rights to the patron/booster for specific benefits.

8. On information and belief, in 2000-2001 the Defendants, in anticipation of the completion of the Colonial Center basketball facility, began to offer and market by written promotional literature and face-to-face explanation, a variety of ticket and seating opportunities in the new facility for the purpose of raising new revenues for the athletic program and in recognition of the expanded number of seats in the new and expanded basketball facility. The Defendants concocted the promotional opportunity variously referred to as "Founders Club" and/or "Courtside Level" memberships which were initially offered and promoted in written materials mailed to Seat Owners and presumably other Gamecock Club members. When a potential donor expressed interest in such an opportunity, Defendants frequently provided the potential donor a face to face, verbal explanation of the offer of membership and upon information and belief, each donor was given the same verbal explanation.

9. The Seat Owners were told by Defendants' representatives that they would be entitled to the assigned courtside seating for basketball events at the Colonial Center upon an initial payment, in most instances, of \$5000.00 per seat, and thereafter for 4 years, a payment annually of \$1500.00. During that 5 year period the Seat Owners were told they would be required to maintain their current membership level or greater, and would be required to purchase season tickets for each seat. The Seat Owners were told that at the end of the five year term of payments, they would be required only to maintain Gamecock Club membership level and to annually purchase season tickets for each seat. In addition to the "right" to these seats, the Seat Owners were promised the right to preferred seating at non-basketball events at the Colonial Center such as concerts,

banquet access during basketball games, access to women's basketball events and preferred parking.

10. Seat Owners, all of whom are Silver Spur or Higher, responded to the promotional offer referred to above. Seat Owners met personally with and discussed the Founders Level opportunity with authorized representatives of Defendants and were informed that at the end of the five year term of payments, each seat owner would be required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat.

11. Seat Owners, in reliance upon the explanation provided them by the Defendants' authorized representatives, accepted the proposal and began for each and every year through year five (5) thereafter, to make the required payments to Defendants for the courtside seats and each seat owner, maintained their Gamecock Club standing, and continued to purchase the requisite number of season tickets, and in all other respects complied with the requirements of their agreement with Defendants in order to ensure their perpetual entitlement to the seats seat owners were permitted to select or were assigned seats by Defendants as part of the Agreement.

12. After the first payment of the 5 year period of installment payments, the Seat Owners received the proper seating assignments and the agreed upon tickets, but the soon thereafter other perquisites promised by Defendants including the right to purchase non-basketball event preferred tickets and private banqueting for women's basketball games were soon discontinued by Defendants without explanation and despite complaints by the Seat Owners.

13. In the fall of 2007, the Seat Owners along with all other Founders Level and/or Courtside members received their ticket and Gamecock Club annual dues notices which in the instance of the Plaintiff Seat Owners and other similarly situated, demanded a sixth (6th) year contribution to maintain their courtside seats, all in violation of Defendants agreement with Seat Owners. Some Seat Owners mistakenly paid the sixth installment, but upon learning it should not have been necessary, demanded its return, and other Seat Owners simply refused to pay. The Defendants informed the Seat Owners that if they did not accede to the Defendants' demand for a sixth year payment, the Seat Owners would be barred or ejected from their seats at the first SEC home basketball game on December 12, 2007. Specifically, Seat Owners Stan Harpe, John Yenco, and Paul Trussell mistakenly paid the invoices and have previously demanded the money be refunded.

14. In response to the threat above, Seat Owners requested a full review by Defendants concerning the promises made by Defendants to Seat Owners. To date, Seat Owners have received no explanation or contact from Defendants regarding the status of the Defendants' commitments to the Seat Owners-despite numerous requests from Seat Owners' counsel. A sampling of statements are attached which have previously been provided to USC.

FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANTS
(Breach of Contract – Specific Performance)

15. Seat Owners reallege all prior allegations.

16. The Defendants entered into valid and binding verbal contracts with the Seat Owners as set forth above.

17. Seat Owners have complied with all terms and conditions of the contract with Defendants including the tender of all sums due and owing and have maintained, as required under the terms of the contract, their Gamecock Club standing and continued to purchase the requisite number of season tickets, and in all other respects complied with the requirements of the agreement between the parties.

18. The Defendants, in breach of the contract between the parties, have now denied Seat Owners the rights and privileges promised, as more fully set forth above, including but not limited to assigned seating, benefits, and privileges and have predicated any future benefits upon additional annual fees, all in violation of the agreement between the parties.

19. As a direct and proximate result of the Defendants' breach of the agreement between the parties, the plaintiffs have sustained a loss in being deprived of the seating access that is unique and rare and cannot be compensated by monetary damages.

20. As Seat Owners have been Gamecock Club Members and supporters of USC for many years, they have been and will continue to be irreparably harmed by being deprived of their assigned seating, and Seat Owners are without an adequate remedy at law and specific enforcement of the contract is the equitable remedy as between the parties.

21. Presumably, Defendants will agree that USC basketball is an extraordinary and unique sporting event and is an opportunity for fan support for South Carolina citizens' and preferential courtside seating for South Carolina fans, especially at the dawn of a new coach of the South Carolina basketball program, is a rare, unique, and extraordinary opportunity. Moreover, as the preferential seating promotion was done during a time of transition for the USC basketball program and in conjunction with efforts related to paying for and filling the new basketball arena, it is doubtful such an opportunity will ever arise again.

22. Furthermore, Seat Owners John Yenco, Stanley Harpe, and Paul Trusell, by mistakenly paying a fee for year six as described above, have suffered the loss of those monies and such funds should be ordered returned to those Seat Owners. The remaining Plaintiff's have thus far refused to make the 6th year payment wrongly demanded by Defendants, and none of the Defendants should be required to pay monies beyond the five years agreed upon.

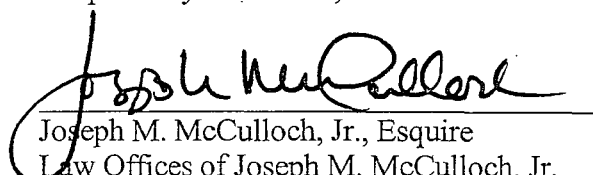
23. All Plaintiffs have been deprived of a measure of the "deal" promised by the Defendants in the Defendant's denial and termination of certain of the promised collateral benefits including banqueting during women's basketball games and preferred ticket opportunities for non-basketball events. Plaintiffs are entitled to recover some damage money, in addition to the specific performance requested, that is proportionate to the value of the promised benefits suspended by Defendants.

24. Because of the Defendants refusal to abide by the terms and conditions of the Agreement, the Plaintiffs are informed and believe that they are entitled to an order of this Court requiring Defendants to honor the Agreement between the parties as to the preferred seating and other benefits as Seat Owners have performed and are continuing to perform their obligations under the agreement and for the Court to order the return of monies wrongfully demanded and received by Defendants which Defendants have refused to return after proper demand.

WHEREFORE, the plaintiffs pray:

- (a) for judgment in specific performance to each Plaintiff granting Plaintiff the right to the continuous use of the seating purchased by Plaintiff on the conditions agreed between the parties;
- (b) for reimbursement to Plaintiffs who erroneously paid monies to the Defendants in the 6th year as demanded by Defendants;
- (c) for judgment in money damages to Plaintiffs in reimbursement for the failures of Defendants to fulfill certain other promised and additional benefits including banqueting and preferred seating at non-basketball events;
- (d) for the reasonable attorney's fees of Plaintiffs pursuant to statutory authority;
- (e) for such other relief as the Court may deem just and proper.

Respectfully Submitted,


Joseph M. McCulloch, Jr., Esquire
Law Offices of Joseph M. McCulloch, Jr.
1426 Richland Street
Post Office Box 11623
Columbia, South Carolina 29211
(803) 779-0005
Attorney for Plaintiffs

Columbia, South Carolina

this 1 day of August, 2008.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF BARTON DUMAS

Personally appeared before me Barton Dumas, who being duly deposed,
swears and states:

1. Affiant has for many years been a member of University of South Carolina Gamecock Club and a conscientious supporter of its athletic and academic programs. In approximately early 2001, Affiant received a solicitation from the University of South Carolina's Athletic Department and/or the University's Gamecock Club, prior to completion of the Colonial Center Arena, which essentially offered Gamecock Club members an opportunity to enter into an arrangement by which the Gamecock Club member who maintained his/her present Gamecock Club status and who agreed to pay the sum of \$5000.00 per seat for the first year and \$1,500 per seat for the next four years (for an approximate total investment of \$11,000 per seat), would essentially purchase a license for arena courtside seats (though the phrase "licenses" was not utilized in the solicitation) and would be entitled to entry to a banquet facility serving food and alcohol called the McGuire Suite and to preferential parking. At the end of the five year term of payments, the purchaser was required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat. The Affiant entered this arrangement after viewing the seat locations and having the offer explained to him by either Chris Massaro or Jeff Barber of the Athletic Department. Since the Affiant's agreement to this arrangement, the Affiant has made all payments required, and has maintained his Gamecock Club status, has purchased season tickets annually, and has complied with all conditions of the agreement entered into with the University and/or Gamecock Club originally.

2. The Affiant entered into these agreements without requiring any written verification of the conditions of the University's promise other than the return to the solicitation in a completed form with the first required check. The Affiant continued to make the payments for the four years thereafter, notwithstanding the fact that some of the perquisites promised by the University and/or Gamecock Club ceased to continue, to wit: the Affiant ceased to be offered McGuire Suite opportunities at women's basketball games and ceased to be permitted the opportunity to purchase preferential seating at non-athletic events at the Colonial Center. In approximately September 2007, the Affiant received a written notification from the University's Athletic Department and /or University Gamecock Club in which the University indicated that the University expected the Affiant to make a sixth year payment of \$1500.00 per seat and that such payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. In response, the Affiant contacted the Athletic Department and/or Gamecock Club indicating that the Affiant believed his obligation to be fulfilled and that the only further requirements for the retention of the pertinent seats

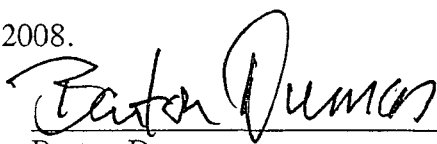
should be as originally promised- the payment for the appropriate Gamecock Club level and the purchase of the season tickets, both conditions which were complied with by the client. The response by the Athletic Department and/or Gamecock Club was that they would investigate the matter.

3. In late December 2007, the Affiant received further notice from the Athletic Department and/or Gamecock Club indicating that the University had investigated the matter and concluded the Affiant's interpretations were partially incorrect and in order to maintain the seat placement the Affiant had purchased, he would be required to pay the annualized premium of \$1500 per seat forever or at least until the University determined to increase that fee. The University's notification to Affiant in late December advised the Affiant that if he did not comply with the University's demand in these regards, the Affiant would be barred from his seats as of the January 12, 2008 game.

4. The Affiant states that he has complied with the original offer by the Athletic Department and/or Gamecock Club in every respect for the required period of five years and is in compliance in the 2007-2008 basketball season by his retention of his Gamecock Club level and the purchase of season tickets for the very seats at issue presently. The Affiant further states that he has been a Gamecock Club member and a supporter of the institution for many years and he and his family and/or children would be irreparably harmed if deprived of the seats and the loss of his right to the seats in the event they were awarded to another purchaser on new terms. In addition to being barred from the court side seats, the University's late December notification would likewise bar the Affiant and his family from access to the McGuire Suite and the amenities found therein as well as the preferential parking.

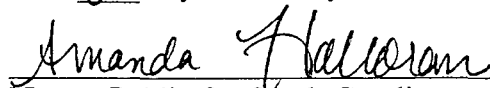
5. The Affiant requests that the Court issue a restraining order barring and prohibiting the University's Athletics Department and/or the Gamecock Club from enforcing the threats contained in the late December notification and requiring the University to provide the full amenities set forth in this affidavit until set time.

This 8 day of January, 2008.


Barton Dumas

SWORN to and SUBSCRIBED before me

This 8th day of January, 2008.


Notary Public for South Carolina

My Commission Expires:

7-19-2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
_____)

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF PAUL TRUSSELL

Personally appeared before me Paul Trussell, who being duly deposed,
swears and states:

1. Affiant has for many years been a member of University of South Carolina Gamecock Club and a conscientious supporter of its athletic and academic programs. In approximately early 2001, Affiant met with Chris Massaro, Associate Athletic Director, who prior to completion of the Colonial Center Arena, offered him an opportunity to enter into an arrangement by which he would pay the sum of \$1500.00 per seat for 5 years (for an approximate total investment of \$30,000), for arena courtside seats and would be entitled to entry to a banquet facility serving food and alcohol called the McGuire Suite and to preferential parking. At the end of the five year term of payments, the purchaser was required only to maintain his Gamecock Club membership level and to annually purchase season tickets for each seat. Since the Affiant's agreement to this arrangement, the Affiant has made all payments required, and has maintained his Gamecock Club status and in fact upgraded his Gamecock Club level from Silver Spur to Gold Spur, has purchased season tickets annually, and has complied with all conditions of the agreement entered into with the University and/or Gamecock Club originally.

2. The Affiant entered into these agreements without requiring any written verification of the conditions of the University's promise. The Affiant continued to make the payments for the five years thereafter, notwithstanding the fact that some of the perquisites promised by the University and/or Gamecock Club ceased to continue, to wit: the Affiant ceased to be offered McGuire Suite opportunities at women's basketball games and ceased to be permitted the opportunity to purchase preferential seating at non-athletic events at the Colonial Center. In approximately September 2007, the Affiant received a written notification from the University's Athletic Department and /or University Gamecock Club in which the University indicated that the University expected the Affiant to make a sixth year payment of \$1500.00 and that such payments would continue unless and until the University and/or Gamecock Club determined to raise the sum required. In response, the Affiant contacted the Athletic Department and/or Gamecock Club indicating that the Affiant believed his obligation to be fulfilled and that the only further requirements for the retention of the pertinent seats should be as originally promised- the payment for the appropriate Gamecock Club level and the purchase of the season tickets, both conditions which were complied with by the client. The response by the Athletic Department and/or Gamecock Club was that they would investigate the matter.

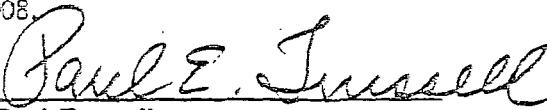
3. In late December 2007, the Affiant received further notice from the Athletic Department and/or Gamecock Club indicating that the University had investigated the

matter and concluded the Affiant interpretations were incorrect and in order to maintain the seat placement the Affiant had purchased, he would be required to pay the annualized premium of \$15,000 forever or at least until the University determined to increase that fee. The University's notification to Affiant in late December advised the Affiant that if he did not comply with the University's demand in these regards, the Affiant would be barred from his seats as of the January 12, 2008 game.

4. The Affiant states that he has complied with the original offer by the Athletic Department and/or Gamecock Club in every respect for the required period of five years and is in compliance in the year in the 2007-2008 basketball season by his retention of his Gamecock Club level and the purchase of season tickets for the very seats at issue presently. The Affiant further states that he has been a Gamecock Club member and a supporter of the institution for many years and he and his family and/or children would be irreparably harmed if deprived of the seats and the loss of his right to the seats in the event they were awarded to another purchaser on new terms. In addition to being barred from the court side seats, the University's late December notification would likewise bar the Affiant and his family from access to the McGuire Suite and the amenities found there in as well as the preferential parking.

5. The Affiant requests that the Court issue a restraining order barring and prohibiting the University's Athletics Department and/or the Gamecock Club from enforcing the threats contained in the late December notification and requiring the University to provide the full amenities set forth in this affidavit until set time.

This 8th day of January, 2008.


Paul Trussell

SWORN to and SUBSCRIBED before me
This ____ day of January, 2008.

Notary Public for South Carolina

My Commission Expires:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Les Springob, Paul Trusell,)
Barton Dumas, Stanley Harpe,)
and John Yenco.)

Plaintiffs,)

The University of South Carolina)
and The University of South)
Carolina Gamecock Club,)

Defendants,)

IN THE COURT OF COMMON PLEAS

COMPLAINT
Jury Trial Demanded

2008 JUL 31 PM 3:23
CLERK OF COURT
C.C.C. & G.S.

FILED

The Plaintiffs, complaining of the defendants herein, would respectfully
allege as follows:

1. Plaintiffs are each citizens and residents of Richland County, South Carolina and each plaintiff is a long standing supporter of the University of South Carolina and a member of the University of South Carolina Gamecock Club. Plaintiffs are hereafter referred to as "Seat Owners."

2. Defendant, the University of South Carolina (hereafter referred to as "USC"), is a state university and an agency of the State of South Carolina with its principal campus and offices in Richland County, South Carolina. USC conducts wide-ranging intercollegiate sports activities through its "Athletic Department," a subdivision of USC.

3. Defendant, the University of South Carolina Gamecock Club (hereafter referred to as "Gamecock Club") is a separately chartered, non-profit corporation with its principal offices located in Richland County, South Carolina, which exists for the promotion and support of the USC Athletic Department intercollegiate programming and events, and operates as a fund raising arm of USC through event ticket sales and sales of varying levels of Gamecock Club memberships with differing levels of perquisites, benefits, and opportunities.

4. On information and belief, the Gamecock Club operates as the alter ego of USC and its Athletic Department, having common goals and interlocking officers and employees. The Gamecock Club membership levels are determined and agreed upon by all Defendants and these membership levels are offered to the public, i.e. to boosters, as voluntary opportunities to make certain payments to Defendants to achieve preferential seating and attendance

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA, COUNTY OF RICHLAND

LES SPRINGOB, PAUL)
TRUSSELL, BARTON DUMAS,)
STANLEY HARPE, and JOHN)
YENCO,)

Plaintiffs,)

v.)

NO. 2008-CP-4005518

THE UNIVERSITY OF SOUTH)
CAROLINA and THE)
UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

ORIGINAL

DEPOSITION OF CHRIS MASSARO

May 21, 2009

Taken on Behalf of the Plaintiffs

APPEARANCES:

For the Plaintiffs: Joseph McCullough, Jr., Esq.
1426 Richland Street
P. O. Box 11623
Columbia, SC 29211

For the Defendants: William Davidson, II, Esq.
1611 Devonshire Drive
Second Floor
P. O. Box 8568
Columbia, SC 29202

Also Present: Mr. Les Springob
Mr. Barton Dumas
Mr. Stanley Harpe

MORGAN REPORTING
3352 Parsons Street
Murfreesboro, TN 37127-6427
(615) 890-7317

Reported by: Marilyn Gorski, CCR #0174

1 committee? Was there a chairman or a de
2 facto --

3 A. I think the de facto was probably
4 Dan.

5 Q. What capacity did he hold with the
6 university?

7 A. He was the CFO for the athletic
8 department.

9 Q. And during these planning stages,
10 were there discussions about seating and
11 seating opportunities?

12 A. Yes.

13 Q. Can you tell me, were notes or
14 minutes kept of these meetings? Do you have a
15 file on these meetings?

16 A. I do not have a file on the meetings.

17 Q. Did you then?

18 A. No, because basically in terms of
19 notes that there was -- it was more
20 brainstorming than anything. It was how to
21 compile, what assets we had to sell. So it was
22 more of a brainstorming session.

23 Q. As you mentioned earlier, the assets
24 were seats, the normal seats?

25 A. You had that and even some things

1 such as, you know, concessions and those kind
2 of things, how it relates to the concession
3 area. So it was a fairly encompassing -- it
4 was just more than seats.

5 Q. It was all about how much revenue
6 from any and every source could be generated
7 with an eye towards, I assume, paying off the
8 annual debt service?

9 A. Yes.

10 Q. And these meetings continued. Did
11 they ultimately culminate in a plan?

12 A. Yes.

13 Q. Was that plan memorialized in any
14 kind of document?

15 A. You see, some of it is in some of our
16 printed literature.

17 Q. How about memoranda?

18 A. No.

19 Q. Accounting documents that would
20 reflect all these sources of revenue and
21 projected revenue?

22 A. Yeah. And I'm sure that that was
23 reflected in some of Dan's reports.

24 Q. Okay. And I want to direct your
25 attention to what we will mark first as, I

1 A. No, they were not.

2 Q. Can you tell me what the levels were?

3 A. What the hierarchy was back then?

4 Q. Yes.

5 A. I dealt with it every day. Century
6 Club member was, I'll say, the lowest priority
7 member and still receive ticket benefits.

8 Do you need to know the dollar
9 amounts to those?

10 Q. No.

11 A. Then Roundhouse, then Half, then
12 Full, then Silver Spur, and then our categories
13 of lifetime memberships.

14 There was like a lifetime Full
15 Scholarship and a lifetime Silver Spur
16 Scholarship and then Golden Spurs.

17 Q. So Golden would be the highest?

18 A. That was the highest.

19 Q. Okay. We can retire Exhibit 5.

20 In the discussions of the seating
21 opportunities with respect to Founders' Club
22 and Courtside seating -- and just for
23 shorthand, I guess, I should ask you, Founders'
24 Club sounds like an entity. Courtside seating,
25 was that a club, or was that just simply an

1 A. This document was mailed to Silver
2 Spur members and above.

3 Q. This document being the exhibit?

4 A. Yeah, Exhibit 1.

5 Q. To Silver Spur and above?

6 MR. DAVIDSON: Is it 6 or 1?

7 MR. MCCULLOUGH: Well, it is marked
8 as 1. It's Exhibit 6 in the Hyman stuff.
9 What I think we'll do is maybe take that
10 away from it.

11 MR. DAVIDSON: Why don't we just
12 refer to it as Hyman 6?

13 MR. MCCULLOUGH: Well, we could do
14 that, but we're not going to put all those
15 in. So I thought I would start over.

16 MR. DAVIDSON: Whatever is easiest
17 for you.

18 MR. MCCULLOUGH: Exhibit 1.

19 Q. (By Mr. McCullough) So this was
20 mailed out to Silver Spur and above?

21 A. Yes.

22 Q. All right. And what -- that would
23 have been in what period of time? This 2002
24 period, you think?

25 A. Yeah. It would have been that

1 spring/summertime period.

2 Q. And did you -- who was in charge of
3 handling the responses?

4 A. In fact, I remember that was the year
5 we were at the college world series and that
6 there was some work being done on it back and
7 forth from Omaha with the printer and that kind
8 of thing, looking at proofs. So it was during
9 that early June time period.

10 Q. Okay. And once this committee
11 concluded its work and -- I assume it concluded
12 its work. And part of the culmination of its
13 work was this brochure and this opportunity?

14 A. (Nods head up and down.)

15 Q. And the document, Exhibit 1, would
16 you refer to that as promotional literature?

17 A. Yes.

18 Q. And this was mailed out to Silver
19 Spur and above members of the Gamecock Club?

20 A. (Nods head up and down.)

21 Q. How were the responses to be handled?
22 I mean, what was the concept within your
23 department?

24 A. Well, I mean, basically, Jeff Barber
25 and I were handling most of the response. But

1 A. Where -- this dark shaded area,
2 ~~opposite behind the benches.~~

3 Q. Very simply, the areas you've drawn
4 with a red pen on Exhibit 1 are the seats
5 Courtside, and the other already preprinted
6 darkened areas are the Founders' Club?

7 A. Yeah. We made the distinction
8 between the two so people would have a better
9 understanding of where they're buying.

10 So Founders' Club was on one side of
11 the court, and Courtside were on the other.
12 But for practical purposes, the benefits and
13 the amenities were basically identical.

14 Q. All right. And so let me ask you
15 then who was eligible for Founders' Club
16 seating.

17 A. Same sub group.

18 Q. Can you tell me what the difference,
19 other than being on opposite sides of the court
20 -- what were the distinctions between those two
21 opportunities, Founders' Club and --

22 A. In my mind, it was just location.

23 Q. So why name them two different
24 things? Why refer to them as two different
25 things?

1 office to the Roundhouse. There's a series of
2 mailboxes there. Boxes were stacked under
3 those mailboxes.

4 There was also two boxes in the
5 right-hand corner of my office. I had a
6 little -- like a little love seat with a table
7 to the left. And there are two boxes under
8 that table.

9 Q. You don't have any way of knowing who
10 inherited your office or those boxes, do you?

11 A. No. It's changed several times. I
12 mean, the original inheritance was Julius
13 Grant.

14 Q. You said it was the expectation of
15 the committee that after the fifth year, there
16 would be additional payments?

17 A. Yes. Do you want me to tell you why?

18 Q. Yeah.

19 A. A lot of the reason is because you
20 have recurring expenses with some of the
21 amenities. The McGuire Club -- food, those
22 kind of things, those are recurring costs. So
23 why would we price something eventually that
24 would be a financial loser if you're having
25 costs without any revenues to offset that

1 within the McGuire Club?

2 The other thing is to keep it
3 consistent with our football premiums, where
4 we've always had annualized payments on the
5 premium side -- the 200 level, the football
6 stadium, also in the zone, and also in the 600
7 level. We've always required premiums there.

8 Q. It's correct that prior to the
9 construction of the Colonial Center, the
10 basketball program was having difficulty
11 selling season tickets, weren't they?

12 A. No.

13 Q. No?

14 A. In fact, that was one of the things
15 that drove the construction of the new
16 building. We were having difficulty sliding in
17 new Gamecock Club members into the old Frank
18 McGuire arena. The students had almost 4,000
19 seats in there.

20 So really when Bobby Cremins got
21 hired and subsequently, a couple months later,
22 Eddie Fogler, we went to a sell out-type
23 situation on our season tickets where a person
24 coming in at a \$3,000 donor level basically was
25 sitting in the top two or three rows of the

1 arena.

2 Q. You pose a rhetorical question, why
3 would we do anything but recurring? Well, part
4 of -- as you said earlier, part of the
5 motivation for even offering these
6 opportunities was to generate up-front money;
7 right?

8 A. Right. That's why it's front-loaded
9 5,000 to 1,500.

10 Q. So part of the considerations were to
11 generate money, as much as you could?

12 A. Right.

13 Q. Now, in terms of the Founders' Club
14 seating, would you say that the investment
15 expected of the prospective purchasers were the
16 same as between Courtside and Founders' Club?

17 A. I'm sorry. Ask that again.

18 Q. You said 5,000 first year, 1,500 for
19 two through five. Was it the same essentially
20 for Founders' Club members?

21 A. Yeah. The exception in there were
22 the Golden Spurs.

23 Q. Let's talk about that.

24 A. Okay.

25 Q. What is the exception that you refer

1 A. Right. I think that's a very
2 important distinction, because they are paying
3 annual.

4 Q. Is that arrangement and that
5 understanding -- was that written down during
6 your tenure anywhere?

7 A. I don't know, to be honest with you,
8 Joe. That was a Gamecock Club function.

9 Q. Well, in your capacity as associate
10 AD, you were meeting with people to explain
11 these opportunities, were you not?

12 A. Yes, sir.

13 Q. And you were promoting the sale of
14 these opportunities; right?

15 A. Yes.

16 Q. So you were essentially closing the
17 deals. Is that a fair statement?

18 A. I would hope I closed some deals.
19 But some deals, I didn't close.

20 Q. Referring back to Exhibit 1 on the
21 document that we earlier used, the second page
22 of Exhibit 1 that you used to refresh yourself,
23 it refers to club seat amenities at the top of
24 the page.

25 A. Uh-huh.

1 except on some selected games.

2 Q. Okay. Now, there are some gentlemen
3 sitting in this room. And you actually met
4 with Mr. Dumas and discussed these seats and
5 this seating opportunity?

6 A. Many times.

7 Q. Did he ultimately agree to enter into
8 some agreement with the university or through
9 you, with you?

10 A. Yes.

11 Q. And did you discuss with him what the
12 terms of the agreement were?

13 A. I did.

14 Q. Do you think you outlined all of
15 these amenities with him that we've been
16 discussing?

17 A. I did.

18 Q. Did you talk with him about what was
19 expected of him by way of payments after the
20 fifth year?

21 A. You know, I've been thinking about
22 this a lot. If I didn't -- let me back up.

23 We had several discussions. And one
24 of the things was, What happens if I can't
25 afford the premiums, if I want to drop out?

1 Or, in my mind, After the sixth year, what
2 would happen?

3 And so we set up Barton with four
4 seats. His seats at the old place were behind
5 a visitor's bench. I want to say Section P,
6 but like five rows up. The first row in front
7 of a cement wall, we had four seats there.

8 We had several discussions about what
9 would happen if he did not like the Courtside
10 seats, didn't want to pay it, whatever.

11 And I said, The best thing to do is
12 to set yourself up a security blanket so that
13 the first row behind the Founders' seats -- we
14 sold him four seats on the aisle behind the
15 visitor's bench, so it would mimic as close as
16 we could to what he had at the old arena. That
17 was the security blanket in case these
18 Courtside seats did not pull through.

19 But, Joe, I can tell you that I never
20 gave the impression that there wouldn't be
21 payments after five years. That did not come
22 out of my mouth. That was always our intent.

23 Q. I understand that may have been your
24 intent. Did you ever tell Mr. Dumas there may
25 be payments required after the fifth year?

1 A. I don't know if I --

2 Q. I'm talking about you specifically.

3 A. Right. I don't know if I
4 specifically told Mr. Dumas that or not. But I
5 do remember when I was asked the question, what
6 my answer would be.

7 Q. Who asked you the question?

8 A. I can't tell you specifically who
9 asked it, but it was asked several times of me.
10 And my answer was, It would mimic what we do at
11 football. There would be an adjustment after
12 five years.

13 Q. So you would agree that that would be
14 an important part of that transaction, what
15 would happen after the fifth year, or would you
16 agree?

17 MR. DAVIDSON: Objection to the form
18 of the question.

19 A. I would think that would be very
20 important to the purchaser to ask that
21 question.

22 Q. (By Mr. McCullough) Would you agree
23 it would be equally important to the seller to
24 make that clear?

25 MR. DAVIDSON: Object to the form.

1 A. I thought that that was understood,
2 because that was our business practice.

3 Q. (By Mr. McCullough) My question to
4 you is, would you agree or do you believe it
5 would be important for the University of South
6 Carolina to make clear that would be an
7 obligation beyond five years?

8 A. I would not agree to that, because I
9 think that that was already understood.

10 Q. How would a purchaser understand
11 that?

12 A. Well, first of all, the three people
13 at this table -- Mr. Harpe had had premium
14 seats in football, and that was the practice of
15 football. That's been our practice -- two of
16 them are lifetime members, and we discontinued
17 selling the lifetime memberships. And they
18 know why that was discontinued, because of the
19 annualized revenue.

20 So my feeling was, particularly those
21 two, that they're so close to the program --
22 and particularly with Barton, that we had so
23 many conversations, that he knew what the
24 intent was when we did it, that he understood
25 our business practices.

1 Q. So those are the reasons why a
2 purchaser should have known your intention?
3 Prior experience with the Gamecock Club?

4 A. That would be one.

5 Q. What else?

6 A. The example I gave that if you're
7 purchasing a commodity, you know, and you do it
8 for four or five years, some kind of rental or
9 whatever, that there is a time -- and we got
10 hung up on the word "lease" earlier, so I'm
11 trying to avoid that term.

12 But there's annualized payment for
13 that service. The service doesn't stop in year
14 six.

15 Q. Are you familiar with the seat
16 licensing concept in, say, the Charlotte
17 Panther stadium?

18 A. Not specifically. I know what they
19 did.

20 Q. What, to your knowledge, did they do?

21 A. Basically, they sell seat licenses.
22 Many places do.

23 Q. What's a seat license?

24 A. There's so many different forms. You
25 pay -- most of them pay an annualized fee for

1 that, for the right to purchase the season
2 tickets.

3 Q. Do some of them include the concept
4 of paying a lump sum and then you own that
5 suite as long as you continue to --

6 A. I would imagine there's probably some
7 out there, yeah.

8 Q. Did your committee ever look at those
9 concepts?

10 A. Not seriously.

11 Q. Ever contact anyone in the Charlotte
12 Panther organization?

13 A. I did not.

14 Q. Anybody on the committee do so?

15 A. Not that I know of.

16 Q. Now, in all these many conversations
17 you had with Mr. Dumas, did you or did you not
18 ever tell him there would be expected of him
19 payments annually after the fifth year?

20 I think you've said no. I'm simply
21 asking the question once more. This is not a
22 trick question. I want to make sure,
23 because --

24 A. I don't remember specifically if I've
25 said that specifically to Barton Dumas.

1 Q. And you do recall having that
2 conversation with some other person or people,
3 but you do not recall who?

4 A. Correct.

5 Q. Now, Mr. Harpe -- do you remember
6 meeting with Mr. Harpe to discuss this seating
7 opportunity?

8 A. I met with him a couple of times and
9 also spoke to his wife, Joy, a couple of times.

10 Q. Do you remember where any meetings
11 with him were?

12 A. I want to say one of them was in my
13 office.

14 Q. Do you know whether you went to the
15 Colonial Center and looked at the seating
16 locations and so forth?

17 A. I don't remember if I went with Stan
18 or not. I don't know.

19 Q. Did you discuss with Mr. Harpe the
20 amenities we've reviewed here?

21 A. Sure.

22 Q. Did you talk with Mr. Harpe about the
23 financial obligation that the university
24 expected of him?

25 A. Sure.

1 Q. Do you remember whether you and
2 Mr. Harpe discussed the specifics of payments
3 expected of Mr. Harpe in the sixth and
4 thereafter years?

5 A. I don't remember specifically.

6 Q. How about Mr. Springob, who is seated
7 next to you to your left? Do you remember
8 having conversations with him about this
9 seating opportunity?

10 A. I do.

11 Q. And do you remember where those
12 meetings or discussions occurred?

13 A. I want to say one was in Jeff's
14 office. There was probably two or three. And
15 I seem to remember, with Les, that it was
16 mostly telephone calls.

17 Q. Do you remember meeting with
18 Mr. Springob and another gentleman?

19 A. No.

20 Q. Do you remember a gentleman by the
21 name Mike Montgomery?

22 A. I don't remember Mike Montgomery. Is
23 he the basketball coach?

24 Q. - No, no, no. Mr. Montgomery, in an
25 effort to perhaps help your memory, he's a

1 reviewed with Mr. Springob the amenities that
2 we've been talking about?

3 A. Sure.

4 Q. Do you remember -- in any of your
5 meetings with Mr. Springob and Mr. Montgomery,
6 do you remember at least Mr. Springob, ever
7 having discussions with him about the
8 expectation of the university or the
9 requirement of payments after the fifth year?

10 A. No, I don't remember.

11 Q. All right. Now, one of the
12 additional plaintiffs in this matter is
13 Mr. John Yenco. Can you place him in your
14 memory?

15 A. No.

16 MR. MCCULLOUGH: Let's go off the
17 record one second.

18 (Discussion off the record)

19 Q. (By Mr. McCullough) Before this
20 deteriorates into old home week, Chris, the
21 John Yenco who may or may not be associated or
22 the owner of Graybar, you don't recall him
23 specifically?

24 A. No.

25 Q. How about Paul Trussell?

1 A. Oh, yeah, I remember Paul.

2 Q. Do you recall meeting with him and
3 reviewing with him these opportunities, this
4 Founders' Club/Courtside seat opportunity?

5 A. I do.

6 Q. Do you think you reviewed with him
7 the amenities?

8 A. We did.

9 Q. And the same question I asked you
10 before, do you recall discussing with
11 Mr. Trussell the specific issue of whether or
12 not payments to him would be required in the
13 sixth year and thereafter? Do you know whether
14 that discussion was had with Mr. Trussell?

15 A. I don't know the specifics.

16 Q. Do you recall any of those plaintiffs
17 asking you that specific question?

18 A. No.

19 Q. But if they did, you would not recall
20 your specific response?

21 A. No, I would recall -- because my
22 response was basically a canned response to
23 that question. And it was, number one, that
24 we've shown in the zone and in the 200 levels
25 that if there is an increase, it would be a

1 options. You know, where it would be, what
2 their options were.

3 Because I had developed a pretty good
4 relationship with a lot of these people, that
5 they had asked kind of my opinion, you know,
6 what other people were thinking. And, you
7 know, is being on the aisle ten rows up in
8 center court better than being five rows behind
9 the bench, that kind of thing.

10 So there was a lot of those kind of
11 debates going on. I would be willing to say
12 that I've had basketball ticket-related
13 conversations with probably 70 percent of this
14 list.

15 Q. Can you quantify in your mind even in
16 a rough fashion, if we subtract the Golden Spur
17 holders or Founders' Club or Courtside seats
18 who are not paying additional payments, how
19 many people were?

20 A. I don't know. I mean, I was more
21 worried not with the number of account holders
22 as the number of tickets, you know.

23 Q. But you were worried about revenue,
24 continuing revenue?

25 A. We were worried about revenue. At

1 some point, we were worried about selling them,
2 because we didn't sell all our inventory.

3 Q. When you refer to "inventory," you
4 mean you didn't sell all these Founders' Club/
5 Courtside opportunities?

6 A. Right. We were still selling as the
7 season began.

8 Q. Do you recall whether, in the sale of
9 these opportunities, that any individuals were
10 not required to pay \$5,000 in the first year?
11 Setting aside the Golden Spur and two seaters.

12 A. I don't think that would happen.

13 Q. So you do not recall any different
14 deal or reduced opportunity, a fire sale, if
15 you will?

16 A. I don't recall that. Now, there may
17 have been an exception in there. I could see
18 an exception if somebody came in in February
19 and said, What do I pay? But I don't think
20 that happened, Joe.

21 Q. How about in the boxes? Were you
22 involved in the sale of the box seats or the
23 suites?

24 A. No.

25 Q. Who did those?

AUGUST 24, 2009

COPY

JEFFREY BARBER

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

TELEPHONE

DEPOSITION OF: JEFFREY ALAN BARBER

DATE TAKEN: Monday, August 24, 2009

TIME: 6:10 p.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING (843) 832-0801
www.carolina-reporting.com

1 Q Okay. That's fine. Do you recall the -- how
2 the Founders Club was promoted by the University or the
3 athletic department or the Gamecock Club?

4 A Joe, outside of this brochure that was mailed
5 out, no. And again, my job was handling the Golden
6 Spurs and that was a big part of mine. So outside of
7 this brochure, I don't recall anything, and I feel sure
8 that I didn't have any part to do with that just
9 because I was up to my elbows in Golden Spurs at the
10 time, but I'm not aware of anything.

11 Q Well, if we tell you that the only details of
12 the Founders Club produced in writing to its
13 prospective interested parties is exactly what you're
14 looking at right now, do you know of anything other
15 than this in writing that would have been sent out by
16 the University?

17 A I do not.

18 Q All right. And this document includes
19 reference to a five-year term for both Courtside and
20 Founders Club.

21 A Okay.

22 Q Do you see that?

23 A Five-year term, yes.

24 Q And an asterisk that is a qualifier that
25 refers you down to the sentence you just read about

1 A Yes, yes, it was. When I got there, Joe, in
2 '96, we were like 14, and my job was to raise that
3 level up and to, you know, oversee that. So that
4 was -- obviously, moving to this arena was a big part
5 of us, you know, getting more members at that level,
6 but that was a large part of my responsibility.

7 Q All right. And in terms of the opportunity
8 for Founders Club and Courtside memberships, as between
9 Silver Spur and Golden Spur, what differences existed?

10 A Can you clarify the question a little bit for
11 me?

12 Q I'm trying to think how to do that. This
13 bullet point --

14 A You're asking me the difference in Golden
15 Spur and Silver?

16 Q No. I'm asking you what a Golden Spur level
17 person had to do differently than a Silver Spur level
18 person in order to keep -- to purchase and keep these
19 courtside or Founders Club seats.

20 A Okay. I got you. I'm sorry. The Golden
21 Spurs had a membership level, Joe. When I got there,
22 it was \$12,000, and we raised that level of membership
23 to -- over a three-year period, it went from 13, to 14,
24 to 15 over a three-year period. And that automatically
25 qualified them for the right to sit in these seats.

1 these tickets in particular?

2 A No, Joe, I really don't. I don't know if
3 they held those back or not. I don't know.

4 Q Do you recall any reason or does any reason
5 occur to you today that would call for these basketball
6 tickets to be handled differently than the football
7 tickets?

8 A The only thing I can think of is just the
9 magnitude of the gift, you know. But outside of that,
10 I can't think of a reason why.

11 Q The premium football seating that you
12 mentioned that University had in effect for the
13 football ticketing included a written understanding or
14 a written agreement or a written contract?

15 A Uh-huh (affirmative).

16 Q Is that correct?

17 A That's correct.

18 Q Do you know of any reason why the University
19 determined not to have a written understanding, a
20 written agreement or a written contract for these
21 Founders Club and Courtside seating?

22 A I do not. I would assume -- I'm really
23 surprised that there wasn't one, to be honest with you.
24 That's -- when I wrote that to Angie, I'm sure I just
25 figured that there had to have been something, because

1 that was protocol for us, but I don't know why. I
2 don't know why it wouldn't have happened in basketball,
3 no.

4 Q Was it protocol or was it a policy of the
5 athletic department or the University at large that
6 there be written agreements or understandings in
7 contracts, do you know?

8 A You know, I would just say it probably was
9 more protocol than policy. I don't remember ever
10 seeing anything written nor passed down to us that you,
11 you know, had to, but we just did it, it's good
12 business, but, you know, it was -- so, no, I don't
13 know, I don't know why they wouldn't have done it.

14 Q You never had any conversations with any
15 other members of the athletic department during your --
16 well, during the time before you left to go to Liberty
17 about the lack or absence of a written understanding?

18 A No.

19 Q All right. Do you have a recollection of
20 what amenities went along with this Founders Club,
21 Courtside business?

22 A Yeah. It was some parking privileges and
23 also the use of the Frank McGuire Room, which was a
24 room we opened up, I think it was 90 minutes before tip
25 off, and maybe elevator pass.

AUGUST 19, 2009

COPY

ALBERT S. HARPE, II

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

DEPOSITION OF: ALBERT S. HARPE, II
DATE TAKEN: Wednesday, August 19, 2009
TIME: 2:54 p.m.
PLACE: 1611 Devonshire Drive
Columbia, SC
REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 A Nope.

2 Q And you were at Chris's deposition?

3 A Yes.

4 Q And do you recall Chris ever explaining
5 anything to you regarding the fifth year, what would
6 happen after the fifth year?

7 A I do.

8 Q What did he say?

9 A Specifically that as long as I kept the
10 maintenance, as you described it, of my scholarship and
11 I paid for my tickets, at the end of the fifth year, I
12 was done.

13 Q Okay. At the point in time that you became a
14 Founders Club, you were a lifetime person, correct?

15 A Uh-huh (affirmative).

16 Q Did you pay the \$5,000 per seat?

17 A Yes.

18 Q Did you question why, as a lifetime member,
19 you were paying for a premium \$5,000 when Golden Spurs
20 were not?

21 A It's the deal that Chris presented to me.

22 Q All right. Did you read the brochure on the
23 terms of the deal?

24 A I did, and it didn't pertain to lifetime.

25 Q Pertained to Golden Spur?

AUGUST 19, 2009

COPY

PAUL E. TRUESSELL

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

DEPOSITION OF: PAUL E. TRUESSELL

DATE TAKEN: Wednesday, August 19, 2009

TIME: 2:37 p.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 COLUMBIA, SOUTH CAROLINA, WEDNESDAY, AUGUST 19, 2009

2 2:37 P.M.

3 P R O C E E D I N G S

4 - - - - -

5 WHEREUPON,

6 PAUL E. TRUESSELL,

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. DAVIDSON:

10 Q Could I get your full name for the record?

11 A Paul Truessell.

12 Q Mr. Truessell, where do you reside?

13 A Irmo, South Carolina.

14 Q And I believe you are -- what level at the
15 Gamecock Club?

16 A I'm hard of hearing now.

17 Q And I'm hard of speaking.

18 MR. MCCULLOCH: He has got a sore throat and
19 you have bad ears, so he --

20 BY MR. DAVIDSON:

21 Q This will be a challenge.

22 A Okay.

23 Q What level are you with the Gamecock Club?

24 A Today?

25 Q Yes, sir.

1 A Golden Spur.

2 Q How long have you been a Golden Spur?

3 A Let's see, since 2007.

4 Q And to become a Golden Spur, what did you
5 have do pay?

6 A 10,000.

7 Q And you've maintained that level since then?

8 A Yes.

9 Q That was basically your donation to the
10 Gamecock Club at that point?

11 A Yes, sir.

12 Q Now, my understanding is you are a member of
13 the Founders Club.

14 A Yes, sir.

15 Q And were you one of the original members of
16 the Founders Club?

17 A Yes.

18 Q And did you receive promotional material
19 about becoming a member of the Founders Club?

20 A Yes.

21 Q Okay. I'm going to show you a brochure
22 and -- one of the few I've got. Is that the brochure
23 that you would have received?

24 A Yes.

25 Q And do you recall -- I'm going to show you

1 what we marked in Mr. Springob's deposition as Springob
2 1.

3 (Springob Exhibit 1, previously marked.)

4 A (Continuing) Yes.

5 Q That's the same information that's in the
6 glossy that I just showed you?

7 A Yes, sir.

8 Q Okay. Do you recall receiving any other
9 brochures or documents concerning the Founders Club
10 other than this promotional material?

11 A No.

12 Q Did you talk with anyone about becoming a
13 member of the Founders Club?

14 A Chris Massaro.

15 Q Did you talk with anyone else?

16 A No, sir.

17 Q Okay. Have you talked with anyone since
18 Chris about the Founders Club and what was entailed
19 with the Founders Club?

20 MR. MCCULLOCH: You mean at USC?

21 MR. DAVIDSON: Yeah, USC.

22 MR. MCCULLOCH: Anybody at USC?

23 A (Continuing) Not really, you know,
24 conversation, not anything pertaining to this.

25 Q All right. Under the Founders Club program,

1 you got certain benefits, including to choose your own
2 seats. Did you choose your own seats?

3 A Yes, sir.

4 Q Okay. How many seats did you get?

5 A Four.

6 Q Okay. And do you still have those four?

7 A Yes, sir.

8 Q Okay. Do you have any other seats in the
9 arena?

10 A Two.

11 Q Where are they?

12 A About 10 rows back of where I sit.

13 Q Okay. And why did you get those two?

14 A Just to have two for other people.

15 Q Okay, all right. Did you talk with
16 Mr. Massaro about the possibility of getting those two
17 extra seats in case you dropped some of your Founders
18 Club seats?

19 A No, sir.

20 Q Did you attend any women's basketball games?

21 A Yes, sir.

22 Q First year?

23 A Probably some every year.

24 Q Okay. And my understanding is that the
25 women's basketball games are not quite as well attended

1 as maybe they should be.

2 A That's true.

3 Q And that the McGuire Room at times was open
4 and at other times was not open?

5 A I never did know it was open during the
6 women's basketball.

7 Q All right. And that was from the first year
8 all the way through?

9 A Yes.

10 Q All right. And you knew that even though
11 they said that light snacks would be provided in the
12 McGuire Room?

13 A Yeah.

14 Q Okay. Did they provide food or light snacks
15 in the McGuire Room for the men's basketball?

16 A Sure.

17 Q Okay. What type of foods did they provide?

18 A Anything from hamburgers to hot dogs to roast
19 beef, you know, various things.

20 Q Was it like a meal?

21 A Sure, you could make a meal out of it.

22 Q Okay. So it was a little more than light
23 snacks?

24 A Yeah.

25 Q Okay. It also indicated in the promotional

1 material that you would get to buy tickets before
2 events became on sale.

3 A Yes, sir.

4 Q Like Jimmy Buffet or whatever.

5 A Yeah.

6 Q Did you ever utilize that?

7 A I think I did one or two times.

8 Q Okay. And --

9 A And then they discontinued it.

10 Q Okay. My understanding, they discontinued
11 that in the second year?

12 A Second year.

13 Q Okay. And the first year, at least from my
14 records, would have been your check -- and you may have
15 this information, your check for the four seats was
16 written like on July the 30th, 2002, is that what you
17 have?

18 A Yeah.

19 Q Okay. And the next check that would have
20 been have been written would have been the February 26,
21 2004, that's your Silver Spur --

22 A Yes.

23 Q -- membership fee --

24 A Right.

25 Q -- for \$3,000?

1 A Right.

2 Q That's the donation you would have made to
3 the --

4 A Right.

5 Q And the next would have been in 2004, your
6 check, and that would have been for the -- would that
7 have been for the '03-'04 football -- I mean,
8 basketball season?

9 A That would have been the second year.

10 Q Okay. And that check was made out on October
11 21, 2003?

12 A Right.

13 Q And that was for the second year?

14 A Right.

15 Q And that was a \$6,000 donation for the
16 Founders seat premiums?

17 A Yes, sir.

18 Q Okay. And then you would have made certain
19 other donations for the Founders seat premium, both in
20 2000 and looks like 2005, 2006?

21 A Right.

22 Q And 2007?

23 A Right.

24 Q And you actually made the payment in 2008?

25 A I paid one year too many, yup.

1 Q Okay. When did you realize you had paid one
2 year too many?

3 A When everybody started talking at the ball
4 game.

5 Q Okay. Up until that point, you didn't
6 realize you made a mistake?

7 A I didn't realize I had paid the -- I realized
8 it myself, too, after I'd done it.

9 Q After you'd done it, all right.

10 To your knowledge, other than this brochure,
11 was there any written documents memorializing any of
12 the agreement between the University and you concerning
13 your donations to the Founders Club?

14 A Nothing I signed, no.

15 Q Okay. Did the University ever sign anything,
16 to your knowledge?

17 A Not that I know of.

18 Q Okay. Would I be correct that each year when
19 it came time for --

20 MR. MCCULLOCH: Object to the form.

21 BY MR. DAVIDSON:

22 Q Would I be correct that each year when it
23 came time for you to buy your basketball tickets, the
24 four Founders Club seats and I assume the two 10 rows
25 up, your donation to the Founders Club would have been

1 due at that point?

2 A It all came in the mail from USC.

3 Q Okay. And you would have paid it right then?

4 A Yeah. You fill out the form, how many seats
5 and all that, yeah.

6 Q Okay, all right. To your knowledge, what
7 would happen if you did not pay one of the years, if
8 you didn't make your \$1,500 donation?

9 A I'm not sure what the University would do.

10 Q To your knowledge, did you make the donations
11 personally, or did you make the donations for the
12 \$1,500 for the Founders Club seats, did you make those
13 through your corporation?

14 A No, personally.

15 Q Okay. To your knowledge, did your income
16 taxes reflect the contribution for that donation?

17 A It's turned over to the accountant, which
18 University sends you a copy saying it's 80/20.

19 Q So you would have declared the --

20 A Whatever the University said I could declare,
21 I declared it, yes.

22 Q Okay. When you talked to Chris Massaro, what
23 did Chris tell you about the Founders Club?

24 A I talked to Chris before we ever left the old
25 arena and I told him, being a Silver Spur donor and

1 sitting in the upper level, that if I went to the new
2 arena and didn't get good seats, I would be dropping
3 out of Gamecock Club. So, he and I talked various
4 times. And when it came up, he approached me because
5 he knew I was dissatisfied in the old arena. So --

6 Q That's how you got to sit courtside?

7 A Yup.

8 Q In your conversations with Chris, did he ever
9 discuss with you what would happen in the sixth year?

10 A What would happen what?

11 Q In the sixth year, to your knowledge?

12 A It was discussed point blank that it was a
13 five-year situation, and after that, all I had to do
14 was buy my tickets.

15 Q Okay.

16 A And as long as I kept the Gamecock level up,
17 the tickets were mine.

18 Q Okay. Did you have any written confirmation
19 of that?

20 A Do not.

21 Q Okay. And you were making -- this was a
22 five-year deal?

23 A Yes, sir.

24 Q Okay. And after five years, it's your
25 position that you would have maintained rights to those

1 seats forever?

2 A Forever, yes, sir.

3 Q What happens if you don't pay for your
4 tickets?

5 A I would imagine if I don't pay the Gamecock
6 Club and maintain my level, the tickets won't be
7 available to me.

8 Q Okay. What happens to the seats since you
9 claim you have interest in them for the rest --

10 A I can't answer that. I don't know what the
11 University would do.

12 Q Did you read the language in the promotion
13 about it being -- the sixth year being a renewable
14 option for Gold -- what has been interpreted by some of
15 your plaintiffs as the Gold Spur membership?

16 A I forget what year it was the -- I believe it
17 was the -- in 2005 -- or 2006, I was still a Silver
18 Spur, and I called down there and asked them about that
19 provision. And they said I didn't get two extra seats
20 because I wasn't a Golden Spur at the time I signed up
21 for the Founders Club. So, I did question it.

22 Q So in the fourth year, you became a Golden
23 Spur, is that right? You have to answer yes or no.

24 A Yes, sir.

25 Q Okay. Is Golden Spur considered to be a

1 higher level of giving than the Silver Spur?

2 A Yes, sir.

3 Q When you -- did you read the language, and
4 I'll refer to the last bullet point, concerning the
5 Silver Spur -- I mean, Golden Spurs, and it says,
6 "Golden Spurs automatically assigned two Founders Club
7 seats or two" club seat -- "courtside club seats
8 without up front premium and with the option to
9 purchase additional seats for \$1,500 premium per seat,
10 with a renewable option in the sixth year." Did you
11 ever inquire as to what that renewable option in the
12 sixth year meant for Golden Spurs?

13 A I didn't, because at the time I -- the time
14 that I talked to Chris about joining this, I wasn't a
15 Golden Spur, so that didn't pertain to me.

16 Q All right. Golden Spurs, though, it appears,
17 and I just want you to see if you agree with this
18 interpretation --

19 MR. MCCULLOCH: I object to the form.

20 MR. DAVIDSON: That's fine.

21 BY MR. DAVIDSON:

22 Q Golden Spurs would have an option to renew,
23 in the sixth year, their membership in the Founders
24 Club?

25 A See, you're asking me something that don't

1 pertain to me, because to me, the Golden Spurs that
2 were -- when this came out, they had an option to get
3 free tickets and not pay a \$5,000 premium.

4 Q Okay.

5 A They didn't pay anything for those tickets.

6 Q For the first --

7 A So to me -- for the first five years.

8 Q For the first year, I believe.

9 MR. MCCULLOCH: Time-out. I object. That's
10 argumentative. And I object to the form of the
11 question. Don't tell him how to answer the
12 questions.

13 MR. DAVIDSON: Note your objection.

14 MR. MCCULLOCH: Well, ask appropriate
15 questions.

16 MR. DAVIDSON: And don't slam the table --

17 MR. MCCULLOCH: Ask appropriate questions.

18 MR. DAVIDSON: -- because I don't want you
19 breaking my glass. And note your objection in
20 accordance with the rules.

21 MR. MCCULLOCH: Good. Ask proper questions,
22 please.

23 MR. DAVIDSON: It will be taken up with the
24 court.

25 BY MR. DAVIDSON:

1 Q Do you know whether or not any of the Golden
2 Spurs paid \$1,500 a year?

3 A I have no unearthly idea.

4 Q Okay. But you, in fact -- best of your
5 recollection, you did write off your donation to the
6 Founders Club, correct?

7 A I would say my accountant did whatever is
8 legal.

9 Q Okay. Are you presently a member of any
10 other premium seats within the University athletic --

11 A Yes, I am.

12 Q Where are you --

13 A Champions Club.

14 Q Champions Club. And how is that deal set up?

15 A Do what?

16 Q How is that deal set up?

17 A It's a contract.

18 Q Is it a signed document?

19 A Yes, sir.

20 Q Prior to the Champions Club, were you -- have
21 any other premium seats?

22 A No.

23 Q Your payments were made on a yearly basis,
24 your donations?

25 A Yes.

1 MR. DAVIDSON: That's all I have. Thank you,
2 Mr. Truessell.

3 THE WITNESS: Okay, thank you.

4 (Deposition concluded at 2:52 p.m.)
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AUGUST 19, 2009

COPY

VERNON L. SPRINGOB

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

DEPOSITION OF: VERNON LESLEY SPRINGOB

DATE TAKEN: Wednesday, August 19, 2009

TIME: 9:00 a.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING (843) 832-0801

1 A '05-'06, '07-'08, yeah.

2 Q The first year would have been '03-'04?

3 A '02-'03, I believe.

4 Q '02-'03?

5 A Yes, sir. I mean, we took advantage of it
6 for Shania Twain and Disney on Ice, that type of thing.

7 Q So basically by -- after the first year,
8 essentially, that benefit ran out --

9 A Well, no --

10 Q -- or they didn't provide it?

11 A They didn't provide it. That's exactly
12 right.

13 Q To your knowledge, did you ever sign any type
14 of written agreement regarding the Founders Club?

15 A No. And I inquired about that. Obviously,
16 with the amount of dollars we were talking about, Chris
17 Massaro, I remember it like it happened one second ago,
18 he said, "Your check will be your receipt," in front of
19 Mike and myself.

20 Q But my question is, you never signed a
21 formal --

22 A Other than my check, no, sir.

23 Q And if you had decided in, let's say, year
24 two or year three that you did not want to pay the
25 \$1,500 and continue to sit courtside, what would have

AUGUST 19, 2009

COPY

JOHN S. YENCO

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

DEPOSITION OF: JOHN S. YENCO

DATE TAKEN: Wednesday, August 19, 2009

TIME: 3:19 p.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 COLUMBIA, SOUTH CAROLINA, WEDNESDAY, AUGUST 19, 2009

2 3:19 P.M.

3 P R O C E E D I N G S

4 - - - - -

5 WHEREUPON,

6 JOHN S. YENCO,

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. DAVIDSON:

10 Q Can I get your full name for the record,
11 please?

12 A John Steven Yenco.

13 Q And where do you live?

14 A 11 Grafton Court in Irmo.

15 Q And how long have you been a Gamecock Club
16 member?

17 A Since I graduated in '86.

18 Q And it looks from some of the documents we
19 have got that you started out as a Century Club member?

20 A That's correct.

21 Q And then ultimately became a Silver Spur, I
22 believe sometime in 2002?

23 A That right. When I purchased the seats, they
24 called and told me I had to be a Silver Spur in order
25 to get the seats, and at the time, I was a half

1 scholarship.

2 Q Okay. And was a half scholarship a Century
3 Club?

4 A No. That's another step up or two.

5 Q And it appears that you actually bought two
6 seats, two Founder Club seats?

7 A I originally bought four.

8 Q Four, okay. And you paid one with a Visa and
9 one with a MasterCard?

10 A Correct.

11 Q And --

12 A Two seats went to each card.

13 Q Okay. And that was in fall of 2002?

14 A Correct.

15 Q And that would have been for the basketball
16 season 2002-2003?

17 A That's correct.

18 Q Okay. And who did you talk with about the
19 Founders Club?

20 A Chris Massaro.

21 Q Did you talk with anyone else at the
22 University about that?

23 A No.

24 Q Okay. I've shown everybody a brochure that I
25 have and ask you to take a moment and look at it and

1 see if that is the promotional information you received
2 concerning this program?

3 A It is.

4 Q Do you recall receiving any other promotional
5 material?

6 A No, sir.

7 Q Okay. Do you recall signing any documents,
8 any contract with the University concerning the
9 Founders Club seats?

10 A No, sir.

11 Q Okay. What was your understanding as to what
12 the Founders Club seats meant?

13 A There was the initial upfront fee and then
14 four more years of payments and a five-year commitment.

15 Q Okay. It was a five-year term?

16 A When I talked with Chris, he made it -- it
17 was a commitment, is the word he used.

18 Q Oh. So it was your understanding you would
19 make -- and I'm going to say per seat rather than
20 \$20,000 for four seats, you would make a \$5,000
21 donation, and then each year thereafter, you would make
22 a \$1,500 donation from year two to year five?

23 A Correct.

24 Q Okay. And at that point, you were a Silver
25 Spur?

1 A Not initially. When I first talked to Chris,
2 I was half scholarship, and when they ran the -- went
3 to run the first credit card for the \$5,000, a lady
4 from the Gamecock Club contacted me, that I wasn't at
5 the Silver Spur level, that I needed to have that paid
6 also in order to get the seats.

7 Q All right. And is your understanding that
8 Silver Spur is, in the priority scheme, a lesser
9 priority than Golden Spur or lifetime?

10 A That's correct.

11 Q Did anyone meet with you and Chris?

12 A No. All my dealings with Chris were done via
13 the phone.

14 Q All right. And did you read this brochure
15 prior to talking with Chris?

16 A Yes. The brochure is what prompted me. I
17 called the Gamecock Club and said I wanted to talk to
18 somebody about the courtside seats, and they directed
19 me to Chris.

20 Q All right. Do you recall what Chris's title
21 was at that point, which would have been in 2002?

22 A No, sir.

23 Q Now, when you got your seats, did you ever
24 attend any women's basketball?

25 A Yes.

1 Q To your knowledge, first year?

2 A Yeah.

3 Q Okay. Did they have the McGuire Room or
4 hospitality suite open at that time?

5 A I don't recall.

6 Q Okay. In the McGuire Room for men's
7 basketball, did they have food set up?

8 A Yes.

9 Q Did you consider the food more than light
10 snacks?

11 A Yes.

12 Q Did you have, at least for the first year is
13 my understanding, the ability to purchase tickets ahead
14 of schedule for events?

15 A Yes.

16 Q Did that end?

17 A Yes.

18 Q Okay. And did that end in the second year?

19 A I don't recall. I know it was after the
20 first year.

21 Q Okay. Shortly thereafter?

22 A Uh-huh (affirmative).

23 Q Did you call anyone and complain about not
24 being able to buy tickets for events like Jimmy Buffet
25 or Shania Twain or Kiss or whatever?

1 A I remember I did call to the office, I don't
2 remember who I spoke with, but they said if there was
3 an early -- where you could buy them early, that they
4 would be contacting us via email.

5 Q But they never did that?

6 A No, sir.

7 Q So your understanding, shortly after you
8 became a Founders Club, within the first year, 18
9 months, that portion of the agreement essentially went
10 by the by?

11 MR. MCCULLOCH: Object to the form.

12 A (Continuing) Yes.

13 Q When the brochure says a five-year term, did
14 you understand what that meant?

15 A I called Chris to get an explanation of what
16 that meant.

17 Q Okay. Did you ask Chris what the language
18 dealing with renewable option in year sixth meant for
19 the Golden Spur?

20 A No, sir.

21 Q Okay. To your knowledge, did any document
22 that would indicate that after five years, you owe
23 nothing insofar as any further donations to the
24 Founders Club?

25 A I don't know of any.

1 Q In your understanding, this was a -- was this
2 a five-year deal or a one-year deal?

3 A Five-year deal.

4 Q Okay. Am I correct that each year when you
5 got your ticket application, you also got a charge for
6 your \$1,500?

7 A That's correct.

8 Q Okay. At some point, I believe you added a
9 seat, is that correct?

10 A Yes, it is.

11 Q Okay. And did you pay the \$5,000 at that
12 point?

13 A Yes.

14 Q That was in 2004?

15 A Correct.

16 Q And then in 2005, you would have paid the
17 \$7,500, correct?

18 A For the '05-'06, basketball season?

19 Q Yes, sir.

20 A Yes.

21 Q Okay. And you would have paid that for one,
22 two, three years up until 2008, correct?

23 MR. MCCULLOCH: Object to the form.

24 A (Continuing) I did pay that.

25 Q Okay. Do you still have the fifth seat?

1 A Yes.

2 Q Okay. You have not paid the fifth year for
3 that seat, have you?

4 A We were told the premiums were suspended
5 while the lawsuit was going on.

6 Q But my question is, though, for that one seat
7 that was still within the five-year period, you have
8 not paid that?

9 A That's correct.

10 Q Okay. Was it your understanding that the
11 payments for the other four seats were suspended until
12 this issue was resolved?

13 A I was under the understanding that the
14 premium seat payments were suspended.

15 Q Okay. Until the lawsuit or the issue of
16 whether or not you owed additional payments was
17 resolved?

18 A Correct.

19 Q Okay. And if, in fact, it turns out that you
20 do owe the money, then obviously, you would pay the
21 additional money, correct?

22 A If it's determined that premium is owed, yes.

23 Q Now, in the document itself, it references a
24 five-year term and then it talks about since 1988, it
25 says, contribution to booster clubs, and it talks about

1 the tax implications. Do you see that?

2 A Yes.

3 Q Okay. And I was looking through, these are
4 documents that I'm going to --

5 MR. DAVIDSON: Did you mark out the one --

6 MR. MCCULLOCH: Yeah. I think this is the
7 one.

8 MR. DAVIDSON: I'm going to make this one the
9 exhibit.

10 (Defendant's Exhibit 1 marked.)

11 BY MR. DAVIDSON:

12 Q I show you what is Yenco 1, and that is
13 documents you've brought today concerning your payment
14 history concerning the University, correct?

15 A Correct.

16 Q Okay. And it appears that you have included
17 your tax receipts from the University, have you not?

18 A That's correct.

19 Q And if I'm not correct, you actually got some
20 notations at the bottom, and I'm going to refer to the
21 2004, where you actually did the 80 percent
22 calculation.

23 A Yes.

24 Q Okay. So the \$14,000 for the 2004 year, you
25 paid \$3,000 for the Gamecock Club, that would have been

1 for your Silver Spur membership?

2 A Correct.

3 Q You would have paid \$5,000 for the one seat,
4 the extra?

5 A That's correct.

6 Q Okay. And then you would have paid -- you
7 would have made a donation of 6,000 for the other four
8 seats?

9 A Correct.

10 Q Okay. So 11 of the 14,000 is for donations
11 towards the Founders Club seats, correct?

12 A Uh-huh (affirmative).

13 Q And that's why it reflects that you were able
14 to write off \$11,200 on your taxes as contributions to
15 the University, correct?

16 A I'd give it to my attorney -- I mean,
17 accountant and I assumed he did that.

18 Q Okay. And who is your accountant?

19 A Roger Harrelson.

20 Q Okay. And where is Mr. Harrelson?

21 A Down the street at Divine, I believe.

22 Q Is he with a group?

23 A He heads the group up.

24 Q To your knowledge, while you have been a
25 Gamecock Club member, have the ticket prices for

1 various athletic events gone up?

2 A Yes.

3 Q Okay. In 2004, when you paid the additional
4 \$5,000 to get one extra seat, where is that seat
5 located?

6 A Right next to my original four. They added a
7 fifth on -- the first year I was the end of the row,
8 and then the second year they added another seat, and I
9 bought that one, also.

10 Q Did you get anything in writing to
11 memorialize this fifth seat?

12 A No. I called Chris and he said it was the
13 same deal.

14 Q Do you know what would happen if you did not
15 pay for your basketball tickets one year?

16 A No, sir.

17 Q And you make the donations to the Founders
18 Club program, you made them yearly, correct?

19 A Yes, sir.

20 MR. DAVIDSON: That's all I have. Thank you.

21 MR. MCCULLOCH: I don't have anything.

22 (Deposition concluded at 3:33 p.m.)

23

24

25

Hilton HHonors Statement

Page 2 of 2

09/27 09/27 W96Z5T30 RESIDENCE INN ST LOUIS ST. LOUIS MO
10/08 10/08 G6KJ56V5 USC TICKET OFFICE 8037774274 SC

Standard Purch 360.15
Standard Purch 10,190.00

2007

Statement Messages

HILTON

YOU HAVE EARNED 23578 HILTON HHONORS VISA POINTS THIS BILLING CYCLE. TO REVIEW YOUR TOTAL POINTS EARNED, A COMPLETE LIST OF EXCLUSIVE HILTON HHONORS REWARDS, OR TO REDEEM YOUR HILTON HHONORS POINTS, VISIT WWW.HILTONHHONORS.COM OR CALL THE HILTON HHONORS CUSTOMER SERVICE CENTER AT (800) 548-8690. Remember, with a no-preset spending limit you now have more financial flexibility. But you MUST PAY IN FULL any charges over the revolving credit line indicated.

Account Summary

	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES	\$10,672.44	\$11,713.25	\$11,950.82	\$125.16	\$10,560.03
ADVANCES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL	\$10,672.44	\$11,713.25	\$11,950.82	\$125.16	\$10,560.03

Rate Summary

Days This Billing Period: 030

	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES				
Standard Purch	\$8,584.65	0.04860%(D)	17.740%	17.740%
ADVANCES				
Standard Adv	\$0.00	0.06230%(D)	22.740%	22.740%

Contact Information

Please see account [Terms & Conditions](#)

Mail Payments To:

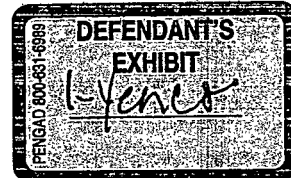
Payment Processing Center
P.O. Box 183037
Columbus, OH 43218-3037

- Make check or money order payable in U.S. dollars on a U.S. bank to Hilton HHonors Include account number on check or money order. No cash please.

To report billing errors, write to this address or complete the [online form](#). Calling will not preserve your rights.

Credit Card Processing
PO Box 6035
The Lakes NV, 89163

[Contact Us for Customer Service](#)



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[Privacy](#)
[Terms and Conditions](#)
Copyright © 2007 Citigroup

Hilton HHonors® Visa Signature®

Account Number

Redacted

Jacksonville, FL
 32231-4167 10/21/2008

Paying t Line) ment/ Closing Date	Available Revolving Credit Line) Amount Over Revolving Credit Line	Cash Advance Limit) Past Due	Available Cash Limit) Purch/Adv Minimum Due
	\$605	\$20000	\$605
	\$0.00	\$0.00	\$538.99

Sale Date Post Date Reference Number Activity Since Last Statement Amount

Payments, Credits & Adjustments

Redacted

10/13	10/13	68MC7S06	USC TICKET OFFICE	COLUMBIA	SC	2,770.00
-------	-------	----------	-------------------	----------	----	----------

Redacted

REWARDS, OR TO REDEEM YOUR HILTON HHONORS POINTS, VISIT WWW.HILTONHHONORS.COM
OR CALL THE HILTON HHONORS CUSTOMER SERVICE CENTER AT (800) 548-8690.

Remember, with a no-preset spending limit you now have more financial flexibility. But you **MUST PAY IN FULL** any charges over the revolving credit line indicated.

Your late fee was based on your account balance as of the payment due date (10/14/08), which was \$23,380.75

Account Summary	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New
PURCHASES	Redacted	\$4,471.20	\$1,000.00	\$266.99	Redacted
ADVANCES		\$0.00	\$0.00	\$0.00	
TOTAL		\$4,471.20	\$1,000.00	\$266.99	

Rate Summary	Balance Subject to	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
PURCHASES	Redacted			
Standard Purch		0.03970% (D)	14.490%	14.490%
ADVANCES				
Standard Adv		0.05477% (D)	19.990%	19.990%

SEND PAYMENTS TO: CITI CARDS PO BOX 688913 DES MOINES, IA 50368-8913 6175
PLEASE FOLLOW PAYMENT INSTRUCTIONS ON REVERSE SIDE PAYMENT MUST BE RECEIVED BY 5:00 PM LOCAL TIME ON 11/13/2008
Visit: www.hhonorscard.accountonline.com

Redacted

1004

NOV 13 2008	\$23394.40	\$538.99
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617S PS 00 A 1 BR1090066

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

JOHN S. YENCO

SC 29063-B113

CITI CARDS
PO BOX 688913
DES MOINES, IA 50368-8913

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

My University of South Carolina Account Manager

[faq](#) | [contact us](#) | [log out](#)

Welcome John Yenco
if this isn't you please sign in

[edit profile](#)

Need Help?

[watch our account manager tour](#)
[faq](#)

Quick Links

[home](#)[manage my tickets](#)[contact client rep](#)[account settings](#)[change password](#)

Click 'Buy Gamecock Events' below to buy Football 2 game packs and tickets to other Gamecock sports.

YOUR INVOICE

[View/Pay Invoices](#)

Account Details

Total Invoice Amount:	US \$7500.00	Pay Now
Overdue Amount:	US \$0.00	
Next Payment Amount: (Next Payment Due Date August 28, 2009)	US \$7500.00	
Outstanding Balance:	US \$7500.00	
Amount Paid to Date:	US \$0.00	

Manage My Tickets

*University of South
Carolina
2002 Tax Receipt*

Drive	Date	Amount
Gamecock club	03/04/2002	\$150.00
Gamecock club	04/02/2002	\$150.00
Gamecock club	05/16/2002	\$150.00
Gamecock club	06/13/2002	\$200.00
Gamecock club	08/20/2002	\$2,350.00
Founder Premium	08/20/2002	\$10,000.00
Founder Premium	10/15/2002	\$10,000.00

Total Payments Received in 2002 \$23,000.00

Name: Mr. John S. Yenco

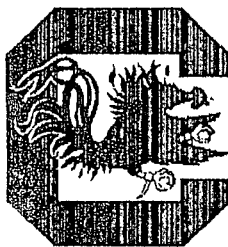
Account Number: 99663

Social Security or FID Number: ~~XXXXXXXXXX~~

Dear Club Member:

Please use this form for your receipt for donations made to the University of South Carolina Gamecock Club in 2003.

Via your contribution you have rights to purchase Carolina Athletics tickets. Pursuant to IRS Code S170 1, your accumulated benefits are 20% of your contribution. The remaining 80% may be treated as a charitable contribution unless otherwise noted. Please consult your tax advisor.



Please Note this is a Record of your Donations, NOT a Pledge statement.

*University of South
Carolina
2003 Tax Receipt*

Drive	Date	Amount
Gamecock Club	03/17/2003	\$300.00
Gamecock Club	03/24/2003	\$2,700.00
Founder Premium	10/09/2003	\$6,000.00

Total Payments Received in 2003 \$9,000.00

Name: Mr. John S. Yenco

Account Number: 99663

Social Security or FID Number:



Dear Club Member:

Please use this form as your receipt for donations made to the University of South Carolina Gamecock Club in 2004.

Via your contribution you have rights to purchase Carolina Athletics tickets. Pursuant to IRS Code S170 1, your accumulated benefits are 20% of your contribution. The remaining 80% may be treated as a charitable contribution unless otherwise noted. Please consult your tax advisor.



Please Note:

**This is a Record of your Donations,
NOT a Pledge statement.**

*University of South Carolina
2004 Tax Receipt*

Drive	Date	Amount
Gamecock Club	02/12/2004	\$3,000.00
Founder Premium BB 04/05	02/04/2004	\$5,000.00
Founder Premium BB 04/05	12/23/2004	\$6,000.00

Total Payments Received in 2004 \$14,000.00

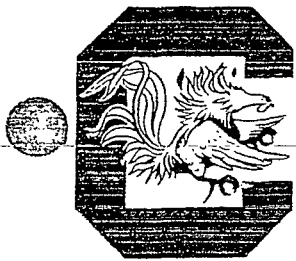
Name: Mr. John S. Yenco

$\times .8$
11,200

Account Number: 99663

Social Security or FID Number: ~~XXXXXXXXXX~~





UNIVERSITY OF SOUTH CAROLINA

99663

Mr. John S. Yenco

Redacted

University of South Carolina 2005 Tax Receipt

Dear Club Member:

Please use this as your receipt for donations made to the University of South Carolina Gamecock Club in 2005.

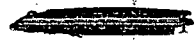
Via your contribution you have rights to purchase Carolina Athletics tickets. Pursuant to IRS Code S170 1, your accumulated benefits are 20% of your contribution. The remaining 80% may be treated as a charitable contribution unless otherwise noted. Please consult your tax advisor.

Drive	Date	Amount
Gamecock Club	02/02/2005	\$3,000.00
Founder Premium BB 06/07	10/10/2005	\$7,500.00

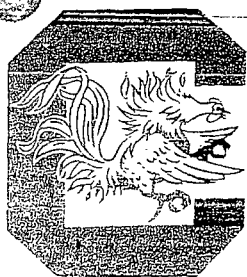
Total Payment Received in 2005 \$10,500.00

Name: Mr. John S. Yenco

Account Number: 99663

Social Security or Federal Id Number:






UNIVERSITY OF SOUTH CAROLINA

Yenco, John S.

Redacted

University of South Carolina 2006 Tax Receipt

Dear Club Member:

Please use this as your tax receipt toward payment made to the Founder Club Donation and/or Seat Premium in 2006.

Via your contribution you have right to purchase Carolina Athletics tickets. Pursuant to IRS Code S170 1, your accumulated benefits are 20% of your contribution. The remaining 80% may be treated as a charitable contribution unless otherwise noted. Please consult your tax advisor.

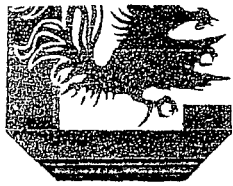
Name: Yenco, John S.

Customer Number: 99663

Social Security or Federal Id Number: ~~212-123-4567~~

Total Payment Received in 2006 \$7500.00

6000



SOUTH CAROLINA

Mr. John S. Yenco

Redacted

University of South Carolina 2007 Tax Receipt

Dear Club Member:

Please use this as your tax receipt toward payment made to the Founder Club Donation and/or Seat Premium in 2007.

Your Gamecock Club donation statement will be a separate mailing.

Via your contribution you have right to purchase Carolina Athletics tickets. Pursuant to IRS Code S170 1, your accumulated benefits are 20% of your contribution. The remaining 80% may be treated as a charitable contribution unless otherwise noted. Please consult your tax advisor.

Name: Mr. John S. Yenco

Customer Number: 99663

Social Security or Federal Id Number: ~~XXXXXXXXXX~~

Basketball Premium

\$ 7,500.00

ONLY \$1500

Total Payment Received in 2007

\$ 7,500.00

ONLY \$1500

ASKED FOR \$6000
REFUND - PAYMENT
FOR YR 6 - WAS
ONLY TO BE 5 YRS



John S. Yenco Giving History

Year	Amount	Date	Form of Payment	For	Season
1986	100	Old System		Century Club	
1987	100	Old System		Century Club	
1988	100	Old System		Century Club	
1989	500	Old System		Half Scholarship	
1990	150	Old System		Century Club	
1991	150	Old System		Century Club	
1992	150	Old System		Century Club	
1993	650	Old System		Half Scholarship	
1994	150	Old System		Century Club	
1995	150	Old System		Century Club	
1996	150	Old System		Century Club	
1997	50	2 payments	ck#226/261 ck#522/550/567 ck#583/613/722	Roost	6/11/97 & 7/2/97
1998	150	3 payments		Century Club	5/6/98 & 6/9/98 & 7/15/98
1999	350	3 payments		Roundhouse	2/18/99 & 4/5/99 & 5/11/99
2000	150	3 payments	ck#1030 &1038/1049 ck#7565/7	Century Club	5/10/00 & 6/8/00 & 7/10/00
2001	150	2 payments	579	Century Club	3/1/01 & 4/12/01
2002	3000	5 payments	ck#7765/7802 /7837/7860/ Mastercard	Silver Spur	3/4/02 & 4/2/02 & 5/16/02 & 5/13/02 & 8/20/02
2003	3000	2 payments	ck#8060/8087	Silver Spur	3/17/03 & 3/24/03
2003	10000	8/20/2002	Visa	Founder's Seat Upfront fee	BB 2002-2003 season
2003	10000	10/15/2002	Mastercard	Founder's Seat Upfront fee	BB 2002-2003 season
2004	3000	2/12/2004	Mastercard	Silver Spur	
2004	6000	10/9/2003	Mastercard	Founder's Seat Premium	BB 2003-2004 season

Year	Amount	Date	Form of Payment	For	Season
2005	3000	2/2/2005	Mastercard	Silver Spur	
2005	5000	2/4/2004	Mastercard	Added 1 addtl Founder's Seat	BB 2004-2005 season
2005	6000	12/23/2004	Mastercard	Founder's Seat Premium	BB 2004-2005 season
2006	3000	1/26/2006	Mastercard	Silver Spur	
2006	7500	10/10/2005	Mastercard	Founder's Seat Premium	BB 2005-2006 season
2007	3000	2/26/2007	Visa	Silver Spur	
2007	7500	9/27/2006	Mastercard	Founder's Seat Premium	BB 2006-2007 season
2008	3000	2/5/2008	Visa	Silver Spur	
2008	7500	10/8/2007	Visa	Founder's Seat Premium	BB 2007-2008 season
2009	3300	11/3/2008	Visa	Silver Spur	
2009	0			Founder's Seat Premium	BB 2008-2009 season

payment for original 4 FNDR seats

0-2456
1-2

FIRST CARD®

Statement Date: 07/27/02 - 08/27/02
Payment Due Date: 09/16/02
Minimum Payment Due: \$215.00

CUSTOMER SERVICE
In U.S. 1-877-272-VISA
Español 1-888-446-3308
TDD 1-800-955-8060
e U.S. call collect
1-302-594-8200

VISA ACCOUNT SUMMARY

Redacted

JNT INQUIRIES
1-8650
on, DE 19899-8550

JNT ADDRESS
P.O. Box 15153
Wilmington, DE 19886-5153

ad 9/14/02
#7944

Oct 2002
16,000 Prem
1801 Tickets
BB&T M/C

BB&T only keeps
5 years of
Records

Redacted

				Amount	Debit
08/20	2400175KT985JM6EF	UNIVERSITY OF SC AT	803-777-4274 SC	10,000.00	
08/20	2400175KT985JM6F7	UNIVERSITY OF SC AT	803-777-4274 SC	1,619.00	

↳ \$ FOR SILVER SPUR

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Category	Daily Periodic Rate 32 days in cycle	Corresponding APR	PERIODIC RATE(S) AND APR(S) MAY VARY		FINANCE CHARGES
			Average Daily Balance	Previous Cycle	Current Cycle
Purchases	.03192%	11.65%	\$0.00	\$0.00	\$0.00
Cash advances	.05425%	19.80%	\$0.00	\$0.00	\$0.00
Total finance charges					\$0.00

Effective Annual Percentage Rate (APR): N/A

Grace Period Type: A (Please see back of statement for the Grace Period explanation.)

The Corresponding APR is the rate of interest you pay when you carry a balance on purchases or cash advances. The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfer fees - expressed as a percentage.

IMPORTANT NEWS

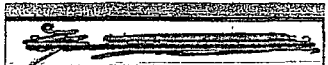
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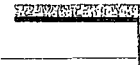


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11/06/03

\$ Redacted



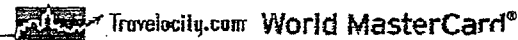
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YENCO
Redacted N CT
29063-8113000

SC

CITI CARDS
PO BOX 688901
DES MOINES, IA
50368-8901

For Customer Service, call or write
1-888-544-9882



Account Number
5466 1305 4007 4052
PAYMENT MUST BE RECEIVED BY 1:00 PM LOCAL TIME (

Statement/Closing Date 10/17/2003
Revolving Credit Line \$20000

Revc

Redacted

Sale Date	Post Date	Reference Number	Activity Since Last Statement	Amount
	10/06	41202161	Payments, Credits & Adjustments PAYMENT THANK YOU Standard Purch	5,000.00
9,9,9,				

Redacted

10/08	10/08	844WG589	UNIVERSITY OF SC AT	803 7774274	SC	1,539.00
		D*00			WI	
10/09	10/09	844WG589	UNIVERSITY OF SC AT	803 7774274	SC	6,000.00
					VA	
					PA	
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					FL	
					VE	
					IL	
					CA	
					SC	
					IN	

Redacted

TRAVELOCITY POINTS SUMMARY
BALANCE FROM LAST STATEMENT
EARNED THIS MONTH
TRAVELOCITY VALUE RATE PURCHASE POINTS
POINTS REDEEMED FOR CERTIFICATE(S)
NEW BALANCE

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03290560014

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Travelocity.com - World MasterCard®

Account Number

Payment must be received by 1:00 pm local time, on 03/08/2004
Available Revolving

Statement/Closing Date
02/16/2004

To report billing errors, write
to this address; calling will
not preserve your rights.

P.O. Box 44167
Jacksonville, FL
32231-4167

Cash A

Date	Post Date	Reference Number	Activity Since Last Statement
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Redacted

Redacted

2/04	2/04	B6MMQ589
2/07	2/07	N*405100
2/10	2/10	TGK3D600
2/11	2/11	HH1WQ589
2/12	2/12	SQW1S300
2/12	2/12	1VQ8F589

UNIVERSITY OF SC AT	803 7774274	SC
UNIVERSITY OF SC AT	803 7774274	CA
UNIVERSITY OF SC AT	803 7774274	FL
UNIVERSITY OF SC AT	803 7774274	SC
UNIVERSITY OF SC AT	803 7774274	MO
UNIVERSITY OF SC AT	803 7774274	SC

Sub
13

5,000.00
401.00
3,000.00

TRAVELOCITY POINTS SUMMA
BALANCE FROM LAST STATEMENT
EARNED THIS MONTH
TRAVELOCITY VALUE RATE PURCHASE PO

The University of South Carolina
Gamecock Club



001154
DATE 2/4 1/04

RECEIVED FROM John S Yenco
Five thousand \$5000.00
DOLLARS

FOR 04-5 BB Founder Premium

CASH ☐ CHECK ☐ MONEY ORDER ☐
VISA ☐ MASTER CHARGE ☒ OTHER ☐

N Addison
RECEIVED BY

BANK CARD NO. #991663

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15466130540074052393776082000007



12/06/04

\$82.00



00 V1 0702 2 PW 4

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Revolving
Credit Line

\$20000

Statement/
Closing Date

11/16/2004

Available Revolving
Credit Line

\$16062

Amount Over
Revolving Credit Line

\$0.00 +

Cash Advance Limit

\$20000

Past Due

\$0.00 +

Available Cash Limit

\$16062

Purch/Adv
Minimum Due

\$82.00 =

ice

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Sale Date Post Date Reference Number Activity Since Last Statement

11/01 47619012
11/02
11/15

Payments, Credits & Adjustments

PAYMENT THANK YOU
CLICK-TO-PAY PAYMENT, THANK YOU
CLICK-TO-PAY PAYMENT, THANK YOU

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10/19 10/19 P3YZN589

Standard Purch

UNIVERSITY OF SC AT 803 7774274 SC

1,948.00

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01/06 01/06 DOWH1589 UNIVERSITY OF SC AT 803 7774274 SC

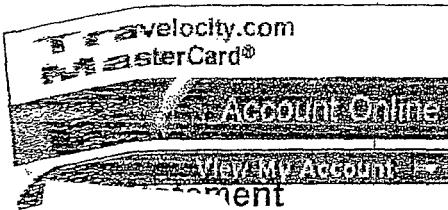
Standard Purch
Standard Purch

13.35
6,000.00

Redacted

PO 14,000
from credit line (online)
1/24/05

travelocity



Travelocity World XXXX-XXXX-X Redacted



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Saturday, Jan 22, 2005

C YENCO
Redacted

Redacted
Minimum Amount Due:
Payment Due Date*: 02/09/2005
*Payment must be received by 1:00pm local time on 02/09/2005

[Pay Credit Card Online](#)

Statement/Closing Date

01/17/2005

Download Options & Instructions

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Account Status

Total Revolving Credit Line	Available Revolving Credit Line	Cash Advance Limit	Available Cash Limit	New Balance
\$ Redacted			\$ Redacted	
Amount Over Revolving Credit Line	Past Due	Purch/Adv Minimum Due	Minimum Amount Due	
\$0.00	\$0.00	Redacted	\$282.00	

Transactions

Transaction details	Redacted To	Amount
Redacted		Redacted
12/17 86Y3H589 UNIVERSITY OF SC AT 803 774274 SC	Standard Purch	400.00

Redacted

ity Stat~~ment~~

ve Locality

VENCO
CT
Redacted 063-8113
K-XXA-XXXX-4052

Minimum Amount Due: \$248.00
Payment Due Date*: 11/07/2005
*Payment must be received by 1:00pm local time on 11/07/2005

ement/Closing Date:
10/17/2005

Account Status	Available Revolving	Cash Advance Limit	Available Cash Limit	New Balance
Total Revolving Credit Line \$20,000	Credit Line \$8,049	\$20,000	\$8,049	\$11,950.60
Amount Over Revolving Credit Line \$0.00	Past Due \$0.00	Purch/Adv Minimum Due \$248.00	Minimum Amount Due \$248.00	

Redacted

Redacted

10/10 10/10 KNAKX589 UNIVERSITY OF SC AT 803 7774274 SC

Standard Purch

7,500.00

10/10/0

Redacted

10/11 10/11 HGCQJ589 UNIVERSITY OF SC AT 803 7774274 SC
10/12 10/12 D5HDDHP2 USC ALUMNI ASSOCIATION COLUMBIA SC

Standard Purch

1,946.00

Standard Purch

55.00

Redacted

Statement Messages

TRAVELOCITY POINTS SUMMARY
BALANCE FROM LAST STATEMENT
EARNED THIS MONTH
TRAVELOCITY VALUE RATE PURCHASE POINTS
POINTS REDEEMED FOR CERTIFICATE(S)
NEW BALANCE

Redacted

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OF \$100 EACH HAVE BEEN ISSUED TO YOUR ACCOUNT. YOUR CERTIFICATE(S) MAY BE
REDEEMED ONLINE AT TRAVELOCITY.COM ANYTIME. BON VOYAGE!
CERTIFICATE NUMBER(S) ISSUED:
05290560026, 05290560027

Remember, with a no-preset spending limit you now have more financial
flexibility. But you MUST PAY IN FULL any charges over the revolving credit
line indicated.

Account Summary

	Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
PURCHASES				\$0.00	
ADVANCES				\$0.00	
TOTAL				\$0.00	

Rate Summary

Days This Billing Period: 031

Redacted

PW 00 A 0
VENCO

CITI CARDS
PROCESSING CENTER
DES MOINES, IA 50363-0000

Total New Balance:
\$13,690.97
Minimum Amount Due:
\$10.00
Payment Due Date:
11/07/2006

Account Number:
5466 1602 2048 4602
Amount Enclosed:
Payment must be received by 5:00 PM
local time on the payment due date.

Make check payable to: Citi Cards

Make check payable to: Citi Cards

Account Activity Sep 19-Oct 18, 2006

Payment Due Date:
11/07/2006

Payment must be received by 5:00 PM
local time on the payment due date.

Minimum Amount Due:
\$10.00

To :
\$ 17

Quick Reference

Revolving Credit Line
Available Revolving Credit Line
Cash Advance Limit
Available Cash Limit

Redacted

Important Account Information

ThankYou Flight Points will appear on your billing statement approximately 6 to 8 weeks following the initial departure date of travel.

Remember, with a no-preset spending limit you now have more financial flexibility. But you MUST PAY IN FULL any charges over the revolving credit line indicated.

1 of 3

citicards.com

Account Member
J YENCO

Redacted Number

How to Reach Us
1-800-967-9800

Customer Service
BOX 6062
SIOUX FALLS, SD
57117

Total Points transferred to your
ThankYou® Member Account this period:

Full details can be found in the ThankYou Points Summary section of this statement.

At a Glance

Previous Balance	Amount Over Revolving Credit Line	Past Due	Finance Charges
	\$0.00	\$0.00	\$0.00

Payments, Credits and Adjustments

Date	Post	Description
10/1/12		CLICK-TO-PAY PAYMENT, THANK YOU
09/1/12		THANKYOU PTS REDEEMED

Standard Purchases

Redacted

Date	Post	Description	Amount	Balance
10/15	10/15	CAPITOL TICKETS	80377	1190 SC

Rate Sale - Charged to C			Amount
Date	Post	Description	Amount
09/17	09/19	KI	1827 SC
			358.

Hilton HHonors

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Card

Hilton HHonors® Visa® Signature Card
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Account Online

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Wednesday, March 5, 2008

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JOHN S YENCO

Minimum Amount Due:
Payment Due Date:*

\$230.16
11/08/2007

Redacted

[Pay Credit Card](#)

*Payment must be received by 5 p.m. local time on
11/08/2007

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10/19/2007

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Statement/Closing
Date.

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and download PDF statements from
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Account Status

Total Revolving

Available Revolving
Credit Line

Cash Advance Limit Available

Redacted

Redacted

Redacted

\$ Redacted

Amount Over
Revolving Credit Line
\$0.00

Past Due
\$0.00

Purch/Adv Minimum Due

Minimum Amount Due
Redacted

Redacted

Transactions

Click on any column heading to sort or on dollar amount for transaction details.

Sale Post Reference

Redacted

AUGUST 19, 2009

COPY

IRWIN B. DUMAS

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,
BARTON DUMAS, STANLEY HARPE AND
JOHN YENCO,

Plaintiffs,

vs.

THE UNIVERSITY OF SOUTH CAROLINA
AND THE UNIVERSITY OF SOUTH
CAROLINA GAMECOCK CLUB,

Defendants.

* * * * *

DEPOSITION OF: IRWIN BARTON DUMAS

DATE TAKEN: Wednesday, August 19, 2009

TIME: 10:18 a.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING (843) 832-0801
www.carolina-reporting.com

1 COLUMBIA, SOUTH CAROLINA, WEDNESDAY, AUGUST 19, 2009

2 10:18 A.M.

3 P R O C E E D I N G S

4 - - - - -

5 WHEREUPON,

6 IRWIN BARTON DUMAS,

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. DAVIDSON:

10 Q Mr. Dumas, could I get your full name for the
11 record?

12 A Irwin Barton Dumas, I-r-w-i-n.

13 Q And where do you presently live?

14 A 239 Harden Street.

15 Q And what level of giving do you have at the
16 University?

17 A Lifetime.

18 Q When did you become a lifetime member?

19 A I'm not sure. I think it might have been
20 1986, '85 or '86.

21 Q Was that the insurance program, or was that a
22 donation of some sort?

23 A It was the insurance program that you paid
24 the premiums in full and made the University the
25 beneficiary.

1 Q And has that been completed?

2 A Yes.

3 Q Was there a contract entered into between you
4 and the University to establish that lifetime benefit?

5 A Just the insurance policy, I believe.

6 Q Do you know whether or not there was an
7 actual document that you and the University signed,
8 memorializing that lifetime --

9 A No, I -- I did have to sign the policy
10 naming the University as a beneficiary.

11 Q Would you be surprised that there is a
12 contract between you and the University, a contract
13 approved by the secretary of the board dealing with
14 your lifetime membership?

15 A I don't know one way or the other if there is
16 or isn't.

17 Q And you presently have Founders Club seats?

18 A Yes, sir.

19 Q And how many seats do you have?

20 A I have two.

21 Q Okay. And do you have any additional seats?

22 A Yes, sir. You have four additional seats.

23 Q And where are they?

24 A They are Section 6 -- well, let me describe
25 it different. They are behind the visitors' bench, I

1 believe six rows up, Seats 1, 2, 3, and 4.

2 Q So you have two Founders and four additional
3 seats?

4 A Yes, sir.

5 Q And did you purchase the four additional
6 seats at the same time you entered into the Founders
7 Club program?

8 A Yes. I actually had four originally in the
9 old arena, and then when it came to the new arena is
10 when I had the four in addition to the two Founders
11 Club's.

12 Q Am I correct that -- you dealt with who in
13 obtaining your Founders Club seats?

14 A Chris Massaro.

15 Q Okay. Am I correct that in your discussions
16 with Mr. Massaro, you wanted those four seats as close
17 to the floor as you could get them?

18 A Yes.

19 Q Okay. And the rationale being if you decided
20 you did not want to keep your Founders Club seats, you
21 would have good seats anyway, correct?

22 A No, sir. The rationale was I just wanted the
23 best seats, I had excellent seats in the old arena.
24 They were almost in the same exact spot, and I wanted
25 as good a seat as possible.

1 Q Do you recall ever telling Mr. Massaro you
2 wanted those four seats also because if you decided you
3 didn't want your Founders Club seats after a couple of
4 years, it would give you good seating?

5 A No, sir, I don't remember that.

6 Q Now, other than Mr. Massaro, did you discuss
7 the Founders Club with anyone?

8 A No, sir. He was my only contact.

9 Q All right. And I showed Mr. Springob a copy
10 of the brochure which kind of outlined the promotion
11 for the Founders Club, which is, in his deposition, No.
12 1.

13 MR. DAVIDSON: And to make this easy, what
14 I'm going to do is just have her mark that again
15 for his deposition.

16 MR. MCCULLOCH: That's fine.

17 BY MR. DAVIDSON:

18 Q Springob 1, and I'm going to show you what is
19 the original. Is that the document that you received
20 explaining the Founders Club program?

21 A I'm not positive. It very well could be. I
22 don't remember exactly.

23 Q All right. Do you recall whether or not you
24 ever signed any formal contract --

25 A No, sir.

1 Q -- with the University? Okay.

2 In looking at the benefits that were offered,
3 did you ever go to any of the women's basketball games?

4 A I gave an employee of mine tickets to the
5 women's game. She took her daughter.

6 Q Okay. And did you have those throughout the
7 term?

8 A No, sir. I had those, I believe -- I know I
9 had them the first year, and I am questionable on the
10 second year. It may have been the second year, also.

11 Q All right. The benefits that were light
12 snacks, those type things for ladies' games, did you
13 ever attend a ladies' game?

14 A I did not attend.

15 Q Okay. So you don't know whether they had
16 light snacks or not?

17 A No, sir, not for the ladies' games.

18 Q And then there were the other events, options
19 where you could get preferred seating, and you heard
20 Mr. Springob talk about that happened the first year --

21 A Yes, sir.

22 Q -- this email? Okay. And it stopped after
23 that?

24 A Yes, sir.

25 Q Do you recall whether or not you ever

1 complained to anybody about not getting preferred
2 seating for other events?

3 A Yes, I did.

4 Q Okay. And when was that?

5 A That would have been the first event, and I
6 don't recall the exact event that I did not receive
7 notice on. And I called, and I was told it was no
8 longer available. And I do not remember the person,
9 but then I referred it back to Chris Massaro, because
10 he was kind of my contact on some other objectionable
11 things that I felt weren't the same in the McGuire
12 Room, so he was my contact.

13 Q Was that in the second year?

14 A Some were in the first year, actually.

15 Q Okay. So, that would have been the '02-'03?

16 A Yes, sir, I believe that's correct.

17 Q Okay. When you met with Mr. Massaro, was
18 anyone with you?

19 A No, sir.

20 Q There is some indication in the record that
21 you have not paid all of your dues for the Founders
22 Club. Are you aware of that?

23 A Yes, sir.

24 Q Okay. Do you know what year that was?

25 A No, sir. I brought a sheet that Angie, I

1 believe her name is Shumpert, prepared for me which
2 shows that, and I dispute that, but I do have that
3 sheet with me.

4 Q Okay. You also brought some additional
5 documents today, I'm going to show you. Take a look.
6 I think that's what you brought. I made a copy of
7 them. Yeah.

8 A Okay.

9 MR. MCCULLOCH: Let's go off the record for a
10 second.

11 (Discussion off the record.)

12 BY MR. DAVIDSON:

13 Q Does any of those documents reflect where you
14 made the missing payment?

15 A One second, please, sir. The --

16 MR. MCCULLOCH: And I object to the form
17 because I'm not clear what it means, but...

18 A (Continuing) I'm looking for an '06 check
19 for \$3,000, which is not listed on their particular
20 that I brought with me. I believe it is this one, my
21 Check No. 1007. That is not listed on there.

22 Q Do you have the canceled check for this?

23 A I do not at this moment, sir.

24 Q Can you get it?

25 A I imagine I can. I have a rather unique

1 problem, is that -- which I have documentation. I have
2 a computer that crashed with all of my files, and I
3 closed this business, and without having to pay for all
4 of my checks for these times, it's very difficult for
5 me to reproduce these. I imagine it can be done, but
6 financially, I'm not able to at this moment.

7 Q What banks would this have been drawn on?

8 A It would have been a combination of either
9 NBSC or Carolina National Bank.

10 Q All right. And do you know, what was the
11 name of the account?

12 A It would have either been -- it would have
13 been Keg of Nails, KON, LLC, or IBD, Incorporated.

14 Q And the Founders Club, the original \$5,000
15 that you paid for -- the 10,000 for the two seats,
16 basically 5,000 per seat, who would have paid those?

17 A I did.

18 Q Okay. And out of what account?

19 A I'm not sure which account it would have come
20 out of.

21 Q One of the corporate accounts?

22 A Yes, yes. I was a sole proprietor, and it
23 would have come out of -- yes, it would have come out
24 of one of those accounts.

25 Q Okay. Did you consider that expenditure to

1 be a business expense?

2 A I'm not sure how accounting-wise it was
3 calculated.

4 Q But normally, would you -- those type
5 donations that you made to the University, would you do
6 those as a business expense?

7 A I'm not sure how my accountant did that at
8 that time.

9 Q But it was written out of a corporate
10 account?

11 A The corporate account and the personal
12 account were my account because I pay taxes on the net
13 of what my businesses did.

14 Q Okay. My question, though, the \$5,000 check,
15 or the \$10,000 check, per seat would have been written
16 out of a corporate account?

17 A Yes.

18 Q Okay. And the \$1,500 per seat each year
19 thereafter would have been written out of a corporate
20 account, correct?

21 A Yes. All of my donations and tickets were
22 written out of those.

23 MR. DAVIDSON: Okay. Let's mark this one
24 specifically.

25 (Defendant's Exhibit 1 marked.)

1 A (Continuing) Sorry, Will, do you want this?

2 Q I just want the whole thing to mark it.

3 A Okay, I'm sorry.

4 Q No. 1, Dumas 1 is actually the record that
5 you indicate reflects that you made the payment?

6 A Yes, sir.

7 Q Okay. And it's basically a check stub,
8 correct, I mean, a stub of some type?

9 A Yes, sir.

10 Q Okay. And the rest of the documents that you
11 produced, I'm going to mark them as Dumas 2.

12 (Defendant's Exhibit 2 marked.)

13 BY MR. DAVIDSON:

14 Q That's the rest of the documents you produced
15 today, right?

16 A Yes, sir.

17 Q Okay, all right. I noticed, in looking at
18 material, there were several checks that were returned
19 for insufficient funds. Is that just periodically
20 something that happens?

21 A No, sir. That happened towards the end, when
22 I was going through my divorce and closing business at
23 the same time.

24 Q All right. To your knowledge, do you have
25 any documentation that reflects that the Founders Club

1 seats, after five years, were lifetime seats for you?

2 A I'm sorry. Would you repeat that?

3 Q Do you have any written documentation that
4 would show that at the end of five years, the two seats
5 you had in the Founders Club would be lifetime seats?

6 A No, sir. I do not have anything written.

7 Q All right. Would you have paid, on a yearly
8 basis, your Founders Club donation, the \$1,500 per
9 seat?

10 A Yes.

11 Q Okay. Would that have been at the same time
12 you would have gotten your basketball tickets?

13 A I'm not necessarily sure. Mr. Massaro and I
14 had a business and a friendly relationship. He would
15 call me and say, "It's time for you to pay for your
16 tickets and your fees that are due," same as on this
17 case in '06, I believe I paid the basketball ticket
18 price the same time as that, but I'm not sure if that
19 happened every year like that.

20 Q Do you have any other premium seats that you
21 utilize at any other athletic functions for the
22 University?

23 A I do right now, yes, sir.

24 Q Okay. Where are those?

25 A I have -- this year?

1 Q Yes.

2 A This year I have two in the zone and I have
3 two in the west side club level, I believe Section 203.

4 Q And those, they are for a period of time, are
5 they not?

6 A Yes.

7 Q Three years?

8 A I'm not sure.

9 Q And after the period of time runs for those
10 premium seats, what happens?

11 A I'm not sure. I don't know.

12 Q Okay. Do you believe you get to maintain
13 those seats for your lifetime if you pay for them for
14 the next however many years?

15 A Yes.

16 Q Okay. Do you recall whether you signed any
17 type of agreement in that instance?

18 A No, sir, I do not recall.

19 Q And I may have asked, do you know who would
20 have done your taxes during the period of time that you
21 were, I think, Founders Club, '02-'03 basketball season
22 up to the present?

23 A It could have been Byron Coffin at that point
24 in time.

25 Q Okay. Do you know whether or not you

1 declared the tax write-off, the 80 percent for the
2 donation?

3 A No, sir, I do not know.

4 Q Can you see if he has that information
5 available?

6 A Yes, sir, if he's still around.

7 Q All right. If you had not paid for the
8 '06-'07 basketball year, the question we have given
9 your Check No. -- I can't remember the check number,
10 1007, if, in fact, that was not written, what would
11 happen to those seats?

12 A I don't know.

13 Q Okay, all right. Do you know what would
14 happen to those seats if you decided not to purchase
15 basketball tickets --

16 A No, sir.

17 Q -- let's say this coming year or five years
18 from now?

19 A No, sir.

20 Q Okay. When you got this brochure and it
21 referenced the benefits and the requirements to obtain
22 Founders Club seats, you were already a lifetime
23 member?

24 A Yes, sir.

25 Q There was some, I want to say turmoil, I'll

1 use the word turmoil, in the Gamecock Club as to the
2 relationship to lifetime members and Golden Spur
3 members at one point, was there not?

4 A I'm not sure.

5 Q Okay. Is Golden Spur further up the pecking
6 order than a lifetime member, to your knowledge?

7 A If that's the turmoil, I think that I do
8 remember something on the order, there was always
9 discussion on which was higher, and I'm not sure what
10 was ever resolved on that. I just know I had high
11 priority.

12 Q Okay. How did you -- when you read this
13 document, did you interpret the term "five-year term"?

14 A That I would pay for the tickets for five
15 years and then they would belong to me.

16 Q Okay. Did you review the remaining
17 documentation that was in the bullets underneath?

18 A Yes.

19 Q All right. And did you ever ask Mr. Massaro
20 what it meant, "with renewal option in year six"?

21 A No, sir, because that said Golden Spur and
22 that didn't refer to me.

23 Q Okay, all right. But you never asked him
24 what that meant?

25 A No, sir.

1 Q And you and Mr. Massaro were friends?

2 A Yes.

3 Q Okay. You were at his deposition?

4 A Yes.

5 Q Okay. You heard him indicate that he was
6 never asked about what would happen in year six,
7 correct?

8 A I don't remember.

9 Q Okay. Do you recall ever asking him what
10 would happen in year six?

11 A I don't specifically remember asking what
12 would happen in year six. I do remember we had a
13 discussion over the five-year period.

14 Q Okay. But you never -- you don't recall
15 asking Mr. Massaro, "What happens in year six in regard
16 to whether I have to pay or not pay the \$1,500"?

17 A No, sir, because based on our conversation, I
18 didn't feel like that was necessary.

19 Q Do you recall him ever specifically saying
20 that, in fact, in year -- after year five, you would
21 have to make no further payments other than purchasing
22 your tickets?

23 A He said I had to keep my donation level up at
24 the same amount, that donation level had to remain the
25 same.

1 Q All right, okay. And that's all he said
2 about them?

3 A Yes, sir.

4 Q Okay. My understanding, Golden Spurs pay a
5 certain amount a year, is that right?

6 A I assume. I don't know.

7 MR. MCCULLOCH: Object to the form.

8 BY MR. DAVIDSON:

9 Q Okay. Do you know?

10 A I don't know.

11 Q Okay. As a life member, once you had paid up
12 your insurance policy, you no longer have to make any
13 further payments to the University, is that correct?

14 A Well, there was an option. You could either
15 not pay anything, or you could pay \$500 a year, and
16 that would allow you to pass down your rights to the
17 next generation, to pass it down one time and remain at
18 the highest level.

19 Q Okay. And which option did you take?

20 A The one to pay the \$500.

21 Q And your understanding was to pay the \$500
22 allowed you to transfer -- or basically make it part of
23 your inheritance?

24 A Yes, sir, yes.

25 Q Okay. But you had -- you did not have to

1 make any further, for lack of a better term, Gamecock
2 donations for the purposes of being part of the
3 Gamecock Club --

4 A No, sir. That --

5 Q -- for a lifetime?

6 A That was the payment on the final, I guess
7 when I die, on the payment of the whole life insurance
8 policy.

9 Q So on a yearly basis, you don't make any
10 donations to the Gamecock Club other than the \$500 to
11 maintain the transferability?

12 A The \$500 and then I pay whatever the premium
13 on the football seats that I have now and the Founders.

14 Q When -- did you go to the men's basketball
15 game?

16 A Yes.

17 Q Okay. And the McGuire Room, was it opened?

18 A Most of the time. The hours changed.

19 Q Okay. Did they provide a meal service in the
20 McGuire Room, to your knowledge?

21 A Yes. There was food provided.

22 Q Did you consider it, like Mr. Springob did,
23 light snacks?

24 A I would consider it a filler food. I'm in
25 the food business. I would consider it filler food or

1 light snacks. It started one way and then it ended
2 with less food and less time that it was out.

3 Q Okay. You understand that there's a cost
4 associated with essentially putting the food out in the
5 McGuire Room?

6 A I assume.

7 Q Okay. And you've been in the food business
8 for a while?

9 A Yes, sir.

10 Q Light snacks can be almost as expensive as
11 putting on a full meal?

12 MR. MCCULLOCH: Object to the form.

13 A (Continuing) I don't know.

14 MR. DAVIDSON: That's all I have. Thank you,
15 Mr. Dumas.

16 THE WITNESS: Thank you.

17 MR. MCCULLOCH: That's it.

18 (Deposition concluded at 10:38 a.m.)
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 20th day of August, 2009, in the Town of Hanahan, County of Berkeley, State of South Carolina.


Teri L. Sampson, NPR,
Notary Public and Certified
Live Note Reporter

My commission expires:
May 15, 2015

AUGUST 24, 2009

COPY

ANGIE SHUMPERT

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) CASE NO. 08-CP-40-5518

LES SPRINGOB, PAUL TRUESSELL,)
BARTON DUMAS, STANLEY HARPE AND)
JOHN YENCO,)

Plaintiffs,)

vs.)

THE UNIVERSITY OF SOUTH CAROLINA)
AND THE UNIVERSITY OF SOUTH)
CAROLINA GAMECOCK CLUB,)

Defendants.)

* * * * *

DEPOSITION OF: ANGIE SHUMPERT

DATE TAKEN: Monday, August 24, 2009

TIME: 3:30 p.m.

PLACE: 1611 Devonshire Drive
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 mentioned staff meetings. I presume these are informal
2 gatherings?

3 A Uh-huh (affirmative).

4 Q No minutes, no notes?

5 A No.

6 Q Do you know who within the University's
7 athletic structure determined that -- are you aware of
8 any written agreements that the Gamecock Club had with
9 donors when they entered into this Founders Club
10 agreement?

11 A No.

12 Q How about the same question as to the
13 Courtside seats?

14 A No, sir. Those are really one in the same.
15 Courtside and Founders seats, in our mind, especially
16 currently, even today, it's just a description of the
17 location of the seat. Courtside was across the floor
18 from the bench.

19 Q Right.

20 A Founders were referring to the seven rows
21 behind the bench.

22 Q But qualitatively, you would agree that
23 Founders Club had a little closer to the action seating
24 than the --

25 A Actually, Courtside are closer because

1 A Basically that you had a three-year
2 commitment, that you agreed to pay this dollar amount
3 for the next three years, and then each year after
4 that -- I think one year we went -- I don't know what
5 year it was, one year we allowed it to go four years
6 for the 200, 600 level to get them on the same page as
7 the Zone people, so we were just doing renewals every
8 three years.

9 Q And all of that was in writing?

10 A Uh-huh (affirmative).

11 Q All right. In the -- in your discussions
12 with Mr. Barber or Mr. Massaro or anyone else with the
13 University, do you know who made the decision not to
14 have a written agreement for the Founders Club?

15 A I do not.

16 Q Have any idea why there was no agreement?

17 A This would be speculation. My only thing is
18 I believe each of them who wanted Founders seats met
19 with Chris Massaro directly, and so he would have
20 plugged them in as they were sitting there, into their
21 seat locations. And so he probably did not feel a
22 need.

23 Q Probably what?

24 A Didn't feel a need for the paperwork, I would
25 assume, but I don't know that.

1 Q All right. Well, at the staff meeting, did
2 you have information to immediately provide to the
3 Founders Club, or did you have to go in search of?

4 A I would have had to go and search.

5 Q So as of the moment when Mr. Wyrick indicated
6 to this assemblage that there was an issue, did he
7 designate you or designate several of you to look into
8 it?

9 A I believe there were probably -- most likely,
10 because Patrick McFarland and I were the two long-term
11 employees on the staff. Toni Karl was very new. She
12 had only been here a few months when Chris started.
13 Anne had been here a little while, but she was working
14 in a different capacity, and Logan was pretty new, he
15 came in with Chris Wyrick.

16 Q And at that point, did Mr. Wyrick -- well,
17 did he tell you how he wanted it investigated?

18 A He would have said find anything you can.

19 Q All right. And what did you find
20 documentary-wise?

21 A I think we found the brochure at that time
22 over at the stadium, but pretty much, I mean, there
23 were not any written records signed by anyone that we
24 could locate.

25 Q Okay. At that point in time, did you go to

1 the computer system to look at who the members were?

2 A We would have looked at some of the different
3 donors. I -- actually, the first thing I did was,
4 because I was not directly involved with it, Chris
5 Massaro and Jeff Barber were, I emailed them. I
6 believe you have both of those.

7 Q All right. And Exhibit 5 is an email dated
8 10/12/07.

9 A Uh-huh (affirmative).

10 Q And the bottom of the page is your email to
11 Mr. Barber, is that right?

12 A Correct.

13 Q On October the 12th?

14 A Uh-huh (affirmative).

15 Q Now, did you attempt to call him by
16 telephone --

17 A I did not.

18 Q -- before sending the email?

19 A I did not.

20 Q So your effort was this email?

21 A Correct.

22 Q Were there any previous emails, emails prior
23 to this sent to Jeff Barber?

24 A No.

25 Q And his response the same day, some two hours

1 later is his complete response?

2 A Uh-huh (affirmative).

3 Q All right. And when you received this email
4 from him, did you contact him and speak with him by
5 phone?

6 A I did not.

7 Q All right. Did you read his response?

8 A Uh-huh (affirmative).

9 Q And his response mentions a -- "They signed a
10 five-year lease"?

11 A Uh-huh (affirmative).

12 Q All right. At that point in time, did you go
13 looking for a five-year lease?

14 A I did not.

15 Q Signed lease?

16 A I had already looked within the stadium,
17 upper side.

18 Q Well, tell me what you did when you saw a
19 signed release, but you were not able to -- a signed
20 release referenced by Mr. Barber, but there was no such
21 document locatable by you.

22 A Honestly, it didn't phase me. I printed this
23 out and took it to Chris Wyrick for him at that time.

24 Q And what did he do about that?

25 A It looks like he has got notes on here where

1 he -- it's not a clear copy. It looks like he called
2 someone on October, possibly 13th at 4:45, left
3 messages, and it cut off.

4 Q Do you know what he did?

5 A No. I'm just -- from this.

6 Q When you say with regard to this "they signed
7 a five-year lease," did -- when you say that didn't
8 phase you, did you not notice it, or did it --

9 A I honestly didn't notice it. I read it, and
10 our terminology may be different, because we did do
11 leases per se on our other premium seat areas, so I
12 didn't -- it didn't phase me in any event.

13 Q Going back to Exhibit 1, there's not any
14 mention of a lease in there, is there?

15 A No.

16 Q And it says, "signed a five-year lease."
17 When you produced this to Mr. Wyrick, did he then
18 say -- did you and he talk about this five-year signed
19 lease?

20 A We did not. And that's Jeff's terminology.
21 I can't answer to what he meant in that.

22 Q But Mr. Wyrick did not direct you to do
23 anything with respect to further efforts to locate a
24 signed document?

25 A Not at this time, no.

1 Q Well, at any time?

2 A I mean, we researched the stadium. We went
3 through there, went through records looking for
4 anything relating to this.

5 Q But had you done that before this email, this
6 exchange?

7 A I believe this may have been Step 1. And
8 then once the suit actually came about, we started
9 doing further research.

10 Q All right. But when you received this email
11 referencing a signed document, a signed five-year
12 lease, you had already -- I think, if I understand the
13 chronology of your testimony today and your efforts,
14 you'd already looked to see if you could find anything,
15 and you didn't?

16 A We found the brochure. We found the
17 brochure.

18 Q You didn't find any other documents?

19 A No, sir.

20 Q And so when this email response came from
21 Mr. Barber, did you go back -- until the lawsuit was
22 filed, did you look, were you directed to look for any
23 signed documents?

24 A No. I was in the middle of a computer
25 conversion. It wasn't my priority at the time.

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF COMMON PLEAS

Les Springob, Paul Trussell,)
Barton Dumas, Stanley Harpe,)
and John Yenco, of Whom Paul)
Trussell, Barton Dumas, and)
John Yenco are the Appellants,)

MOTION FOR SUMMARY JUDGMENT

PLAINTIFF,)

Case No. 2008-CP-40-5518

-VS-)

The University of South)
Carolina and the University)
of South Carolina Gamecock)
Club,)

DEFENDANTS.)

BEFORE THE HONORABLE ALISON R. LEE, JUDGE

SEPTEMBER 4, 2009

COLUMBIA, SOUTH CAROLINA

A P P E A R A N C E S:

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REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING.

1 THE COURT: Good morning. This is Docket
2 Number 2008-CP-40-5518, Les Springob et al. versus
3 The University of South Carolina and the Gamecock
4 Club. The plaintiff is represented by Joseph
5 McCulloch. The defendant is represented by William
6 Davidson.

7 And we are here on competing motions for
8 summary judgment. I have received the memoranda
9 that you all have provided, along with the
10 attachments. And there are other affidavits and
11 information in the file.

12 It appears that Mr. McCulloch's motion was
13 filed first. I understand that they're competing
14 ones. So unless you all want to flip to see who
15 goes first, we'll start off first in time, first in
16 right.

17 Mr. McCulloch?

18 MR. McCULLOCH: Thank you, Your Honor.
19 Your Honor, this is an interesting situation since
20 we have competing summary judgment motions, each by
21 their very nature. I assert to you there is no
22 factual issue and only legal issues.

23 THE COURT: That may be the issue right
24 there. That may resolve it all.

25 Mr. McCULLOCH: Well, Your Honor, the

1 briefing in this case has been extensive, as you can
2 see.

3 THE COURT: Yes.

4 MR. McCULLOCH: And hopefully it laid out
5 the arguments, and the facts can be fairly
6 succinctly stated, Your Honor. They're all
7 undisputed facts in each of our memoranda. The
8 facts differ only on one point.

9 And that really is whether these
10 plaintiffs entered into an agreement with the
11 University that was that they were required to pay a
12 sum of money over a period of five years, at the end
13 of which they would have in essence purchased a
14 right to that seat, so long as they complied with
15 the other conditions. And to outline the brief
16 history, Your Honor, the University --

17 THE COURT: I've got all that.

18 MR. McCULLOCH: All right.

19 THE COURT: I'll just save you time.

20 MR. McCULLOCH: All right, Your Honor.

21 THE COURT: I've read it. I understand
22 that there was an upfront initial of \$5,000 with
23 \$1,500 over the next -- I guess for a total of five
24 --

25 MR. McCULLOCH: Four years.

1 THE COURT: -- well, four years. And then
2 there's some question whether at the end of that
3 five years it was -- according to the defendants, it
4 would have had to be renewed.

5 According to you all, as long as you paid
6 your membership in the Gamecock Club with your
7 scholarship and purchased your season tickets --

8 MR. McCULLOCH: Season tickets.

9 THE COURT: -- you were good to go for
10 that seat.

11 MR. McCULLOCH: That's correct, Your
12 Honor.

13 THE COURT: And there were other
14 amenities?

15 MR. McCULLOCH: We filed affidavits from
16 all the plaintiffs which establish their positions
17 and what they were told in this meeting with Mr.
18 Massaro, the only University official present. In
19 Mr. Massaro's deposition, as you can see, he doesn't
20 know what he told the plaintiffs.

21 He tells us in the deposition what his
22 intent or what the intent of the University was but
23 not what he represented to them and not what they
24 were told. So the plaintiffs' positions of what
25 their agreement was I would submit to you is

1 undisputed.

2 Further, Your Honor, the University in
3 their memoranda says that there is no specific
4 contract here. Certainly, all of the elements of
5 this agreement between the University are set forth
6 in the affidavits of the plaintiffs, not only the
7 affidavits of the plaintiff but an objective party,
8 Michael Montgomery, a member of the Richland County
9 Bar. There is an affidavit from him attached --

10 THE COURT: Okay.

11 MR. McCULLOCH: -- in which he
12 participated in one of these meetings with one of
13 the plaintiffs just as an observer, because he was
14 somewhat interested in it. And his affidavit is
15 consistent with everyone else's understanding.

16 So I would submit to you there is no
17 argument about whether or not a contract existed. I
18 would also note for the Court that it was enough of
19 a contract for the University annually to send these
20 people a bill and to take their money every year for
21 five years.

22 This agreement, this contract, between the
23 University and these plaintiffs was struck during
24 the Mike McGee administration, who was in the
25 Athletic Department for a number of years. He left

1 the University in and around 2005, somewhere along
2 in there, Your Honor.

3 The new administration, Coach Hyman --
4 Eric Hyman -- arrived here and based on his
5 deposition was not made a part of the record. He
6 began to reformulate things to create new revenue
7 streams and to approach the entire Gamecock Club
8 business differently than had been the case.

9 He professed to have no knowledge of any
10 of this. And essentially, we think the University
11 is now attempting to rely on a kind of institutional
12 amnesia. We think that by asserting this vague
13 notion of what the intention of the University was,
14 without any other evidence, without any writing,
15 without any other basis to assert that there was no
16 contract or there was a contract in their view that
17 required payments in the sixth year, we think that's
18 specious and unsupported and think the Court can
19 find that a contract existed, the Court can find
20 that it was specific in nature and understood by all
21 the plaintiffs and therefore as being presented to
22 them by the University, by their agent, that this
23 contract existed.

24 Once you get beyond the existence of the
25 agreement, Your Honor, then you turn to the question

1 of this being an oral contract that is not
2 necessarily performable in a year. There's no
3 question here that the agreement anticipated
4 payments over a period of five years.

5 The brief -- and, Your Honor, the
6 competing summary judgment motions really address
7 the same technical legal issues. And the defenses
8 of the University, in my view, perversely are
9 whether there's a contract or not, we, the
10 University, believe that we're protected by the
11 statute of frauds because there's no written
12 contract and because it's not performable in one
13 year.

14 We believe that we're protected under the
15 statute of limitations, because there were breaches,
16 according to the plaintiffs, in certain areas of the
17 provision of failure to provide certain amenities
18 back during earlier years and that specific
19 performance is not an adequate remedy.

20 And, Your Honor, I would suggest to the
21 Court -- and I hope we have briefed it adequately --
22 that fortunately the law provides protection for
23 plaintiffs or people who enter into oral contracts;
24 to take those oral contracts and enforce them,
25 notwithstanding the fact that they may initially

1 fall under the statute of frauds.

2 Those protections are called estoppel and
3 partial performance, two areas that we fully
4 briefed, and they are touched upon by the defendant
5 in this case. Essentially, Your Honor, those
6 arguments we believe are more than adequate for this
7 Court, once the contract is found, to say, No, I'm
8 not going to allow the University to avoid their
9 obligation and the commitment which they without any
10 dispute agreeded to and entered into.

11 And, Your Honor, there are several reasons
12 for that. It is clear that the essence of this
13 contractual agreement was that the plaintiffs were
14 being offered this opportunity of a lifetime, a one-
15 of-a-kind deal to hit their Jack Nicholson seat.

16 Whenever you watch a Lakers game, if
17 you're a basketball fan, you'll see the stars
18 sitting down front, hotly sought-after seats, quite
19 expensive seats, as this case demonstrates, and they
20 are irreplaceable. And the University called them
21 such in the promotional literature that's Exhibit A
22 in both of our briefs.

23 It's characterized as the ultimate
24 basketball experience, never been a seat like this
25 before. Like to be able to choose your own seat?

1 Too good to be true -- sounds too good to be true.

2 The point is that all of these folks were
3 induced to do something by the University. And then
4 at agreement time, they were told by the University,
5 "There's no contract. We don't need to put it in
6 writing because we're the University."

7 As Mr. Massaro told one of the plaintiffs
8 -- and that's featured in our brief and recited --
9 Mr. Massaro, when asked, "Where is the contract?"
10 Mr. Massaro said, "The contract is your check."

11 So the University now seeks to hide behind
12 the statute of frauds by utilizing their own
13 decision not to memorialize the agreements in
14 writing in this case many years -- several years
15 later in which the plaintiffs are all consistent,
16 and the University can offer nothing to dispute
17 their understanding of the contract. I think that
18 is extremely important.

19 We have briefed rather fully the partial
20 and full performance cases of South Carolina, and
21 there are lots of them. And they say essentially
22 that -- and that begins, Your Honor, on page 11 of
23 our brief, which recites cases saying that an oral
24 contract may be taken out of the statute of frauds
25 when a party does some act essential to the

1 performance and the court of equity will not permit
2 a statute designed to prevent fraud when used as an
3 instrument to effect the fraud.

4 And that is exactly what the University's
5 position today is in an effort to use the statute of
6 frauds to commit a fraud. There's clear evidence in
7 this oral agreement and the agreement as per these
8 affidavits -- and those affidavits are undisputed --
9 each of these plaintiffs paid all of the money
10 required to them under the essential part of this
11 deal -- \$5,000 a year, \$1,500 -- \$5,000 for the
12 first year, \$1,500 for four more years.

13 Each plaintiff did that, Your Honor. They
14 did it, as they said in their depositions, because
15 this was the deal of a lifetime. So the University
16 should not now be allowed to disavow its contract
17 after taking their money and annually sending them a
18 bill and annually taking their money and until a new
19 administration, without any information about what
20 that arrangement was, because that information, the
21 ability for the University to say that the intent of
22 the University was x, y, z only became known to the
23 University after they had reneged and after they had
24 sent this bill for the sixth year.

25 THE COURT: Mr. McCulloch, let me --

1 MR. McCULLOCH: Yes, Ma'am.

2 THE COURT: You say that there's a new
3 athletic director. I know the previous one left.
4 And did that person attempt to reorganize either the
5 Gamecock Club or how these suits would be solved?

6 MR. McCULLOCH: Well, Your Honor, we
7 assume so. We took Coach Hyman's deposition in
8 February of 2009. That was about -- well, we filed
9 this lawsuit in September of 2008, about a year
10 after the University first notified the plaintiffs
11 and all of the other seatholders.

12 And we still today do not know how many
13 seatholders there are because the University hasn't
14 provided that information in a way that we can
15 decipher. But from the time that the University
16 sent the letters and memoranda to the plaintiffs,
17 which I think are F and G -- Exhibits F and G -- in
18 which they essentially concede the existence of this
19 agreement except as to the six-year payment term.

20 I think that's also important. In those
21 documents which are in December 2007, Your Honor,
22 the University had already -- those exhibits are
23 responsive to complaints made by the plaintiff about
24 their sixth-year bill. And the University began a
25 review.

1 The Athletic Department under Coach Hyman
2 began its review of what the deal was. And those
3 memoranda reflect the University's conclusion after
4 several months of "investigation" by the University.

5 There is an exhibit, Your Honor, which is
6 Exhibit J, which is simply my letter to the
7 University saying in January, when these people were
8 told if they don't pay, we're going to throw you out
9 of your seats, that's my request to the University
10 and their essential agreement follow-up to continue
11 to look at this matter to try and decipher what the
12 University's position ought to be, because there was
13 clearly an agreement.

14 They just weren't -- the only term they
15 weren't clear on and the only term today that they
16 can't dispute is whether or not there was a
17 requirement or an agreement that payments after the
18 sixth year could be made, and we say there is no
19 dispute.

20 But when we took Coach Hyman's deposition
21 in February of 2009, months after this suit was
22 filed, Coach Hyman professed not to know much about
23 much. In fact, the second day of the deposition he
24 again testifies, as he had the first day, that he
25 had not read the complaint in this case.

1 So I cannot tell you, Your Honor, based on
2 our deposition of Coach Hyman what he knew and what
3 he did. He professed to have delegated all of these
4 things to somebody but could not tell us to whom he
5 had delegated it. So I hope that's responsive to
6 that question.

7 THE COURT: Yes, sir.

8 MR. McCULLOCH: Your Honor, legally that -
9 - the partial or full performance, depending on how
10 you view it, clearly these plaintiffs performed the
11 part of this agreement that required them to pay
12 these five years of payments.

13 They also complied with the other two
14 terms of the understanding, which were that they buy
15 season tickets, because obviously, if they did not
16 purchase season tickets, they would not have enjoyed
17 the seats.

18 They also, Your Honor, paid their Gamecock
19 Club dues. Of these five plaintiffs, you have three
20 categories of Gamecock memberships. One or two of
21 the plaintiffs are lifetime members, which is a
22 membership level achieved -- and I think that's
23 covered in some of the depositions attached --
24 lifetime memberships were achieved by the agreement
25 of the Gamecock Club member to enter into an

1 insurance contract.

2 And this, if I recall correctly, occurred
3 about 1988 or '89. You could enter into an
4 insurance contract, make the University the
5 beneficiary, pay for that over several years.

6 And when your payments for this insurance
7 -- life insurance -- contract were concluded and the
8 interest vested, the University was a beneficiary to
9 the extent of not less than \$100,000 when you die,
10 kind of a morbid way to achieve membership but the
11 way that the University created a new level of
12 Gamecock Club membership, the lifetime member.

13 And several of these plaintiffs are those,
14 and clearly they all have done that in addition to.
15 And the further requirement of that membership level
16 is that you have to pay \$500 a year. And that's
17 different from the Silver Spur membership.

18 I think two people of this group, Harpe
19 and Dumas, are lifetime members. The remaining
20 three -- Yenco, Springob, and Trussell -- I believe
21 are Silver Spur members. One of them has now become
22 a Golden Spur.

23 But in addition to paying the premium fees
24 during this five-year term as agreed and paying for
25 season tickets each year, each of these people

1 maintain a Gamecock Club level. In the instance of
2 Silver Spurs, they have to pay \$3,000 a year on top
3 of everything else.

4 Golden Spur, which one of these folks has
5 become since the beginning of this five-year period,
6 he pays \$13,000 a year. And those numbers are going
7 up, Your Honor, which we take notice of the
8 University's ability to increase the Gamecock Club
9 membership levels.

10 We do not believe under any construction
11 the University can now disavow this contract and
12 require additional payments. So, Your Honor, we
13 think that there is ample partial if not complete
14 performance, because essentially what you have here
15 is performance terms over five years based on our
16 plaintiffs' affidavits and their construction of
17 what the agreement was, and that is undisputed,
18 after which the only further conditions are the two
19 that the Court mentioned at the outset.

20 Our position is that that vested a right
21 of continued expectation and was -- and despite the
22 University's assertion in their brief, in their
23 memoranda, that somehow each year's payment was a
24 renewal, that would not be the case, Your Honor.

25 The University also relies on the statute

1 of limitations. And in our brief, we touch on that
2 at page 14. The University asserts that, well,
3 because some of the plaintiffs -- because in this
4 lawsuit we did assert that the essence of this
5 contract is the seating.

6 And that's clear from the brochure, that's
7 clear from -- you know, people don't pay somewhere
8 between \$22,000, which would be two seats -- one of
9 these plaintiffs have two seats, several of them
10 have four seats, \$11,000 times a seat.

11 So we're talking about people paying
12 \$22,000 and almost \$50,000 for this right to pick
13 these seats and to have these seats and to keep
14 these seats so long as they comply with the other
15 two conditions. The University asserts that because
16 we didn't complain when they ceased to provide a
17 couple of the amenities -- though we did ask for
18 some money damage in the complaint, the essence of
19 the complaint is specific performance.

20 That is the remedy that we believe we're
21 entitled. And under the case law, we think that
22 there is the ability to ask for some additional
23 dollar valuation of these benefits that were not
24 provided, but they were non-essential. They were
25 nominal.

1 In a different kind of case, Your Honor,
2 oddly enough, the University would be asserting,
3 instead of the assertion that somehow a clock began
4 to run when they failed to provide women's
5 basketball seats during this five-year term, that
6 that required these plaintiffs to immediately bring
7 a breach of contract lawsuit.

8 That's not the essence of the contract,
9 Your Honor. In every contract, whether it's written
10 or verbal, there are nonconformities by the parties.
11 And when the parties don't take actions, usually the
12 other party, the granting party, just simply assumes
13 they are acquiescing.

14 So in a different kind of case, the
15 University would be continuing acquiescence or
16 waiver. But I would submit to you, Your Honor, that
17 the failure of the University to pay -- to provide
18 the seats to the women's basketball games, which is
19 one of the amenities that was not provided, is not
20 the essence of this deal.

21 The essence of this deal was the seats for
22 men's basketball. And, Your Honor, there is even
23 some evidence amongst all of the discovery that if
24 you asked for some of these lapsed benefits, they
25 were granted, but you had to make some noise.

1 So we don't think that those are material.

2 We don't think that that would act to operate or to
3 instigate the statute of limitations. And, of
4 course, we have cited cases, Your Honor, which say
5 that the statute of limitations may also be
6 overridden.

7 Even if it were found to be of some
8 concern to the Court, again, estoppel may step in.
9 And I would submit to the University, as this record
10 indicates, that the critical and material breach,
11 the requirement or the decision by the University to
12 assert to these five plaintiffs that they needed to
13 send more money in the sixth year resulted in the
14 University's indication to them that they were going
15 to review it.

16 And it remained under review, Your Honor,
17 until we filed this lawsuit over a year later. So
18 the statute of limitations, the passage of time, is
19 unfortunately the University's delay. If the
20 University determined during the five-year term that
21 there was some ambiguity, they should and certainly
22 could have sought to clarify it.

23 But they should not, by any stretch of the
24 law, to be allowed to hide behind their decisions
25 right upfront. As to the argument of specific

1 performance, that that is not a proper remedy, Your
2 Honor, I would ask you to simply go back to the
3 Exhibit A and again look at what the essence of this
4 deal was.

5 The University itself referred to it as
6 the ultimate basketball experience, too good to be
7 true. Your Honor, I think that -- you know, the
8 plaintiffs in this case are not all wealthy. Some
9 are. But they would not have entered into this deal
10 if it was regarded as a five-year term. Probably no
11 one would.

12 The University in Coach Hyman's deposition
13 and perhaps it was Mr. Barber's deposition
14 essentially said, "Gee, \$22,000 -- \$11,000 for a
15 seat in perpetuity, that's ridiculous, that's not
16 enough money."

17 Well, \$11,000 is a lot of money where I
18 come from, Your Honor. And so the specific
19 performance requiring the University to now own up
20 to what they promised and to require them to provide
21 these seats without further premium payments on the
22 same conditions that existed during the five-year
23 term and were agreed upon by the University
24 originally, those conditions are conditions that
25 these plaintiffs wish to continue to abide by, and

1 have, and will.

2 So, Your Honor, we think that the law
3 provides ample remedies here. Within the specific
4 performance section of Mr. Davidson's motion for
5 summary judgment, he asserts that, "Gosh, you know,
6 there could be conditions which would" -- you know,
7 that this agreement between the University is
8 somehow unenforceable because it doesn't contemplate
9 what ifs, it does not contemplate the specific
10 example of what if SEC does away with these seats.

11 Well, I would submit to the Court that
12 those kinds of what ifs are not pertinent to what
13 was and what is. We could what if about an
14 earthquake that rendered the building unoccupiable.
15 But the law provides a remedy for those
16 eventualities, as well. It's called impossibility.

17 And a party is not held accountable if it
18 becomes impossible to provide a service that they
19 have contracted for if it's beyond their control.
20 And that's inherent, I guess, Your Honor, in our
21 law.

22 THE COURT: Mr. McCulloch, what about the
23 language -- and I understand that the brochure did
24 not create the contract. But there appears to be
25 language in the brochure that talks about a

1 five-year term and that there are options for
2 additional seats, \$1,500 premium per seat with
3 renewable option in year six.

4 MR. McCULLOCH: I think that the
5 representative of the University had conceded -- and
6 if you read it carefully, Your Honor, first and
7 foremost, the document Exhibit A refers to a
8 five-year term with an asterisk, which would
9 generally be a modifier. And that asterisk is a
10 little hard to see on our --

11 THE COURT: It talks about the IRS
12 contributions.

13 MR. McCULLOCH: It goes down and talks
14 about the deductible nature of that contribution.
15 Below that, it describes upfront premiums of one
16 year and two through five. Below that is the
17 language you referred to. You'll notice that it
18 begins with Golden Spurs.

19 And that entire sentence, Your Honor, is
20 about Golden Spur memberships, because Golden Spurs
21 were entitled to not pay for these seats. They got
22 two additional seats, as that language says. And so
23 it is our position and has been throughout this
24 litigation that none of these people were Golden
25 Spurs when they entered into this.

1 Their memberships are not confined and
2 constrained by that language because it refers
3 uniquely to Golden Spurs who entered into this
4 agreement, because they got something that nobody
5 else got. And so we think that that is irrelevant
6 to this lawsuit but perhaps would be relevant to a
7 Golden Spur member.

8 But we don't know what they were told by
9 Mr. Massaro when they met with him or whether he
10 would remember what he told them. Your Honor, the
11 last thing I would say is that equity permits you to
12 find the contract -- or the facts permit you to find
13 the contract, but equity permits you to consider the
14 partial performance as a block and a bar to the
15 umbrella that the University seeks to hide from
16 their obligations under.

17 Equity permits you to consider estoppel,
18 and we submit that you should. It is easy to view
19 this as a -- and I don't suggest today, because I
20 don't have evidence that the University entrapped,
21 fraudulent induced these people. I have no idea,
22 because I was not present and do not know what
23 conversations occurred. And the University has not
24 produced any documents -- any documents -- that to
25 me to any extent memorialize any intentions.

1 So I would suggest to Your Honor that the
2 facts at least suggest that the University by their
3 own conduct created this situation by making the
4 internal decision -- with or without legal advice,
5 we don't know -- to enter into this very expensive
6 promotional arrangement to induce people to pay a
7 vast sum of money over a period of time, with
8 commitment and plain promise of what their
9 expectations after that fifth year should be and
10 what their obligations would be.

11 And they should not now be permitted to
12 hide behind that -- these two technical legal
13 issues. It is a situation apparently of what I
14 guess I'd call seller's remorse. A new
15 administration decided this wasn't such a good deal
16 for the University, and they now seek to abandon it
17 without any ability to dispute the plaintiffs'
18 version of this agreement.

19 And I would suggest to the Court that it
20 is a dramatic demonstration of the disregard of the
21 University for the loyalty of their fans. For over
22 a hundred years, the University has promoted itself
23 as being a friend to this community, has promoted a
24 relationship with this community such that they have
25 this vastly recognized symbolism, and they call the

1 Carolina fan base their family. And this is a
2 business dispute that requires this Court's action.
3 Thank you.

4 THE COURT: Mr. Davidson?

5 MR. DAVIDSON: Thank you, Your Honor.
6 Might I stand here since I am stuck spread out?

7 THE COURT: That's fine.

8 MR. DAVIDSON: Your Honor, just so -- some
9 of these I actually have a color copy if you'd like
10 to see it. I'm going to refer to it.

11 THE COURT: Thank you.

12 MR. DAVIDSON: Your Honor, this is, as you
13 know, cross-motions for summary judgment.

14 THE COURT: Yes, sir.

15 MR. DAVIDSON: In this case, Your Honor,
16 we are ultimately going to hand up the depositions
17 in this case. At the end, I will go through with
18 the Court Reporter what we'll hand up. They'll
19 include the original depositions of various
20 individuals.

21 Mr. McCulloch asked, so I'm going to ask
22 him to provide some of those also. I know you are
23 familiar with the facts, but I'm going to briefly go
24 over a couple of points that I think is important.

25 Number one, Your Honor, is that in 2002

1 the University put this program together called
2 Founders Club or courtside seating. For lack of a
3 better explanation, they just depend on where you
4 sit. If you look at them, the dollars are the same.

5 There were ultimately about 200 and some-
6 odd seats. Ultimately, in 2000 and -- I believe
7 '06, '07 was the last of the five years. And then
8 in '07, '08 they sent out letters advising those
9 individuals who had those seats what their premiums
10 would be for the next year.

11 Of that, the plaintiffs in this case have
12 brought the suit. In this case, when this program
13 was offered by the University and the University
14 Gamecock Club, one in the same -- the Gamecock Club
15 actually is part of the University -- it was offered
16 to Silver Spur members. lifetime members, and Golden
17 Spur.

18 And Mr. Massaro, even the plaintiff has
19 indicated in the record -- I think the record is
20 pretty good about this -- that the level of priority
21 within the Gamecock Club is Golden Spur, then
22 lifetime, then Silver Spur.

23 Golden Spur paid \$12,000 a year donation
24 to the Gamecock Club. Lifetime essentially through
25 a contractual relationship with the University paid

1 a sum or had a premium for insurance that allowed
2 them to forego having to pay membership dues on a
3 yearly basis.

4 And last, but not least, was the Silver
5 Spur. And the record reflects that Silver Spurs
6 paid \$3,000. In 2002, the University sent out the
7 promotional material which you now have indicating
8 that if you wanted to buy -- not buy but get the
9 provision for these seats, the Spike Lee, Jack
10 Nicholson courtside floor seats, whatever you want
11 to call them -- that there were certain things you
12 had to do.

13 The University in this brochure, as you
14 picked out, said there was a five-year term, and
15 there's an asterisk. And that asterisk references
16 you to the 1988 tax code dealing with the ability to
17 write off 80 percent of your donation as a gift.

18 Now, that's important because I believe in
19 Mr. Yenco's deposition -- and I believe those
20 records are in the file and in the records before
21 the Court -- the University sent out their statement
22 of what your tax ability was for that year.

23 And I believe in Mr. Yenco's they showed
24 the \$3,000 for his Silver Spur membership, and then
25 they showed the payments he made for the gift or

1 donation to the Gamecock Club for the Founders Club
2 or courtside seat. And if you look at that note, he
3 actually makes a note of 80 percent of the total
4 amount.

5 I think it was like \$14,000 he said 80
6 percent. Well, the University in this brochure
7 clearly indicates it is a five-year term. There is
8 nowhere in this document that it says anything about
9 this being a lifetime benefit.

10 Also, in Mr. Massaro's deposition, Mr.
11 McCulloch asked him about some discussions with Mr.
12 Dumas. And in the record, Mr. Massaro talks about
13 Mr. Dumas and him discussing Mr. Dumas didn't like
14 the seats, didn't want to sit there anymore, what
15 could he do.

16 And what Mr. Massaro did is he got him
17 some seats in another area of the arena in case he
18 decided he did not want to continue with this
19 program. Now, another point -- and I go back to
20 this idea about Silver Spurs -- it says that Silver
21 Spurs are automatically assigned two Founders Club
22 seats or second row of courtside seats without
23 premium.

24 Now, recognize what I just said. They
25 don't have to pay a premium for two seats because of

1 their donation level to the University. They pay
2 \$12,000 a year, and the University said, "By virtue
3 of paying \$12,000 a year, you get two of these seats
4 essentially by virtue of your donation."

5 Then they go on to say, "With option to
6 purchase additional seats, \$1,500 premium per seat."
7 So if a Golden Spur wanted three or four seats, what
8 the Golden Spur had to do is pay a \$1,500 premium
9 for those seats, which would be deductible at 80
10 percent.

11 In fact, in this case it then goes on to
12 say in regard to the Golden Spur, "With renewable
13 option in year six." I would submit, Your Honor,
14 that if the highest level of donor to the University
15 had to renew their option in year six for the \$1,500
16 extra seat, why would their benefits be less than
17 those of a Silver Spur who only pays \$3,000 a year
18 or a lifetime member, which the plaintiffs, and Mr.
19 Massaro, and the University consider to be less in
20 priority than a Golden Spur -- for that of a Golden
21 Spur. It's inconsistent.

22 The other point is that if in fact you are
23 buying this seat or right to sit in this seat in
24 perpetuity or for the lifetime -- I'm going to say
25 for your lifetime, because that's their position --

1 if you are essentially entering an agreement to buy
2 this seat for your lifetime after five years, two
3 things happen.

4 Number one, you are essentially purchasing
5 a license to that seat. Now, all of the plaintiffs
6 -- I think I asked this question; you'll have all
7 the depositions, they're not very long -- didn't
8 know what would happen if the seats weren't
9 available if they didn't pay their tickets, because
10 if you take their position, they had rights to these
11 seats for their lifetime if they purchased it.

12 The problem with that rationale is
13 twofold. If you purchased it, the right to that
14 seat for your lifetime, you've got a license and
15 it's not deductible. It is not deductible, because
16 you are buying an asset from the University.

17 The University clearly made sure that its
18 notation in the thing -- five-year term, asterisk,
19 contribution. The other problem with their argument
20 that after five years they had lifetime rights to
21 these seats or a license to these seats so long as
22 they paid their \$3,000 if they were Silver Spur or
23 their \$500 if they were a lifetime member and paid
24 for their tickets is that you run into the statute
25 of frauds.

1 It is a contract that they claim cannot be
2 completed within a year. If you take the position
3 that each year, as they all have testified, they
4 were sent a bill and they paid for their tickets,
5 they paid for their \$1,500 year two through five on
6 a yearly basis, it's a yearly contract, and it ends
7 at the fifth year.

8 And it is subject to renewable option in
9 the sixth year. Now, one thing is where it's
10 interesting. They make a big point about Mr.
11 Massaro not remembering what he told these
12 individuals. Well, if you look at the affidavits of
13 the plaintiffs, they're all pretty much the same.

14 As a matter of fact, I think they probably
15 all read just about the same. And we will hand up
16 or get Mr. McCulloch to hand up Mr. Massaro's
17 deposition. At page 25, he indicated that the
18 Golden Spur was the highest level of giving.

19 In discussions regarding the program, the
20 question was asked, "You said it was an expectation
21 of the committee who looked at this that after five
22 years, there would be additional payments?"

23 Answer, "Yes. Do you want me to tell you
24 why?" Question, "Yes." Answer, "A lot of the
25 reason is because you have reoccurring expenses with

1 some of the amenities. Food, those kinds of things
2 are all recurring costs. So why would we price up
3 something that eventually would be a financial loser
4 if we were having costs without any revenue to
5 offset that within the requirement?

6 "The other thing is to keep it consistent
7 with our football premiums where we always had
8 annualized payments on the premium side, the 200
9 level, the football stadium, also in The Zone, and
10 also in the 600 level. We always required premium
11 payment."

12 He then goes on to say in discussions
13 regarding Mr. Dumas, "Did you talk with him about
14 what was expected" -- this is on page 52 -- "of him
15 by way of payment after the fifth year?"

16 "You know, I've been thinking about this a
17 lot, and I didn't -- let me back up. We had several
18 discussions, and one of the things was 'What happens
19 if I can't afford the premiums, if I want to drop
20 out, or in my mind, after the sixth year what
21 happens?'

22 "So we set Barton up with four seats. His
23 seats in the old place" -- and he goes on and talks
24 about providing Mr. Dumas what I had told you
25 earlier about the kind of a security blanket, the

1 extra seats in the arena outside the Founders Club.

2 And then his last statement to Mr.

3 McCulloch in response to this question, "But, Joe, I
4 can tell you that I never gave the impression that
5 there wouldn't be a payment after five years. That
6 did not come out of my mouth. That was always our
7 intent."

8 And he goes on to say, on page 45, "I
9 can't tell you specifically if you ask me, but it
10 was asked several times. And my answer was it would
11 mimic what we did active football. There would be
12 an adjustment after five years, go up or down,
13 basically."

14 And then he goes on to talk about Mr.
15 Harpe. He said, "First of all, three people at the
16 table. Mr. Harpe had premium seats in football.
17 That was the practice in football. That had been
18 our practice.

19 "Two of them were lifetime members, and we
20 discontinued selling lifetime memberships. And they
21 know why it was discontinued, because of the annual
22 revenue. So my feeling was, particularly those two,
23 that were so close to the program, particularly with
24 Mr. Barton, that we had so many conversations that
25 he knew what the intent was when we did it, that he

1 understood our business practice."

2 He goes on to say that they had gotten out
3 of the lifetime part of business and that "We knew
4 when we set this whole thing up that we needed
5 annual revenue." Mr. Massaro, who is now Athletic
6 Director at East Middle Tennessee State, doesn't
7 have a dog in this fight.

8 He's completely removed. He was very
9 honest. He can't tell you specifically what he told
10 these people, but he can tell you that, if asked,
11 and the canned response was, "After five years, it
12 was subject to adjustment," which is consistent with
13 the brochure which talks about in year six with a
14 renewable option.

15 And with the brochure, it has absolutely
16 nothing about this being a lifetime deal. Now, we
17 move for summary judgment in regard to this case on
18 the statute of frauds as well as the statute of
19 limitations based on some other things.

20 Mr. McCulloch has in response raised
21 estoppel. I think estoppel is an affirmative
22 defense that has to be raised in reply. I know
23 that's highly technical, but I'll note it for the
24 record.

25 The last point is that his attachment

1 Exhibit J, I only got the second page of Exhibit J.
2 I don't know what -- I think that just memorializes
3 the understanding that the University would not
4 essentially, for lack of a better term, kick these
5 people out of their seats.

6 THE COURT: The second page is just --

7 MR. DAVIDSON: Thank you, Judge.

8 THE COURT: -- "We look forward to hearing
9 from you," and his signature?

10 MR. DAVIDSON: That's all I've got. I
11 would assume all of this, if Mr. McCulloch is right
12 that I can look at it, is basically the agreement
13 that the University wouldn't sue these people to
14 collect the money or essentially kick them out of
15 their seats until this issue was resolved.

16 THE COURT: So you're saying you only
17 received the second page, not the first page?

18 MR. DAVIDSON: Yes, Ma'am.

19 THE COURT: Okay.

20 MR. McCULLOCH: I'm sorry, Your Honor.
21 That is an error in my office.

22 MR. DAVIDSON: Is that the one?

23 MR. McCULLOCH: Right.

24 MR. DAVIDSON: Okay. And that was the
25 understanding. The statute of limitations is

1 somewhat easy, and I'll do that to get it out of the
2 way. They raised in the complaint this issue about
3 these amenities, the fact that they didn't get the
4 McGuire Room open during basketball -- girls'
5 basketball or ladies' basketball, that they didn't
6 get first priority to buy -- I hear Willie Nelson is
7 coming -- Willie Nelson tickets, although I think
8 that's the Koger Center as opposed as to Colonial
9 Center.

10 That all transpired when the University
11 wasn't able to carry that out around 2003. And I
12 think in the record all the plaintiffs pretty much
13 admit that. If those are the basis of any claim for
14 breach of contract, they are barred by the statute
15 of limitations, because if they were breached in
16 2003, 2004, this lawsuit had to be brought long
17 before they brought it or long before they entered
18 into any discussion under the three-year statute.

19 So I'm not taking the position the breach
20 occurred back then for the seat issue. The seat
21 issue occurred of more recent vintage.

22 THE COURT: So, just to be clear, your
23 statute of limitations argument only goes to --

24 MR. DAVIDSON: The amenities.

25 THE COURT: -- the amenities?

1 MR. DAVIDSON: Yes. Now, if I can kind of
2 look at some of the cases in regard to this matter.
3 Clearly, if you take the plaintiffs' interpretation
4 that this is a lifetime deal that occurred over a
5 five-year-plus period, because obviously if it's
6 lifetime, it goes on longer than five years, it's
7 squarely within the statute of frauds, 32-3-10.

8 Now, that would make the matter barred in
9 its entirety, given their interpretation. Now, we
10 need to look at the question of part performance in
11 regard to the contract and whether or not that
12 rescues the case from the statute of frauds.

13 There are several cases that deal with
14 this, and it's interesting that in May of this year
15 -- I hope I say this right -- Fismeier versus Digh -
16 - D-I-G or Digh -- case came out of Horry County
17 which dealt with specific performance.

18 It dealt with a land contract, but it has
19 all of the law that deals with this type issue. The
20 Digh case or the Fismeier involves a situation where
21 the Dighs and the Fismeiers bought a condo unit
22 together. And ultimately Ms. Digh got cancer, and
23 there were some questions about whether or not she
24 could pay for her bone marrow transfer.

25 And so there was some question about

1 seeing if the Fismeiers would buy the property. I
2 refer to this as the cigar box case, because
3 allegedly Mr. Fismeier brought to Ms. Digh while she
4 was in bed sick, \$20,000 in a cigar box in cash. So
5 I call it the cigar box case.

6 I thought that was kind of an interesting
7 way to deliver money. If you look at the Digh case,
8 there are some issues dealing with some of the
9 exhibits that were entered. But the underlying
10 opinion deals specifically with the statute of
11 frauds.

12 The Court indicated clearly that part
13 performance can remove a contract, an oral contract,
14 from the statute of frauds. But it goes on to say
15 that there must be clear evidence of the existence
16 of an oral contract for part performance to remove
17 the contract from the statute of frauds.

18 And it cites several cases for that
19 proposition. It also indicates, Your Honor, that to
20 establish part performance in regard to this matter,
21 you must show three things -- clear evidence of an
22 oral contract.

23 The Court actually says in response to
24 this on a case called Scurry that it has to be clear
25 and unequivocally referral to such an agreement --

1 not only just clear, unequivocally referral to the
2 contract. The Court also requires that the contract
3 had been partially executed, and the party who
4 requests this performance had completed or is
5 willing to complete his part of the oral deal.

6 It says "and," because you have to prove
7 all three to show part performance. The Court in
8 this case found that there was no clear evidence of
9 a contract, an oral agreement, between the plaintiff
10 and the defendant.

11 In this case, there were some issues about
12 some testimony. And what the Court recognized --
13 and I will read from -- I've got it on page nine,
14 that's the way WESLAW printed it out -- it talks
15 about a statement, and then it says, "In self-
16 serving testimony or braggisms regarding statements
17 of Shelly Digh, a woman who died before they brought
18 this action," saying that those self-serving
19 statements about what somebody else said -- and they
20 didn't even get into the dead man's statute,
21 assuming they didn't have to deal with that --
22 that's self-serving.

23 And the Court goes on to say that there
24 was in this instance, in the Fismeier case, not
25 sufficient evidence to establish clear and

1 unequivocally that there was an oral agreement.

2 Well, in this case,

3 we have the plaintiffs saying that there was this
4 deal that they get this for life after five years.

5 If you look at the promotional material.

6 It's a donation. It's write-offable. It's
7 classified as a gift. Eighty percent is taken care
8 of. It is classified as a five-year term.

9 When you buy five-year or ten-year term
10 life insurance, we all know that at the end of the
11 term, it ends. You don't get the renewal option to
12 keep it for life. We have the Golden Spur issue
13 where individuals who have higher levels have to
14 renew in year six.

15 All of these individuals are lesser in
16 category than the Golden Spur. Also, we have Mr.
17 Massaro. He may not remember the specific
18 conversation -- and I would submit after seven
19 years, I doubt if I could remember specific
20 conversations, having dealt with as many people as
21 Mr. Massaro does
22 -- but Mr. Massaro clearly indicates in his
23 testimony the University did away with any lifetime
24 benefits.

25 The University was looking for an

1 annualized revenue stream, recognized that even
2 after five years the revenue would need to be there
3 to pay for some of the amenities like the McGuire
4 Room, that his canned speech clearly indicated or
5 his canned talk that in year five, once this ended,
6 you would to re-up, for lack of a better term.

7 And it essentially was something that
8 could be adjusted up or down. It was similar to the
9 programs in the football area where they have
10 premium seats that have a term. And at the end of
11 that term, you have to re-up.

12 So there is contradictory evidence based
13 on the documents, based on the plaintiffs' own
14 exhibits concerning the contributions and the write-
15 offability, the fact that it's not a license but
16 it's a gift to establish in this case no clear and
17 unequivocal agreement being reached between the
18 parties.

19 So just like in Fismeier where we had Mr.
20 Fismeier coming in and saying "I delivered \$20,000
21 and put it on the table," the Court said that was
22 self-serving, and that is not sufficient to
23 establish -- okay, a clear contract.

24 Then you've got to look at the second
25 provision, whether or not the contract has been

1 partially executed. In Fismeier, the Court clearly
2 notes that in this case Mr. Fismeier said he brought
3 in \$20,000. There's some dispute as to that.

4 But what the Court goes on to say,
5 "Moreover, these actions could have been consistent
6 with Digh's version of the parties' contract and
7 subsequent events, despite the expiration of a 30-
8 day red line for the closing of the sale."

9 There was a deadline to close the sale
10 within 30 days. What the Court is saying there is
11 our version. These actions could have been
12 consistent with the University's versions of the
13 parties' contract or agreement.

14 They paid each year \$5,000, the next year
15 \$1,500, and for that they got with their price their
16 seats. That's consistent with what the University's
17 position is in this case, not that they have
18 partially executed the contract, because if that was
19 the law, any time someone came in and had a contract
20 to buy land and they came in and had given somebody
21 \$5,000 and could say, "Five thousand dollars, I paid
22 them. That essentially establishes the contract."

23 Our Courts have said no. It may be
24 evidence that you can consider. Just like if
25 somebody comes in -- and I'll talk about some of Mr.

1 McCulloch's cases in a second -- and does
2 renovations, you know, you've got to look beneath to
3 see whether or not that's something that was a right
4 of that individual to do anyway.

5 And in this instance, what the Court said
6 in the Fismeier case is that what was happening,
7 whether or not he paid \$20,000 or not, does not
8 establish part performance because that was part and
9 parcel to what he was going to have to do anyway.
10 That was Digh's version of the deal.

11 Now, Mr. McCulloch in his brief cites
12 several cases, and I'll just go through a couple of
13 them fairly quickly, because they all stand for
14 these very same propositions. There's the Gibson
15 case which was decided in '87 where Judge Cureton
16 wrote the opinion for the Court of Appeals.

17 I think it's in Mr. McCulloch's brief, but
18 it's 293 SC 8, 358 S.E. 2nd 173. I can get your law
19 clerk all these cites at the end. In this case,
20 this dealt with the oral lease of a building.

21 What the Court says, "A party seeking to
22 show part performance by possession or improvement
23 must show acts that are relatively clear and
24 unequivocal to the agreement. Exclusive are any
25 other relation between the parties touching the

1 agreement," cited in Austin versus Beard, another
2 case they reference.

3 "Mere payment of all or a portion of a
4 price is not in and of itself regarded as such part
5 performance as will take the contract out of the
6 statute. Taking possession, paying rent, however,
7 in conjunction with other facts and circumstances
8 may constitute sufficient part performance to take
9 the agreement out of the statute."

10 What the Court is saying there -- it's
11 consistent with Fismeier -- that in this instance,
12 there has to be clear and unequivocal showing, okay,
13 that part performance by possession or improvement
14 or by payment establishes the agreement and is
15 exclusive to any other relationship between the
16 parties touching the agreement.

17 The relationship between these parties was
18 you pay \$5,000 the first year, you get a seat, you
19 get to pay for the ticket. Second year, you pay
20 \$1,500, you pay for the ticket, you get a seat up to
21 year five. That is in fact a relationship that has
22 to be completed -- I'll use my own word --
23 disirregardless, okay, of what they're now claiming.

24 They had to pay that anyway to sit there.
25 It doesn't establish part performance. The Austin

1 versus Beard case they cite, it says basically the
2 same thing. It's what I call a person who's trying
3 to buy two properties in Myrtle Beach.

4 The Court says, again, "It is incumbent
5 upon the respondent to establish such a contract by
6 competence and satisfactory proof such as is clear,
7 definite, and certain, okay. Degree of certainty
8 required is reasonably certain, having regard to the
9 central matter of the contract.

10 And it references a case that I am not
11 even going to try to say. It's Hassahula or
12 something, or
13 Massa something -- Hammamassahula or something. It
14 also says in this case, "The terms of a contract
15 must be so clear, definite, certain, precise, and
16 free from obscurity and self-contradiction that
17 neither party can reasonably misunderstand them and
18 that the Court can understand and interpret them
19 without supplying anything."

20 Well, you don't have that in this case,
21 not if you're looking at a case where the statute of
22 frauds acts as the bar. Again, they cite -- and
23 I've got three more cases, and I'm just going to be
24 very quick, and then I'll wrap up.

25 They've got a case called Player versus

1 Chandler, they've cited. It's a 1989 case. This
2 deals with a restaurant and some land down in
3 Georgetown. And I call this the ghost ship, because
4 that was the name of the restaurant.

5 In this instance, the Court again said the
6 appellates in that instance asserted actual estoppel
7 to try to prevent the statute of frauds. The Court
8 said the appellates failed to show any definite,
9 substantial, or detrimental change in their position
10 in reliance upon any oral agreement.

11 Well, in this instance, to raise estoppel
12 they've got to show some change or detrimental
13 reliance. They got the value for their contribution
14 or donation. They got their seats. They got to sit
15 on the floor where the action was, if you want to
16 say that. And they got their tax write-off if they
17 decided to take it, because the University indicated
18 that was something they needed to look at.

19 They got the benefit. There is no
20 detrimental change in the relationship. This idea
21 that they would not have bought this if in fact they
22 didn't have lifetime benefits, number one, I think
23 is somewhat -- flies in the face of Golden Spurs
24 having to renew it.

25 But, number two, it's purely self-serving.

1 And the ghost ship case, the Chandler case, talks
2 about a meeting of the minds. And if you don't have
3 a meeting of the minds in regard to specific,
4 complete, and important terms, there is no contract.
5 And I think you at the very least have that here.

6 Another estoppel case they cite is
7 Atlantic Wholesale. It's a case where a statute of
8 frauds was raised. And in fact, this was where you
9 a silver dealer buying some silver for an individual
10 and then them refusing to purchase the silver.

11 In this instance, estoppel was used. The
12 Court found, again, definite and substantial change
13 in position. In this case, there was. What
14 happened was the silver broker who bought this
15 silver lost about \$8,000 on this deal. There is the
16 type change you would need to have for estoppel.

17 And, last but not least, one of the cases
18 -- I read all of them, or at least Ms. Grafton read
19 most of them, and I read some of them. I'll just
20 give her credit. It's interesting the last case
21 they cite is College Music versus Cook, which comes
22 out of the old video poker days.

23 We haven't had that kind of litigation on
24 all kind of subjects since video poker went out of
25 the way. The Court in that instance, again citing

1 the same proposition dealing with estoppel, clearly
2 indicated that there has to be a detrimental change
3 in position. There hadn't been in this case.

4 It's our position, Your Honor -- and,
5 quite honestly -- that if the plaintiffs are
6 claiming this is a contract that goes beyond
7 basically year to year, which it was, for all
8 practical purposes. You could consider it, and
9 that's what the University viewed it as.

10 If you consider it a contract that goes
11 for their lifetime, you clearly are faced with the
12 statute of frauds. And there is nothing signed by
13 either party to memorialize this. There is no part
14 performance. There is no clear and convincing
15 evidence of contract. Quite contrary, the clear and
16 convincing evidence based on the brochure and the
17 testimony.

18 And I'll give the plaintiffs, all of them
19 saying -- it's in the record, they've all said it --
20 "We were told after the fifth year we wouldn't have
21 to pay." Mr. Montgomery, who is the lawyer for Mr.
22 Springob, who's represented him multiple times and
23 is a friend, said basically he had never read or
24 seen the brochure, and he remembers there being that
25 discussion.

1 Well, Mr. Springob said he went as his
2 lawyer. Mr. Montgomery said he went as his friend.
3 If he went as his lawyer and he heard that, somebody
4 should have put something in writing, because an
5 important term is if this is a lifetime benefit, a
6 lifetime license to that seat, it has to be in
7 writing because it is longer than a year.

8 If you take the University's position that
9 this is a yearly term deal -- year one, you pay
10 \$5,000, you pay for your ticket, you get your seat.
11 In year two, if you decide you don't want to pay
12 \$1,500 and you don't want to pay for the ticket, you
13 don't get the seat. And that's how it was.

14 But their position is it was lifetime --
15 "We as Silver Spurs and lifetime members have more
16 rights and priorities than individuals that pay
17 \$12,000 a year," who have to renew this in year six.
18 And Mr. McCulloch's -- and in the record he cited
19 some theses parts of Mr. Massaro's deposition.

20 I'm going to give you the whole
21 deposition. If you want to read it, that's fine.
22 We've actually cut out some of the excerpts. But
23 I've actually added portions when Mr. McCulloch
24 references pages 52 on page 5 of his and then page
25 57. He doesn't include everything so you can read

1 context.

2 Mr. Massaro says even though he doesn't
3 specifically remember a conversation with these
4 individuals, it never came out of his mouth you
5 didn't have to pay after the fifth year. Another
6 point is -- and this may be just the way it was
7 phrased -- he says, "By explanation -- the
8 explanation by Massaro, as testified to consistently
9 by the plaintiff, was that in exchange for a one-
10 time fee, you got it for a lifetime."

11 Mr. Massaro never said that. That's on
12 page four of the brief. Mr. McCulloch does on page
13 seven reference "Defendant Chris Massaro responded
14 that we told them that there was a great possibility
15 after the term that the premium would increase."
16 Then he says that's inconsistent with the
17 plaintiffs.

18 Well, as in Fismeier, the Court has
19 recognized there's some self-servingness in their
20 testimony. Mr. Massaro, who's now AD at another
21 college out of state, has got no one to reward in
22 this case.

23 Jeff Barber -- we'll hand up his
24 deposition for the Court, I'll let you have all of
25 that; it doesn't really matter to me -- who dealt

1 with the Gold Spurs, explained that Gold Spurs got
2 two seats free for paying their dues. And in the
3 fifth -- if they wanted additional seats, they had
4 to pay \$1,500 every year. He's now the AD at
5 Liberty. He doesn't have any bone to pick in this
6 case.

7 Finally, Your Honor, in this case we
8 believe the University is completely within its
9 rights to require the plaintiffs to continue to sit
10 in the courtside seats or the Founders seats, to
11 donate, give a gift of an amount set by the
12 University on a yearly basis is consistent with the
13 brochure, is consistent with practices, is
14 consistent with Mr. Massaro's testimony.

15 They did not buy a license to these seats.
16 For them to have bought a license to these seats
17 over -- for their lifetime runs square in the face
18 of the statute of frauds. And it's not salvageable
19 by part performance, and it's not salvageable by
20 estoppel.

21 I thank you, ma'am. Judge Manning said
22 you were going to the beach. I hope you have a nice
23 weekend. And Mr. McCulloch may have a few words to
24 say.

25 THE COURT: Mr. McCulloch, do you have a

1 reply?

2 MR. McCULLOCH: Your Honor, I'll try to be
3 brief. I, like you, am going to the beach.

4 THE COURT: We'll all be in traffic
5 together.

6 MR. McCULLOCH: I'm afraid. Your Honor,
7 Mr. Davidson should be a halfback because of the
8 efficiency of his bobbing, weaving, and dodging.
9 This is not as hard as he makes it out.

10 But I want to touch on several things that
11 he mentions. Your Honor, first, he takes us back to
12 the Exhibit A, the brochure. And back to the
13 question that he has raised, I may be misconstruing
14 his position.

15 But his position seems to be the
16 University wishes you to regard that document as a
17 part of the contract somehow. And that, of course,
18 is fine with us as we believe that there in all
19 probability are documents sufficient in this matter
20 to confirm the contract as writings.

21 But, Your Honor, we have not taken that
22 position today because we still don't have all the
23 documents that may or may not exist out there. But,
24 again, looking at the verbiage of this document,
25 Your Honor, it's pretty clear, it's pretty

1 straightforward, and it's pretty simple.

2 It refers to a five-year term. And right
3 below that, it refers to year one payment and four
4 more years of payments, without any reference to
5 additional payments being required. And I think
6 that people who sit down and who look at a document
7 like this would naturally come to the conclusion
8 that the five-year term refers to a term of
9 payments.

10 And, Your Honor, that is exactly what the
11 plaintiffs' affidavits say they were told by Mr.
12 Massaro. Notwithstanding Massaro's seven years
13 later explanations during his deposition of what was
14 intended by the University, those were undisclosed
15 intentions, if they even existed in 2002 when these
16 conversations with the plaintiffs were had by Mr.
17 Massaro and each plaintiff.

18 And the case law, we've cited at least one
19 of them -- that the contract in this -- I think it's
20 recited in McGill versus Moore. Of course, Your
21 Honor, the cardinal rule is that contract must be
22 read as a whole. If you consider this written
23 documentation, it's pretty clear that what the
24 normal person would assume from that is only five
25 years of payments. And that is, again, exactly what

1 they were told.

2 And when Your Honor reads to that third
3 bullet point, it's very simple. It refers to a
4 special deal for Golden Spurs. Golden Spurs didn't
5 have to pay premiums upfront. They got the seats
6 because they apparently were regarded as special.

7 They were paying \$13,000, and according to
8 at least one deposition we took in this case, that
9 number was going to \$14,000 and then \$15,000 over a
10 three-year period so that -- presumably, though we
11 don't know, Your Honor, because none of the
12 plaintiffs in this case fall into the third bullet
13 point.

14 But I would suggest to you that if you
15 read it, there's no inconsistency even in the
16 reading of that, because the renewal comes right
17 after and appears to be a qualifier and pertinent to
18 the additional seats that Golden Spurs could get but
19 that they apparently have to pay for in addition to
20 the three seats that they got by reason of their
21 large payment to achieve that Gamecock level status.

22 So I don't think that that language is
23 inconsistent at all. Your Honor, we have also
24 provided a case -- I'm fumbling a little bit, I
25 can't find it -- but the essence of that case that's

1 cited in the brief that undisclosed -- but it's
2 fairly --

3 Undisclosed intentions can't be used to
4 construe an otherwise unambiguous agreement. This
5 agreement was unambiguous, Your Honor. The five-
6 year term of things is clear from a simple reading
7 of the document and from the affidavits of their
8 plaintiffs and their understandings and which are
9 not disputed by the University in any meaningful
10 way, because Mr. Massaro doesn't know what he told
11 them.

12 It is -- if this were some kind of one-
13 year renewal, it really would be inconsistent for
14 the University to allow these people to continue to
15 sit in those seats as the University has, according
16 to Exhibit J, and as they did -- to sit in these
17 seats, continue in these seats, while the University
18 tried to figure out what the deal was for two years
19 without paying.

20 And so I suggest to you, Your Honor, that
21 these folks entered into an agreement to purchase
22 exactly that right, not any kind of annual renewal.
23 And if there's any lack of clarity, that ambiguity
24 should be held against the University which is also
25 the traditional case law.

1 Your Honor, as to the Fismeier case, I
2 would suggest to you that that case is not
3 applicable, because it appears that that case
4 involved a dispute with parties who were disputing
5 whether there was any contract at all.

6 As Mr. Davidson says on page eight of his
7 brief, "Plaintiffs and defendants agree they
8 attempted to enter into an oral contract, but they
9 disagreed as to the terms," no writing. And the
10 issue there is whether there was even a contract
11 because of the lack of clarity of terms.

12 And here that is not the situation. The
13 University takes the position that the partial
14 performance that we have suggested occurred and that
15 appears to be undisputed is not enough.

16 Your Honor, in a situation where the
17 parties are required as their part of the bargain
18 only to make payments, it's hard to see how those
19 payments would not be a sufficient basis for partial
20 performance. And here, of course, the Fismeier case
21 talks about certain payments not necessarily being
22 assignable or applicable to the agreements.

23 Well, here, Your Honor, the only reason --
24 and the University has to stipulate -- the only
25 reason that these people paid between -- well,

1 \$11,000 over a period of time per seat -- the only
2 reason, Your Honor -- is the fulfillment of the
3 bargain, no other assignment of that.

4 You could argue that their Gamecock Club
5 membership entitles them to other things, even
6 though it is as a condition of this. But the
7 payment of this somewhere between \$22,000 and
8 approaching \$50,000 paid by these people -- and by
9 the way, Mr. Trussell and Mr. Harpe came in during
10 arguments -- the only reason they paid it was for
11 performance of the contract.

12 It is absolutely assignable and directly
13 by reason of this agreement. Your Honor, again, the
14 undisclosed intent -- I would point you to Player
15 versus Chandler, which is recited in the brief -- it
16 simply says, "This meeting of the minds required to
17 make a contract is not based on secret purpose or
18 intention on the part of one party stored away in
19 his mind and not brought to the attention of the
20 other party but must be based on purpose and
21 intention which is made known or which from the
22 circumstances should be."

23 And, Your Honor, we submit that the
24 intentions and the deal is absolutely clear and
25 certainly was to the plaintiffs. Your Honor, there

1 has been some reference to tax deduction. That's
2 not briefed. In my view, it is not relevant on
3 anybody.

4 I disagree with Davidson on the law with
5 regard to what can and cannot be deducted. While
6 there were questions asked about this during
7 depositions, I don't see the relevance of that. I
8 don't believe it is pertinent, and I also do not
9 believe that it is the law that these premiums can
10 be deducted.

11 And I'm advised that the only thing that
12 is deductible is the Gamecock Club to some extent,
13 whether it's 20 percent or whatever. But the
14 documents -- these documents that Mr. Davidson
15 refers to the University sending each year -- have
16 never been disclosed to us by the University in
17 discovery.

18 So I don't know that those documents
19 exist. But even if they did, I don't believe they
20 are pertinent to this situation. Your Honor, you
21 know, this is very confusing and difficult on some
22 level and made more confusing by the fact that our
23 Athletic Director, Mr. Hyman, could provide so
24 little information on -- the University's
25 investigation for more than a year provided so

1 little information, certainly no documents provided
2 to us that would clarify other than the clarity
3 gained through the things that we have submitted to
4 you, which we believe make it very clear.

5 Coach Hyman testified he couldn't tell us,
6 didn't know where lifetime members, Gamecock Golden
7 Spur and Silver Spur fit in the grand scheme of
8 priorities. He testified he did not know about this
9 deal. He testified he didn't know whether there was
10 anything in writing. He testified he hadn't read
11 the complaint.

12 So we are left, Your Honor, with the kind
13 of evidence that we submitted and think it is more
14 than sufficient for you to conclude there is a real
15 agreement with concrete terms and real performance,
16 and real documents, and real people involved in this
17 case, who, frankly, Your Honor, entered into a
18 bargain as a part of a family and now find that the
19 University has turned its back on them. And we ask
20 you to enforce this agreement.

21 MR. DAVIDSON: May I make a brief
22 response, Your Honor?

23 THE COURT: Very briefly.

24 MR. DAVIDSON: Very briefly. If you will
25 go to Exhibit F in my documents --

1 THE COURT: Yes, sir.

2 MR. DAVIDSON: -- if you look at the last
3 page of Exhibit F --

4 THE COURT: Yes, I've seen it.

5 MR. DAVIDSON: -- you will see -- I hope
6 it looks like that, Your Honor.

7 THE COURT: It does. It says 2004 tax
8 receipt.

9 MR. DAVIDSON: And it indicates that "This
10 is a receipt of your donations," and you will note
11 his Founders Club premiums are listed right there
12 for his seats for that period of time, for a total
13 payment received of \$14,000. And that's Mr. Yenco's
14 handwriting, the 80 percent, being \$11,200.

15 Mr. McCulloch referenced two cases, and
16 one of the cases I cited that he had cited, Player
17 vs. Chandler, and he talked about a meeting of the
18 minds. Well, with all due respect to Mr. McCulloch,
19 in Chandler there was a written contract originally
20 dealing with a lease.

21 This is the ghost ship case dealing with
22 the restaurant. The issue surrounding the oral
23 contract in this case dealt with whether or not
24 there was basically an extension of the original
25 typed-up lease agreement. So the meeting of the

1 minds talks about an actual contract itself.

2 In the Fismeier case, Your Honor, there
3 was a written agreement. On page one of the
4 opinion, it indicates that the Fismeiers and the
5 Digs entered into a written agreement among
6 themselves setting forth their understanding of
7 their ownership of the property, the division of
8 property and incoming expenses, and the disposition
9 of their respective interests in the property in the
10 event of a future sale.

11 What the oral contract was, was based on
12 Mr. Fismeier saying that he paid \$20,000, and that
13 satisfied his obligations for the purchase of the
14 property. In actuality, what was the deal in that
15 one I believe they owed about -- their interest
16 would have been about \$70,000 based on the written
17 agreement.

18 After you took out taxes and expenses,
19 they would pay I believe around \$37,000. Mr.
20 Fismeier tried to come in with this idea of the shoe
21 box -- I mean, of the cigar box -- that by paying
22 \$20,000, he satisfied the oral agreement he had with
23 the Digs.

24 And the Court clearly said that's not the
25 case. It was not clear. It was not equivocal.

1 And, quite honestly, paying even \$20,000 was
2 consistent with the agreement, because \$20,000 is
3 part of \$37,000. So his attempt to disdain the
4 Fismeier case I believe is incorrect. It's clearly,
5 for all practical purposes, the latest law has come
6 out of court dealing with this issue.

7 THE COURT: If you all would leave the
8 depositions, please.

9 MR. DAVIDSON: Yes, ma'am. I would like,
10 Your Honor -- I do not have Mr. Massaro's
11 deposition, and I think you referenced Ms.
12 Schumpert's. We probably ought to put it in. I
13 don't know if he's got them, Judge.

14 MR. McCULLOCH: Your Honor, I did not
15 bring them with me. And in fact, some of the
16 depositions that we took using out-of-state people,
17 I have not even gotten the originals. I don't know
18 if Will has the originals, so we may have to submit
19 the copies we got by e-mail.

20 THE COURT: Okay.

21 MR. McCULLOCH: And I'm happy to work with
22 him on that. At the risk of being -- but we'll do
23 that, Your Honor. At the risk of being cracked by
24 the mold, I want to touch on one thing Will said,
25 because I did not want you to think I was flaky.

1 Exhibit F, which is indeed a document that
2 makes reference to this tax receipt, which I think
3 is nominal, that was a document provided by us to
4 the University on August 19th in Mr. Yenco's
5 deposition that was taken. It's a document that he
6 had in his records, but he had just found it.

7 So we provided it at the deposition. The
8 problem is -- one of the problems in this case -- is
9 the University can't find things like this in their
10 own files, or if they have -- and I certainly would
11 not presume this to be the case -- they've never
12 provided.

13 MR. DAVIDSON: We'll work together to get
14 the depositions.

15 THE COURT: And I would prefer not to have
16 them e-mailed to me. You can --

17 MR. McCULLOCH: We'll get you hard copies.

18 THE COURT: Yes, please.

19 MR. McCULLOCH: Will, what have you got
20 there?

21 MR. DAVIDSON: I've got all the
22 plaintiffs. I can get, Your Honor, all of them.

23 THE COURT: I need Massaro's.

24 MR. McCULLOCH: Your Honor, I can have
25 Massaro's, Hyman's, and Schumpert's.

1 MR. DAVIDSON: And Barton, I guess.

2 MR. McCULLOCH: And Barton's, absolutely.

3 I'll get those back over to you in 15 minutes.

4 THE COURT: And I've heard you all mention
5 in passing several times that it's your belief that
6 resolution of these competing motions will be a
7 resolution of the issues in the case, is that
8 correct?

9 MR. McCULLOCH: Correct, Your Honor.

10 THE COURT: There's not a need for a
11 trial, or there's not a need for --

12 MR McCULLOCH: Your Honor, depending on
13 how you rule. Obviously, if you rule there's no
14 contract, that probably brings an end to it. If you
15 rule that there is a contract, then each of the
16 plaintiffs have slightly different -- I mean, their
17 claim for and entitled to a seat is absolutely the
18 same consistent for each of them.

19 Some of them actually in the sixth year
20 paid by mistake the sixth-year payment and have
21 sought its return. Some of them did not pay. So
22 there are a couple of issues that have to be
23 resolved, and I presume, Your Honor, that depending
24 on your ruling, that we can work out any of those
25 differences.

1 THE COURT: And I follow Mr. Davidson,
2 then the whole thing goes away?

3 MR. DAVIDSON: Correct.

4 MR. McCULLOCH: I think that would
5 unfortunately be the case.

6 You want the originals?

7 MR. DAVIDSON: I had given you my original
8 brief. Do you want me to give you a copy and file
9 that one?

10 THE COURT: What I did not print out, I
11 did not print off the exhibits. I printed the memo,
12 but I didn't print the exhibits.

13 MR. DAVIDSON: Okay.

14 THE COURT: So I've got a copy of the
15 memo. I just don't have a copy of your exhibits.
16 But if you file it with the Court, then it will end
17 up in the record because I'll have it that way.

18 MR. DAVIDSON: Okay. I'll tell you what
19 I'll do. I'll file a copy. I'll file this, and I
20 will actually -- do we have a file copy?

21 MS. GRAFTON: Yes.

22 MR. DAVIDSON: I'll give you our file
23 copy, how about that?

24 THE COURT: Okay. All I really need are
25 the attachments, because I have the memo. And I

1 have

2 your --

3 MR. McCULLOCH: You have the separate --

4 THE COURT: Yes, I do.

5 MR. McCULLOCH: -- depositions?

6 THE COURT: Right. And then I have the
7 copies of the excerpts that you all --

8 MR. McCULLOCH: Yes, ma'am.

9 THE COURT: I do notice, though, that the
10 brochure that you attached is a little bit
11 different, I guess. It was a different document, or
12 there was some other --

13 MR. McCULLOCH: Your Honor, I think I only
14 attached the cover and one pertinent page.

15 THE COURT: One page. And then the other
16 page --

17 MR. McCULLOCH: It should be a subset of
18 Mr. Davidson's.

19 THE COURT: -- is where you sign it and
20 you send it back?

21 MR. DAVIDSON: To get information.

22 THE COURT: To get information. And then
23 I couldn't read the writing on that.

24 MR. DAVIDSON: I don't think it matters.

25 MR. McCULLOCH: I don't think it's

1 pertinent.

2 THE COURT: Okay. But this is the main
3 part of it.

4 MR. DAVIDSON: If you want to keep that --

5 THE COURT: Yes, I'd like to.

6 MR. DAVIDSON: -- I'd like to get it back.
7 It's the only one the University was able to find.

8 THE COURT: So that means I have to guard
9 it carefully?

10 MR. DAVIDSON: Guard it with your life.

11 MR. McCULLOCH: They want it for their
12 museum.

13 MR. DAVIDSON: But I'll give you that,
14 because if you're like me, my eyes don't read that
15 other stuff so well anymore.

16 THE COURT: This is the only page I need.

17 MR. DAVIDSON: Hopefully, your copy is
18 better than ours, or maybe we can blow it up.

19 THE COURT: Okay.

20 MR. DAVIDSON: Do you want the originals,
21 or do you want a copy?

22 THE COURT: I'll take the originals.

23 MR. DAVIDSON: Okay.

24 THE COURT: Because all they're going to
25 do is put a stickie on it where they clocked it in.

1 MR. DAVIDSON: Okay, that's fine.

2 MR. McCULLOCH: Your Honor, can I deliver
3 them to your office?

4 THE COURT: Sure.

5 MR. McCULLOCH: Is that all right?

6 THE COURT: Yes.

7 MR. McCULLOCH: And, again, I'm not sure
8 that I've got the original sealed. I should on some
9 of these because they were my depositions, but I
10 just haven't gotten them -- I've got this. We've
11 got the transcripts.

12 MR. DAVIDSON: As long as we've got the
13 exhibits in this case.

14 MR. McCULLOCH: I'll just make sure
15 they're complete transcripts. And if they have a
16 word-searching capacity on them, I'll pull that.

17 THE COURT: They're usually short enough
18 that I read them through, and I just put stickies on
19 them.

20 MR. McCULLOCH: Thank you, Your Honor.

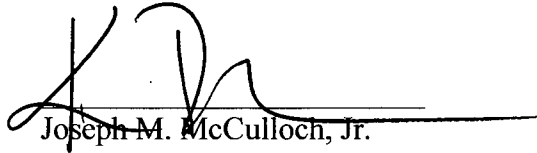
21 MR. DAVIDSON: Thank you, ma'am.

22 THE COURT: You're welcome.

CERTIFICATE OF APPELLANT

Pursuant to Rule 210(g), the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 31, 2012

A handwritten signature in black ink, appearing to read "J. McCulloch, Jr.", is written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

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SC Court of Appeals

Les Springob, Paul Trussell, Barton
Dumas, Stanley Harpe, and John Yenco,

Of Whom Paul Trussell, Barton Dumas, and John Yenco
are the Appellants,

v.

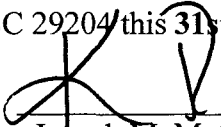
The University of South Carolina and
the University of South Carolina Gamecock
Club,

Respondents.

RI 2012
SC 2012

PROOF OF SERVICE

I certify that I have served the **RECORD ON APPEAL** on William Davidson, Esq. by hand delivery on October 31, 2012 to William Davidson, Esq., Davidson & Lindemann, 1611 Devonshire Drive, Columbia, SC 29204 this **31st day of October, 2012.**


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