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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 03 2012

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

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

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

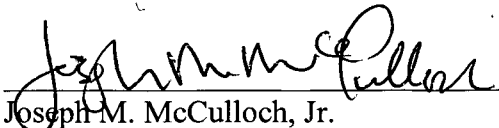
v.

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

NOTICE OF APPEAL

Paul Trussell, Barton Dumas, and John Yenco appeal the decision of the Honorable Alison Renee Lee dated October 18, 2011, granting Summary Judgment for Respondents and her denial of the Appellant's November 7, 2011 Rule 59(e) Motion by way of her Order dated November 30, 2011 and filed December 1, 2011. Appellant received written notice of entry of this order, attached, on December 5, 2011.

January 3, 2011


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

Other Counsel of Record

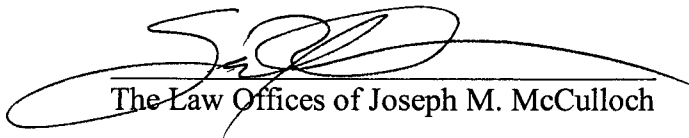
William H. Davidson, II
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, South Carolina 29202
Attorney for Respondents

CERTIFICATE OF SERVICE

I, an employee of the Law Offices of Joseph M. McCulloch, Jr., attorneys for Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe, and John Yenco, of Whom Paul Trussell, Barton Dumas, and John Yenco are the Appellants, do hereby certify that I have served all parties in this action with a copy of the **Notice of Appeal** via U.S. Mail, with sufficient postage, to:

Parties Served: William H. Davidson, II
Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29202

This 3rd day of January 2012. Copies have been served on all parties to this action in accordance with Rule 5, SCRCF.


The Law Offices of Joseph M. McCulloch

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JAN 03 2012

SC Court of Appeals

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January 3, 2012

Via Hand Delivery

Jeanette McBride, Clerk of Court
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street
Post Office Box 2766
Columbia, South Carolina 29201

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JAN 03 2012

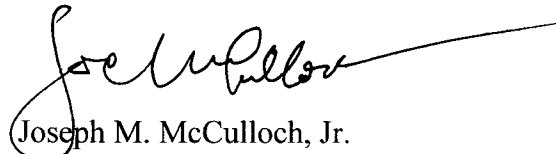
SC Court of Appeals

RE: Les Springob, et. al. v. The University of South Carolina,
et.al., Case No. 2008-CP-40-5518

Dear Ms. McBride:

Enclosed for filing is a notice of appeal in the above case. Should you have any questions, please do not hesitate to contact me.

Sincerely,


Joseph M. McCulloch, Jr.
Attorney for Appellant

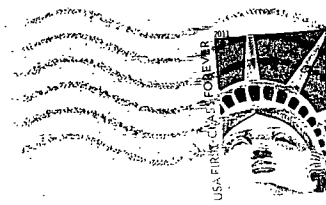
cc: Will Davidson, Esq., Attorney for Respondent

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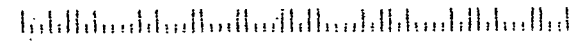
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South Carolina Court of Appeals
Attn: Clerk of Court
P.O. Box 11629
Columbia, SC 29211

29211-11629



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Lés 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 OCT 20 AM 11:07
JEANETTE W. McBRIDE
C.C.P. & C.S.

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

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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.

and
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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

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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

encl
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Joseph M McCulloch Jr
P.O. Box 11623
1426 Richland Street
Columbia, SC 29211

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

FILED

RICHLAND COUNTY

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).

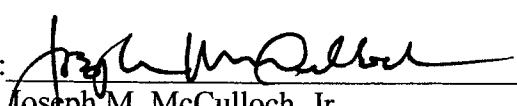
The performance of the Plaintiffs – each and every one was not merely partial but complete insofar as their obligations, as shown by the evidence. Every Plaintiff made the required payments over the 5 year term and each year and through the years of this litigation, though not part of the record, the 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.

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

November 7, 2011

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2008CP4005518**

Les Springob

University Of South Carolina

Paul Trussell

University of South Carolina Gamecock Club

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. Suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of Oct, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Joseph M McCulloch Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

William H Davidson II

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

☒ Plaintiff

v.

The University Of South Carolina And The University Of South Carolina Gamecock Club,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-05518

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Joseph M. McCulloch, Jr., Bar No.

Address:

1426 Richland Street, Columbia, SC, 29211

phone: (803)779-0005 fax: (803)779-0006

e-mail: joe@mccullochlaw.com other:

Defendant's Attorney:

William Davidson, II, Bar No.

Address:

P.O. Box 8568, Columbia, SC 29208

phone: (803) 806-8222 fax: (803) 806-8855

e-mail: wdavidson@dml-law.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted 11/1/11

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

CERTIFICATE OF SERVICE

I, an employee of the Law Offices of Joseph M. McCulloch, Jr., certify that I have served via first-class United States mail, sufficient postage prepaid, a copy of Plaintiffs' Motion for Reconsideration to all parties of record at the address(es) below:

William H. Davidson, II
Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202

This 7th day of November, 2011.

FILED
2011 NOV -7 PM 3:05
JEANETTE W. BRIDE
C.C.P. & G.S.

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

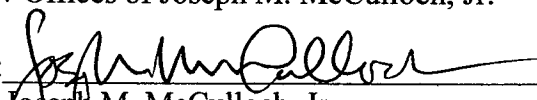
Civil Action No. 2008-CP-40-05518

**SUPPLEMENT TO
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

RICHLAND COUNTY
FILED
2011 NOV 10 AM 9:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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: 

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

November 7, 2011

CERTIFICATE OF SERVICE

I, an employee of the Law Offices of Joseph M. McCulloch, Jr., certify that I have served via first-class United States mail, sufficient postage prepaid, a copy of Supplement to Plaintiffs' Motion for Reconsideration to all parties of record at the address(es) below:

William H. Davidson, II
Davidson & Lindemann, PA
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202

This 7th day of November, 2011.

A handwritten signature in black ink, appearing to read "J. McBride", written over a horizontal line.

2011 NOV 10 AM 9:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

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

CASE NUMBER: **2008CP4005518**

Les Springob

University Of South Carolina

Paul Trusell

University of South Carolina Gamecock Club

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATIONThis order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 1 December 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Joseph M McCulloch Jr

William H Davidson II

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

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

vs.)

ORDER

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

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.

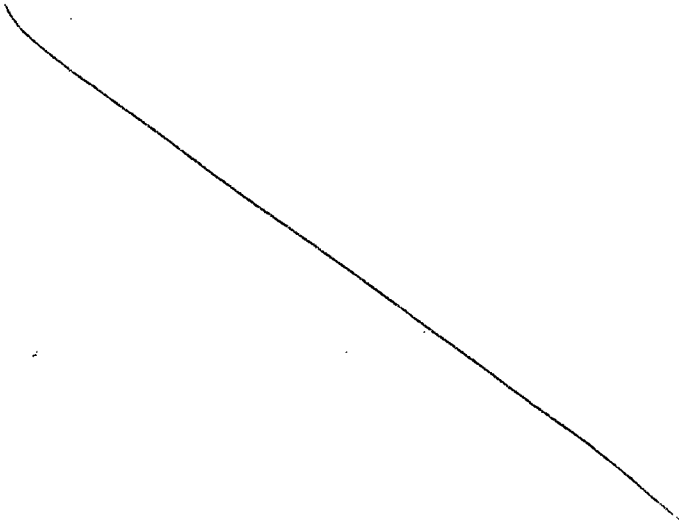
After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiffs' Motion pursuant to Rule 59(e) SCRCF 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.

arl
#2

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 30, 2011


af
#3

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

January 6, 2012

Hilda M. Jordan
P.O. Box 435
Lexington, SC 29071

**RE: 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
Case No. 2008-CP-40-5518**

Dear Ms. Jordan:

On September 4, 2009, the above case was argued on Motion for Summary Judgment before the Honorable Alison Lee, Circuit Court Judge, in Richland County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record of the arguments in that case which occurred on September 4, 2009.

I agree to pay the per page charge for this transcript as provided by Rule 607,

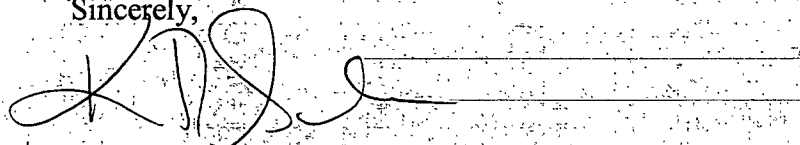
SCACR.

RECEIVED

JAN 09 2012

SC Court of Appeals

Sincerely,



Joseph M. McCulloch, Jr.
Attorney for Appellants

cc: Will Davis, Esquire
S.C. Court Administration
Clerk, Court of Appeals

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

RECEIVED
JAN 06 2012
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,

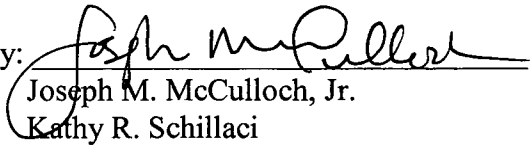
Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all attorneys of record as set forth below by depositing a copy of said Notice of Appeal in the United States Mail, first-class postage prepaid, on January 3, 2011 addressed to:

William H. Davidson, II
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, South Carolina 29202
Attorney for Respondent

THE LAW OFFICES OF JOSEPH M. MCCULLOCH, JR.

By: 
Joseph M. McCulloch, Jr.
Kathy R. Schillaci

Law Offices of Joseph M. McCulloch, Jr.

Post Office Box 11623

Columbia, South Carolina 29211

(803) 779-0005

Attorney for Appellant

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

January 3, 2011

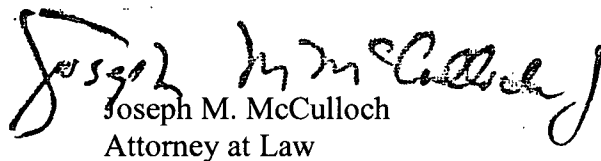
RECEIVED
JAN 06 2012
SC Court of Appeals

Court of Appeals
Attn: Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: Certificate of Service, Notice of Appeal
Case No. 2008-CP-40-5518

Please find enclosed a Proof of Service Certificate of Service in the correct form. Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,


Joseph M. McCulloch
Attorney at Law

JMM/sci
Enclosure

Cc: William H. Davidson, II

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE: (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

January 13, 2012

Deborah M. McCurdy
1403 Geiger Avenue
Columbia, SC 29201-1713

**RE: 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
Case No. 2008-CP-40-5518**

Dear Ms. McCurdy:

On September 4, 2009, the above case was argued on Motion for Summary Judgment before the Honorable Alison Lee, Circuit Court Judge, in Richland County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record of the arguments in that case which occurred on September 4, 2009.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Joseph M. McCulloch, Jr.
Attorney for Appellants

cc: Will Davis, Esquire
S.C. Court Administration
Clerk, Court of Appeals

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, *supra*, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 27, 2012

Joseph M. McCulloch, Jr, Esquire
Law Offices of Joseph M. McCulloch, Jr.
P.O. Box 11623
Columbia, SC 29211

Re: Trussell, Paul v. Univ of SC
Case #2012206887

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. Failure to file in the proper court may result in the dismissal of your appeal. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the bar number and firm name of any counsel shown must be included in his or her address.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

I further wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests

with counsel and the parties. This office will not review filings for objection or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
Tanya A. Gee
CLERK

TAG/jt

cc: William H. Davidson, II, Esquire
The Honorable Jeanette W. McBride

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. BOX 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

March 6, 2012

SC Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

RECEIVED

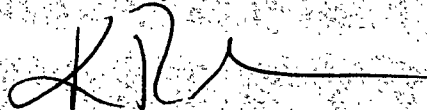
MAR 08 2012

**RE: 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
Case No. 2008-CP-40-5518**

Dear South Carolina Court Administration:

By letter dated January 6, 2012, we requested from Hilda Jordan a copy of the transcript in the above-captioned case as that was the name provided to us by the Judge's office. Hilda Jordan subsequently contacted us and told us to contact Debra McCurdy. By letter dated January 13, 2012, we requested from Debra McCurdy a copy of the transcript at issue. Judge Lee's office informed us today that they had spoken with Ms. McCurdy, and she does not believe she was the court reporter in the matter. After discussion with your office this afternoon, we understand the court reporter was Rema K. Gantt Thomas, and we have forwarded a transcript request to her which is attached. We appreciate your attention to this matter, and we will keep the South Carolina Court Administration and Clerk's office informed as to the status.

Sincerely,



Kathy R. Schillaci
Attorney for Appellants

cc: Will Davidson, Esquire
S.C. Court Administration
Clerk, Court of Appeals
Rema K. Gantt Thomas

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

March 6, 2012

Rema K. Gantt Thomas
P.O. Box 562
Chapin, SC 29036

**RE: 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
Case No. 2008-CP-40-5518**

Dear Ms. Thomas:

On September 4, 2009, the above case was argued on Motion for Summary Judgment before the Honorable Alison Lee, Circuit Court Judge, in Richland County. Court administration indicates that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record of the arguments in that case which occurred on September 4, 2009.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Joseph M. McCulloch, Jr.
Attorney for Appellants

cc: Will Davidson, Esquire
S.C. Court Administration
Clerk, Court of Appeals

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

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.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

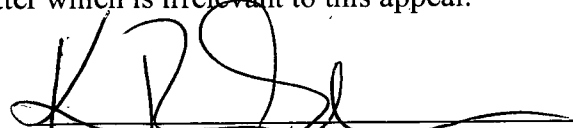
Appellants propose the following also be included in the Record on Appeal:

1. Order of Judge Lee dated December 1, 2011
2. Order of Judge Lee Filed October 20, 2011
3. Plaintiffs' Motion for Reconsideration and Supplement to Plaintiffs' Motion for Reconsideration
4. Plaintiffs' Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross-Motion for Summary Judgment and all exhibits
5. Plaintiffs' Motion for Summary Judgment and all exhibits, including Affidavits
6. Defendants' Motion for Summary Judgment
7. Answer to Amended Complaint on Behalf of Defendants
8. Amended Complaint
9. Complaint
10. Brochure
11. Chris Massaro Deposition, pages 13-14, 29, 42, 46, 52, 57-59, 61-62
12. Jeffrey Barber Deposition, pages 22, 24, 39-40
13. Stan Harpe Deposition, page 7

- 14. Paul Trussell Deposition, page 13
- 15. Les Springob Deposition, page 14
- 16. Angie Shumpert Deposition, pages 16, 23, 42, Exhibits 5 and 6
- 17. Transcript of September 4, 2009 Hearing, page 23-25

I certify that this designation contains no matter which is irrelevant to this appeal.

July 5, 2012



Law Offices of Joseph M. McCulloch, Jr.
Joseph M. McCulloch, Jr.
Kathy R. Schillaci
Post Office Box 11623
1426 Richland Street
Columbia, South Carolina 29201
Telephone: (803) 779-0005
Fax: (803) 779-0666

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

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

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

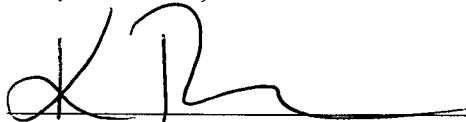
v.

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

Respondents.

PROOF OF SERVICE

I certify that I have served the **APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** and on William Davidson, Esq. by depositing a copy of it in the United States Mail, first-class mail, postage prepaid, on July 5, 2012 to William Davidson, Esq., Davidson & Lindemann, PA, P.O. Box 8568, Columbia, SC 29202 this **5th day of July, 2012.**



Joseph M. McCulloch, Jr.
Kathy R. Schillaci
Post Office Box 11623
1426 Richland Street
Columbia, South Carolina 29201
Telephone: (803) 779-0005
Fax: (803) 779-0666

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

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KATHY SCHILLACI

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E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

July 5, 2012

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

**RE: 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**

Case No. 2008-CP-40-5518

Dear Ms. Kitchings:

Please find enclosed a copy of Appellants' Initial Brief, Designation of Matters of Appeal, and Proof of Service. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Kathy R. Schillaci

cc: Will Davidson, Esq.

RECEIVED

JUL 05 2012

SC Court of Appeals

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

August 6, 2012

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The
University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

This letter is to request a thirty day extension to file the Initial Brief of Respondents and the Respondents' Designation of Matter to be Included in the Record on Appeal in the above referenced appeal. Other obligations and deadlines, including out of state depositions, court appearances, and other briefs including one due in the South Carolina Supreme Court have prevented me from completing the preparation of this brief by the current deadline.

By my calculations, the Initial Brief of Respondents and Designation of Matter will be due on or before September 5, 2012. I have not enclosed the filing fee since the Respondents are exempt. If you require a formal motion, please advise.

Thank you very much for your consideration of this request.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb

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AUG 06 2012
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
August 6, 2012
Page Two

cc: Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

The South Carolina Court of Appeals

Lee Springob, Paul Trussell, Barton Dumas, Stanley
Harpe and John Yenco, Defendants,

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.

Appellate Case No. 2012-206887

ORDER

The time for serving and filing the respondent's initial brief and designation of
matter is hereby extended until September 5, 2012.

FOR THE COURT

BY

V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Joseph M. McCulloch, Jr.
William H. Davidson, II
Andrew F. Lindemann

FILED

8/22/12 AS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

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SEP 04 2012

Case No. 2008-CP-40-5518

SC Court of Appeals

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

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

v.

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

**MOTION FOR EXTENSION
TO FILE INITIAL BRIEF**

The Respondents respectfully move this Court for a fifteen day extension of time until September 20, 2012, by which to file and serve the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal.

The Respondents' motion is based on the following grounds:

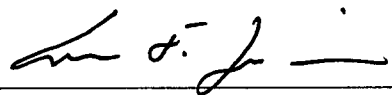
1. The Initial Brief is currently due to be filed and served on September 5, 2012.

2. Counsel for the Respondents requires additional time to complete the preparation of the Initial Brief because of other obligations, including a brief due to the United States Supreme Court on September 5, 2012, as well as an all-day out of town deposition on September 5, 2012 and a brief due in the Fourth Circuit Court of Appeals on September 7, 2012..

3. Counsel for the Appellants has consented to the requested extension.

WHEREFORE, the Respondents respectfully request that they be allowed until September 20, 2012, by which to file and serve their Initial Brief of and Designation of Matter to be Included in the Record on Appeal.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

Columbia, South Carolina

September 4, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

RECEIVED
SEP 04 2012
SC Court of Appeals

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

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

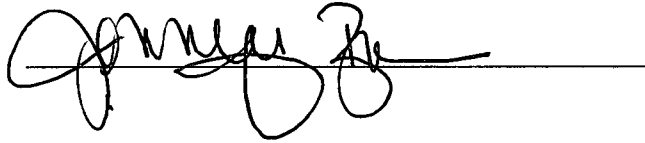
v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents, does hereby certify that service of the **Motion for Extension to File Initial Brief** in the above-captioned matter was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 4th day of September 2012:

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

A handwritten signature in black ink, appearing to read "Joe McCulloch", is written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Flyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

September 4, 2012

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The
University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012-206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Motion for Extension to File Initial Brief** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have not enclosed the filing fee since the Respondents are exempt.

By copy of this letter, I am serving a copy on Appellants' counsel.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
SEP 04 2012
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
September 4, 2012
Page Two

cc: (w/ Enclosure)

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

The South Carolina Court of Appeals

Lee Springob, Paul Trussell, Barton Dumas, Stanley
Harpe and John Yenco, Defendants,

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.

Appellate Case No. 2012-206887

ORDER

The time for serving and filing the respondents' initial brief and designation of
matter is hereby extended until September 20, 2012.

FOR THE COURT

BY

V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Joseph M. McCulloch, Jr.
William H. Davidson, II
Andrew F. Lindemann

FILED

9/17/12 AS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

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

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

v.

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

**RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondents propose that the following be included in the Record on
Appeal:

- (1) Transcript of Motion Hearing, September 4, 2009, pp. 1-69
- (2) Massaro Deposition, pp. 1, 25, 29, 30, 33, 40-41, 52-56
- (3) Yenco Deposition, pp. 1, 4-14, Exhibit 1
- (4) Trussell Deposition, pp. 1, 4-18
- (5) Dumas Deposition, pp. 1, 4-22
- (6) Gamecock Club Brochure (Exhibit A to Defendants' Motion for Summary Judgment)

We certify that this designation contains no matter which is irrelevant to this appeal.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

Columbia, South Carolina

September 21, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

RECEIVED
SEP 25 2012
SC Court of Appeals

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

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

v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents, does hereby certify that service of the **Initial Brief of Respondents and Respondents' Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon Appellants' counsel by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 21st day of September 2012:

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
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www.dml-law.com

Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

September 21, 2012

Writer's Email: alindemann@dml-law.com

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The
University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012-206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondents and Respondents' Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on Appellants' counsel.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

RECEIVED
SEP 23 2012
SC COURT OF APPEALS

The Honorable Jenny Abbott Kitchings
September 21, 2012
Page Two

cc: (w/ Enclosures)

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

RECEIVED
SEP 25 2012
COURT OF APPEALS

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

1426 RICHLAND STREET
P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

October 31, 2012

Via First Class U.S. Mail

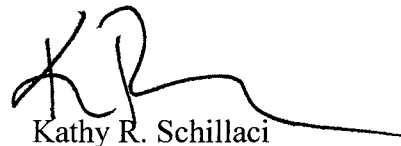
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

**RE: 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; SCCA Tracking No. 2012-206887; Case No. 2008-CP-40-
5518**

Dear Ms. Kitchings:

Please find enclosed a copy of Appellants' Proof of Service as to the Record on Appeal. Please file the original and return a clocked-in copy to me in the enclosed, self-addressed envelope. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Kathy R. Schillaci

cc: Will Davidson, Esq.

RECEIVED

NOV 05 2012

SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 09, 2012

Mr. Joseph M. McCulloch, Jr.
PO Box 11623
Columbia SC 29211

Ms. Kathy Ridenoure Schillaci
P.O. Box 11623
Columbia SC 29211

Re: Lee Springob v. Univ of SC
Appellate Case No. 2012-206887

Dear Counsel:

Upon reviewing your record on appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".
CLERK

cc: William H. Davidson, II
Andrew F. Lindemann

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

November 20, 2012

Writer's Email: alindemann@dml-law.com

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
NOV 20 2012
SC Court of Appeals

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012-206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

Please accept this letter as a request for a twenty day extension for the Respondents to file their Final Brief in the above-referenced appeal. In preparing the Final Brief, I have determined that there are some issues with the Record on Appeal as prepared by Appellants' counsel. I will need this additional time to try to work out a resolution of these issues or to otherwise file a motion to seek such a relief from the Court.

Please advise if you require a formal motion. I have not enclosed a motion filing fee because the Respondents are exempt.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/
Enclosure

11-26
12-17

The Honorable Jenny Abbott Kitchings
November 20, 2012
Page Two

cc: Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

The South Carolina Court of Appeals

Lee Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco, Defendants,

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.

Appellate Case No. 2012-206887

ORDER

The time for serving and filing the respondents' final brief is hereby extended until December 17, 2012.

FOR THE COURT

BY

V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

12/3/12 AS

cc:

Joseph M. McCulloch, Jr.

William H. Davidson, II
Andrew F. Lindemann
Kathy Ridenoure Schillaci

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

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DEC 17 2012

SC Court of Appeals

Case No. 2008-CP-40-5518

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

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

v.

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

MOTION TO RE-PRINT THE RECORD ON APPEAL

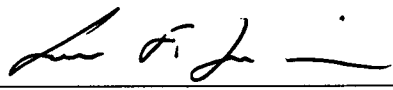
The Respondents University of South Carolina and University of South Carolina Gamecock Club respectfully move this Court for an Order requiring the Appellant to file and serve a corrected Record on Appeal that fully complies with the South Carolina Appellate Court Rule and includes all documents designated by

the parties for inclusion in the Record on Appeal and provides for fully legible copies of all exhibits.

The Respondents' motion is addressed in greater detail in the supporting memorandum filed herewith.

The Respondents request that the Court hold all deadlines in abeyance until the issue regarding the Record on Appeal is resolved.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

Columbia, South Carolina

December 17, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

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Case No. 2008-CP-40-5518

SC Court of Appeals

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

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

v.

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

**MEMORANDUM IN SUPPORT OF
MOTION TO RE-PRINT THE RECORD ON APPEAL**

The Respondents University of South Carolina and University of South
Carolina Gamecock Club have filed a motion seeking an Order requiring the

Appellants to file and serve a corrected Record on Appeal that corrects the following deficiencies:

1. The Appellants designated the "Plaintiffs' Memorandum in Support of Motion for Summary Judgment and in Opposition to Defendants' Cross-Motion for Summary Judgment *and all exhibits*" for inclusion in the Record on Appeal. (Emphasis added). That memorandum included Exhibits A through J. Exhibit B includes excerpts from the deposition of Jeffrey Barber, including pages 23 and 25 of that deposition. Pages 23 and 25 of the Barber deposition have not been included in the Record on Appeal.

2. The Appellants designated the Complaint for inclusion in the Record on Appeal. However, the Record on Appeal as served on the Respondents' counsel included only page one of that Complaint with a notation in the Index stating "first page with file stamp." The copy of the Complaint in the Record on Appeal does not include a file stamp. The Respondents request that a complete copy of the Complaint with file stamp be included in the Record on Appeal.

3. The Respondents designated "Gamecock Club Brochure (Exhibit A to Defendants' Motion for Summary Judgment)" for inclusion in the Record on Appeal. The Appellants included only a copy of the Gamecock Club Brochure that was an exhibit to the Appellants' memorandum, and that copy of the brochure is difficult to read and even illegible in places. Exhibit A to Defendants' Motion for

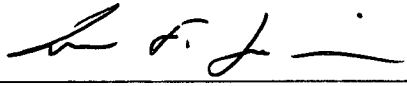
Summary Judgment, as was designated, is a much more legible copy of the brochure. The Respondents ask that a fully legible copy of the Gamecock Club Brochure be included in the Record on Appeal as that is a critical piece of evidence in the Circuit Court record.

4. The copy of the Record on Appeal served on the Respondents' counsel was not bound as required by Rule 267(d), SCACR. In addition, the copy of the Record on Appeal served on the Respondents' counsel was not double-sided as required by Rule 267(c), SCACR. The Respondents' counsel does not know whether copies filed with the Court of Appeals complied with these requirements. However, the Respondents request that the copy of the Record on Appeal served on the their counsel be the same as that filed with the Court and comply with Rule 267, SCACR.

The Respondents therefore request that the Court issue an Order requiring that these corrections to the Record on Appeal be made. The Respondents further request that the time for filing Final Briefs be held in abeyance until this motion is adjudicated.

Respectfully requested,

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

Columbia, South Carolina

December 17, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

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DEC 17 2012

SC Court of Appeals

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

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

v.

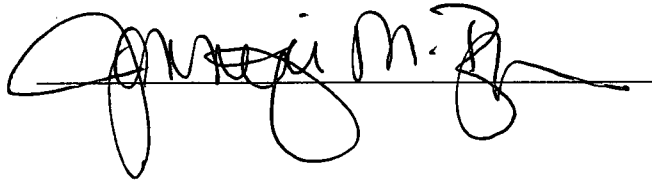
The University of South Carolina and the
University of South Carolina Gamecock Club, ... Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents, does hereby certify that service of the **Motion to Re-Print the Record on Appeal** and the **Memorandum in Support of Motion to Re-Print the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below

listed address clearly indicated on said envelope this the 17th day of December 2012:

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

A handwritten signature in black ink, appearing to read "Joseph M. McCulloch, Jr.", written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

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Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

December 17, 2012

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012-206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of the **Motion to Re-Print the Record on Appeal** and the **Memorandum in Support of Motion to Re-Print the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me by way of my courier. I have not enclosed the filing fee because the Respondents are exempt.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

RECEIVED

DEC 17 2012

SC Court of Appeals

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
December 17, 2012
Page Two

cc: (w/ Enclosures)

Joseph M. McCulloch, Jr., Esquire
Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
Post Office Box 11623
Columbia, South Carolina 29211

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

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.

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DEC 31 2012

SC Court of Appeals

REPLY TO MOTION TO RE-PRINT THE RECORD ON APPEAL

Respondents have filed a motion to re-print the record on appeal. While undersigned counsel believes the motion could have been resolved by a phone call from Respondents' counsel to undersigned counsel raising the issues prior to filing the motion, undersigned counsel is prepared to submit a Record on Appeal Volume II or, if the court orders, a re-printed record. Additionally, Appellants' counsel responds below to each point raised by Respondents.

Respondents point out in paragraphs one (1) and two (2) of their motion that the Record on Appeal does not contain pages 23 and 25 of an exhibit to Appellants' summary judgment motion and contains only the first page of the Complaint. Importantly, *Respondents did not request that these documents be included* and as such, Respondents are pointing out technicalities and not documents necessary for the filing of their final briefs. The complaint and all exhibits to the summary judgment motion were listed by *Appellants* for inclusion in the record on appeal. The summary judgment motion contained voluminous documents and deposition exhibits. In an effort to prevent voluminous duplication given the deposition pages listed by Respondents, the depositions were included separately and unintentionally, the two deposition pages were not included. As to the complaint, the full Amended Complaint is included. The original complaint was listed for inclusion by Appellants for purposes of the procedural history. As Appellants agree these are technical – not substantive – defects, undersigned counsel is prepared to submit a Volume II to the Record on Appeal containing these pages.

Respondents point out in paragraph three (3) of their motion that the Gamecock Club Brochure included in the Record on Appeal is difficult to read and indicate that Exhibit A to Defendant's Motion for Summary Judgment be included as it is more legible. Unfortunately, Exhibit A to Defendant's Motion for Summary Judgment is not a complete copy of the brochure, contains three out of six pages, and is missing the pages containing the USC logo. If the Court agrees, Respondents' counsel proposes that the attorneys for Respondent and

Appellants be allowed to re-copy the brochure at issue and submit a complete, most legible version in a Volume II to the Record on Appeal.

Lastly, Respondents point out that the copy of the Record on Appeal served on Respondents' counsel was not double-sided or bound. As to the copies being single-sided, in re-reviewing the page count, Appellants agree that technically the copies should be double-sided as the Record contains 264 pages and would ask that the Court excuse this error. Undersigned counsel agrees that the copy served on Respondents was not bound. However, this should not surprise Respondents. On the day the Record on Appeal was due to be served to Respondents, the printer returned bound copies of the Record on Appeal that were barely legible with the unbound version being the only legible copy. Undersigned counsel immediately called Respondents' office about the issue and was told that the attorneys were unavailable. Undersigned counsel spoke to Respondents' assistant, explained the situation, told her that undersigned counsel would be serving the unbound version and asked that counsel call immediately if that was a problem. Respondents' counsel did not call back, and Respondent was not aware this was an issue until the filing of this motion. In an effort to resolve the matter, undersigned counsel is serving Respondents with a bound copy of the Record on Appeal simultaneous with the filing of this reply.

CONCLUSION

Appellants request that they be allowed to serve a Volume II to the Record on Appeal to resolve the technical – not substantive defects – of the two missing

deposition pages and a complete copy of the complaint, and a most legible complete copy of the brochure as mutually agreed upon by all counsel.



The Law Offices of Joseph M. McCulloch, Jr.
Joseph M. McCulloch, Jr.

Kathy R. Schillaci

Post Office Box 11623

1426 Richland Street

Columbia, South Carolina 29201

Telephone: (803) 779-0005

Fax: (803) 779-0666

Attorneys for the Appellants

December 27, 2012

Columbia, South Carolina

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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DEC 31 2012

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.

PROOF OF SERVICE

I certify that I have served the **REPLY TO MOTION TO RE-PRINT THE RECORD ON APPEAL and BOUND** copy of the Record on Appeal on Andrew F. Lindemann, Esq. by HAND DELIVERY on December 27, 2012 to Andrew F. Lindemann, Esq., Davidson & Lindemann, 1611 Devonshire Drive, Columbia, SC 29204 this **27th of December, 2012.**



Joseph M. McCulloch, Jr.
Kathy R. Schillaci
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Columbia, South Carolina 29201
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Fax: (803) 779-0666

LAW OFFICES OF
JOSEPH M. McCULLOCH, JR.

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P.O. Box 11623
COLUMBIA, SC 29211

JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

TELEPHONE (803) 779-0005

FACSIMILE (803) 779-0666

E-MAIL: joe@mccullochlaw.com

E-MAIL: kathy@mccullochlaw.com

December 27, 2012

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

**RE: 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
Case No. 2008-CP-40-5518**

Dear Ms. Kitchings:

Please find enclosed for filing an original and six copies of the Reply to Motion to Re-Print the Record on Appeal in the above referenced matter along with the Certificate of Service. I have also enclosed a copy of each document that I would appreciate your clocking and returning to me the self-addressed stamped envelope. I greatly appreciate your assistance.

Sincerely,



Kathy R. Schillaci

cc: Andrew F. Lindemann

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DEC 31 2012
SC Court of Appeals

The South Carolina Court of Appeals

Lee Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco, Defendants,

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.

Appellate Case No. 2012-206887

ORDER

Respondents have filed a "motion to reprint the record on appeal." After careful consideration of the motion and Appellants' return, Appellants are ordered to serve within ten days a Supplemental Record on Appeal, which contains the missing deposition pages, a complete copy of the complaint, and a legible and complete copy of the Gamecock Club brochure.


FOR THE COURT

Columbia, South Carolina

FILED
2/15/13 AS

cc:

Joseph M. McCulloch, Jr.
William H. Davidson, II
Andrew F. Lindemann
Kathy Ridenoure Schillaci

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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Daniel C. Plyler
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David A. DeMasters

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

March 18, 2013

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe and John Yenco v. The University of South Carolina and the University of South Carolina Gamecock Club
SCCA Tracking Number: 2012-206887
Civil Action Number: 2008-CP-40-5518
Our File Number: 356.7900

Dear Ms. Kitchings:

Please find enclosed for filing the original and fifteen copies of the **Brief of Respondents** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving a copy on Appellants' counsel.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

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MAR 18 2013

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
March 18, 2013
Page Two

cc: (w/ Enclosure)

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Kathy Schillaci, Esquire
Law Offices of Joseph M. McCulloch, Jr.
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Columbia, South Carolina 29211