

STATE OF SOUTH CAROLINA

COUNTY OF YORK

York County and Cultural and Heritage Commission
of York County,

Plaintiffs,

vs.

Culture and Heritage Foundation, Inc., Sustainable
Development Group, Inc., SDG Properties, LLC, CHF
Property Management, LLC,

Defendants.

IN THE CIRCUIT COURT

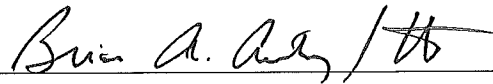
Civil Action No. 2013-CP-46-01986

SUMMONS

FILED-RECEIVED
2013 SEP -5 AM 11:31
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint upon the subscribers, at their office, 1230 Main Street, Suite 700 (29201), Post Office Drawer 2426, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Amended Complaint.



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September 4, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

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Civil Action No. 2013-CP-46-01986

AMENDED COMPLAINT

FILED-RECEIVED
2013 SEP -5 AM 11:32
DAVID HAMILTON
C.C. CP & GS
YORK COUNTY, SC

The Plaintiffs, York County and Cultural and Heritage Commission of York County, complaining of the Defendants, Culture and Heritage Foundation, Inc., Sustainable Development Group, Inc., SDG Properties, LLC, and CHF Property Management, LLC, allege and would show the Court that:

PARTIES AND JURISDICTION

1. York County (the "County") is a political subdivision of the State of South Carolina.
2. The Cultural and Heritage Commission of York County (the "Commission") is a non-profit charitable organization organized and existing under the laws of the State of South Carolina, with its principal place of business in Rock Hill, York County, South Carolina. The Commission operates as a division of York County.
3. The Culture and Heritage Foundation, Inc. (the "Foundation") is a non-profit, eleemosynary 501(c)(3) corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Rock Hill, York County, South Carolina.
4. Sustainable Development Group, Inc. ("SDG") is a South Carolina corporation with its principal place of business in Rock Hill, York County, South Carolina. The Foundation is the majority (99%) owner of SDG and is in control of it.

5. SDG Properties, LLC ("SDGP") is a Delaware limited liability company, authorized to do business in the State of South Carolina and having its registered agent in Rock Hill, York County, South Carolina. SDGP is wholly owned by SDG and is a disregarded entity for tax purposes.

6. CHF Property Management, LLC ("CHFPM") is a South Carolina limited liability company having its principal place of business in Rock Hill, York County, South Carolina. CHFPM is wholly owned by SDG and is a disregarded entity for tax purposes.

7. Venue and jurisdiction are proper in this Court.

GENERAL ALLEGATIONS

8. The Commission is formerly the Museum of York County. In 1997, the Museum and the York County Historical Commission merged to form the Commission.

9. In 1992, Friends of the Museum of York County, Inc. ("Friends") was formed with the declared purpose of "support[ing] the educational and civic purposes of the Museum of York County." In 1993, Friends amended its articles of incorporation to become a 501(c)(3) entity for federal tax purposes. In its resolutions, Friends stated that its purpose for operating was "exclusively to provide a source of endowed funding for the Museum of York County, which is a York County government unit."

10. Friends was formed by the Board of Directors of the Museum to oversee an endowment fund. At its formation, Friends reported to the Board of the Museum and continued to do so after it obtained its independent status.

11. In 1998, Friends changed its name with the South Carolina Secretary of State to the "Culture and Heritage Foundation, Inc." At the time of the name change, the Foundation did not amend or broaden its purpose, meaning that its previously stated purpose remained the same – the sole benefit of the Commission.

12. In November 1998, the Foundation Board adopted new bylaws (the "1998 Bylaws") stating that it was now to "operate exclusively for the benefit of museums, historic sites, nature

conservancies, and cultural facilities operated by and/or supported by the Cultural and Heritage Commission of York County...by raising, investing, and managing endowment, capital building, acquisition, and operating funds for, and disbursing said fund to [the Commission].”

13. The 1998 Bylaws also stated that, although the “Foundation may develop, amend, or restate guidelines from time to time in order to effectively implement the aforesaid purposes...the Foundation shall always be operated exclusively for the benefit of museums, historic sites, nature conservancies, and cultural facilities operated and/or supported by the [Commission].”

14. The 1998 Bylaws also gave the Commission significant oversight with respect to the Foundation Board of Trustees, including:

- a. Requiring that prospective members of the Foundation Board of Trustees be approved by the Commission;
- b. Including the Commission’s Chair, Vice Chair, Finance Committee Chair, and Director as original members of the Foundation Board of Trustees; and
- c. Requiring that the Commission’s Board approve any amendments to the Foundation Bylaws.

15. The 1998 Bylaws could only be amended, subject to the approval of the Board of Trustees of the Commission, by the 2/3 vote of the Board, provided the Board had been given two weeks’ notice of the proposed amendments.

16. The 1998 Bylaws provided that, upon dissolution of the Foundation, all funds remaining in the Foundation accounts would revert to the Commission.

17. Finally, the 1998 Bylaws require that the Foundation be operated “in accordance with the provisions of 26 USC Sections 501(c)(3), 509(a)(1), (2), or (3) and the regulations thereunder” and that “[n]otwithstanding any other provision of these Bylaws, the operations, activities, and powers of the Foundation shall be limited to those permitted by (i) an organization described in 26 USC Sections 501(c)(3), 509(a)(1), (2), or (3)...”

18. In all of the Foundation's tax filings, it has taken the position that it qualifies as a Type I "supporting organization" under Internal Revenue Code 509(a)(3)(B)(i). A supporting organization is a special kind of 501(c)(3) entity described in Section 509(a)(3).

19. The Foundation has represented to the Plaintiffs and the federal government, throughout its existence, that it is a Section 509(a)(3) supporting organization.

20. The function of a supporting organization is to provide support to a designated public charity that is referred to as its "supported organization." The Foundation's bylaws designate the Commission as its supported organization.

21. A supporting organization is one that is so connected to the supported organization that it derives its own tax exempt status as a public charity from that relationship. The Foundation's tax exempt status as a public charity is derivative of the Commission's status as a public charity.

22. The Foundation's operation as a Section 509(a)(3) entity imposes several requirements on it, including, but not limited to, the following:

- a. Foundation may not change its designated supported organization from the Commission except in circumstances that are beyond the Foundation's control;
- b. Foundation must be supportive of and responsive to the needs of the Commission; and
- c. Foundation must provide the Commission with a significant voice in its major decisions.

23. Because of the Foundation's relationship with the Commission, its stated purpose, and its status as a supporting organization, funds and property given to the Foundation are impressed with a constructive trust for the sole benefit of the Commission, which imposes duties on the Foundation of a trustee.

24. In December 1998, after the 1998 Bylaws were adopted, the McColl family donated approximately 400 acres of property (the "McColl Property") to the Foundation.

25. On April 3, 2000, the Foundation's bylaws were amended to:
- a. Delete the reference to the Commission's Chair, Vice Chair, and Finance Committee Chair as automatic members of the Foundation Board;
 - b. State that the Commission's Director would serve as an "ex-officio member" of the Foundation's Board;
 - c. Remove the Commission's authority to approve new members of the Foundation Board; and
 - d. Remove the requirement that the Commission approve amendments to the Foundations bylaws (the "2000 Bylaws").

26. At the time of the 2000 Bylaws, there were no changes made with respect to the Foundation's purpose, its funds, its application and use of funds, the distribution of its funds in the event of dissolution, or its status as an IRC 509(a)(3) supporting organization.

27. The Defendants have "stonewalled" Plaintiffs and blocked Plaintiffs' attempts at obtaining information about the activities of the Foundation and the management and disposal of funds and property being held by the Foundation and managed by the Defendants.

28. On May 1, 2012, the Foundation filed documentation with the South Carolina Secretary of State, changing its purpose and broadening its scope to include "museums, historic sites, nature conservancies, cultural facilities and similar entities offering cultural and/or educational opportunities to South Carolina citizens" (the "Change in Purpose").

29. On March 8, 2013, the Foundation sent a letter to its supporters, informing them of the Change in Purpose and indicating that it was holding property (the McColl Property) that it could now use for purposes other than the benefit of the Commission.

30. The Foundation has changed its designated supported organization from the Commission of its own accord and not because of circumstances beyond its control.

31. The Foundation has not been supportive of and responsive to the needs of the Commission, evidenced by its uncooperative behavior, refusal to release information, and stated

intentions as to funds and property originally designated for the Commission.

32. The Foundation has not provided the Commission with a significant voice in its major decisions.

33. The Foundation has stated its intent to use funds and property donated to the Foundation for the benefit of the Commission and York County for other purposes.

34. Defendants SDG, SDGP, and CHFPM perform the following functions for the Foundation: (a) promotion and marketing; (b) property development (including the McColl Property); and (c) serving as title holder of real property in the care of the Foundation (including the McColl Property). As such, all of these entities are involved with and are complicit with the activities of the Foundation and have performed tasks in furtherance of the Foundation's activities.

FOR A FIRST CAUSE OF ACTION
(Injunction)

35. Plaintiffs reallege the above paragraphs as if repeated verbatim.

36. The Defendants' actions and conduct, as alleged herein, will irreparably injure the Plaintiffs in the absence of injunctive relief.

37. The Plaintiffs are likely to succeed on the merits of this action.

38. The Plaintiffs have no adequate remedy at law.

39. An Order restraining and enjoining the Defendants' actions is necessary to preserve the *status quo*.

40. The Plaintiffs are entitled to a preliminary injunction and a permanent injunction precluding the Defendants from distributing funds or property (including the McColl Property) that were acquired by the Foundation prior to the Change in Purpose to any organization other than the Commission.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

41. Plaintiffs reallege the above paragraphs as if repeated verbatim.

42. The Plaintiffs bring this claim for declaratory judgment pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 *et seq.*, and pursuant to the inherent equitable powers of the Court.

43. A justiciable controversy exists between the Plaintiffs and the Defendants with respect to the organization, structure, and purpose of the Foundation and to the right, title, and interest in funds and property (including the McColl Property) held by the Foundation.

44. As a direct result, a declaratory judgment is necessary and proper to determine the rights and duties of the parties with respect the Foundation's organization, structure, and purpose and the funds and property (including the McColl Property) held by the Foundation.

45. Therefore, Plaintiffs seek a declaratory judgment that:

- a. All funds, endowments, real or personal property (including the McColl Property), or any other tangible and non-tangible items given to the Foundation prior to the Change in Purpose are for the sole use and benefit of the Commission;
- b. Properties and funds conveyed to the Foundation prior to the Change in Purpose (including the McColl Property) are impressed with a constructive trust for the sole benefit of the Commission, which imposes duties on the Foundation of a trustee;
- c. Actions taken by the Foundation without notice to or the input of the Commission that would give the Foundation the ability to transfer funds or property to anyone for the benefit of anyone other than the Commission are invalid.

FOR A THIRD CAUSE OF ACTION
(Estoppel/Promissory Estoppel)

46. Plaintiffs reallege the above paragraphs as if repeated verbatim.

47. As set forth by the facts alleged herein, the Foundation made certain unambiguous promises and representations to the Plaintiffs in connection with its purpose and the disposal of funds and property held by the Foundation, upon which the Plaintiffs have reasonably relied.

48. The Foundation did foresee, or should have foreseen, that the Plaintiffs would detrimentally rely on the Foundation's promises and representations.

49. As the direct and proximate result of the Plaintiffs' reliance, the Plaintiffs have suffered or will suffer injury and pecuniary loss in an amount that will be proven at trial.

50. Foundation and the other Defendants should be estopped from taking any action contrary to the Foundation's promises and representations to the Plaintiffs, and the Plaintiffs are entitled to entry of a judgment against the Defendants for damages arising from the Plaintiffs' reliance on the Foundation's promises and representations.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

51. Plaintiffs reallege the above paragraphs as if repeated verbatim.

52. By virtue of the relationship between the Plaintiffs and the Foundation, the Plaintiffs held a special confidence in the Foundation such that the Foundation was bound to act in good faith and with due regard to the interests of the Plaintiffs.

53. In addition, the Foundation owes a duty to the Plaintiffs to operate in accordance with its bylaws, its tax exempt status (including its status under IRC Section 509(a)(3)), and the purpose it has stated to the Plaintiffs, the federal government, and the public – as a supporting organization of the Commission, whose sole purpose is to benefit the Commission alone.

54. The other Defendants, by virtue of their relationship to the Foundation, also owed the same fiduciary duty to the Plaintiffs.

55. The Defendants have breached this fiduciary duty by:

- a. Failing to act in good faith and with due regard to Commission's interests, as alleged above;
- b. Failing to operate in accordance with its bylaws, to the detriment of Plaintiffs;
- c. Changing the Foundation's designated supported organization from the Commission of its own accord and not because of circumstances beyond its control;
- d. Failing to be supportive of and responsive to the needs of the Commission, evidenced by its uncooperative behavior, refusal to release information, and stated intentions as to funds and property originally designated for the Commission; and
- e. Failing to provide the Commission with a significant voice in its major decisions.

56. Plaintiffs have been damaged by the Defendants' breach of fiduciary duty in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION

(Accounting)

57. Plaintiffs reallege the above paragraphs as if repeated verbatim.

58. The Commission, as the supported entity of the Foundation and the sole beneficiary of funds and property received by the Foundation prior to the Change in Purpose, is entitled to an accounting of all the books and records of the Defendants.

59. The Court should order an accounting of the affairs of the Defendants to determine:

- a. The status of funds currently held in the accounts of the Defendants;
- b. The status of property (including the McColl Property) being managed by the Defendants; and
- c. The extent to which the Defendants have engaged in conduct to the detriment of Plaintiffs.

60. The Defendants should be required to produce, for inspection and copying, the corporate books and records, including accounting records, of the Foundation, SDG, SDGP, and CHFPM.

61. To the extent that an accounting and inspection of records reveals that the Defendants have disposed of any funds or property being held for the benefit of the Commission by transferring the

same to other parties, then the Court should find the Defendants in breach of the constructive trust imposed on those funds and that property.

WHEREFORE, Plaintiffs pray that the Court:

1. Issue a preliminary injunction and a permanent injunction precluding the Defendants from distributing funds or property (including the McColl Property) that were acquired by the Foundation prior to the Change in Purpose to any organization other than the Commission.
2. Enter a declaratory judgment that:
 - a. All funds, endowments, real or personal property (including the McColl Property), or any other tangible and non-tangible items given to the Foundation prior to the Change in Purpose are for the sole use and benefit of the Commission; and
 - b. Properties and funds conveyed to the Foundation prior to the Change in Purpose (including the McColl Property) are impressed with a constructive trust for the benefit of the Commission, which imposes duties on the Foundation of a trustee.
3. Find that Foundation and the other Defendants should be estopped from taking any action contrary to the Foundation's promises and representations made to the Plaintiffs and enter judgment against the Defendants for damages arising from the Plaintiffs' reliance on the Foundation's promises and representations.
4. Find that the Defendants had a fiduciary duty to the Plaintiffs as a result of their relationship and the corporate structure of the Foundation, that Defendants have breached their fiduciary duty as alleged herein, and that Plaintiffs are entitled to damages as a result of the breach.
5. Order the production and an accounting of the corporate books and records, including accounting records, of the Defendants.
6. Award such other and further relief as the Court deems just, equitable, and proper.



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