

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: _____

HARRIETT HURST TURNER and)
JOHN HENRY HURST,)

Plaintiffs,)

vs.)

THE HAMMOCKS BEACH)
CORPORATION, NANCY SHARPE)
CAIRD, SETH DICKMAN SHARPE,)
SUSAN SPEAR SHARPE, WILLIAM)
AUGUST SHARPE, NORTH CAROLINA)
STATE BOARD OF EDUCATION, ROY)
A. COOPER, III, in his capacity as)
Attorney General of the State of North)
Carolina,)

Defendants.)

COMPLAINT

2006 DEC 15 P 1:50
WAKE COUNTY, CSC

FILED

Plaintiffs, complaining of the acts of the Defendants, allege and state that:

1. Plaintiff Harriett Hurst Turner is a citizen and resident of Wake County, North Carolina. Plaintiff Harriett Hurst Turner is an heir and descendent of both the late Gertrude Hurst and the late John Hurst.

2. Plaintiff John Henry Hurst is a citizen and resident of Onslow County, North Carolina. Plaintiff John Henry Hurst is an heir and descendent of both the late Gertrude Hurst and the late John Hurst.

3. Upon information and belief, Defendant The Hammocks Beach Corporation is a corporation organized under the laws of the State of North Carolina with its principal place of business and agent for service of process in Wake County, North Carolina. Defendant The

Hammocks Beach Corporation is the trustee of certain real property pursuant to the terms of a charitable trust created by Dr. William Sharpe and Josephine W. Sharpe on September 6, 1950.

4. Upon information and belief, Defendant Nancy Sharpe Caird is a resident of Ireland, is over the age of 18 and is otherwise competent. Defendant Caird is an heir and descendent of the late Dr. William Sharpe.

5. Upon information and belief, Defendant Seth Dickman Sharpe is over the age of 18 and is otherwise competent. Defendant Seth Dickman Sharpe is an heir and descendent of the late Dr. William Sharpe.

6. Upon information and belief, Defendant Susan Spear Sharpe is a resident of Maine, is over the age of 18 and is otherwise competent. Upon information and belief, Defendant Susan Spear Sharpe is an heir and descendent of the late Dr. William Sharpe.

7. Upon information and belief, Defendant William August Sharpe is a resident of Maine, is over the age of 18 and is otherwise competent. Upon information and belief, Defendant William August Sharpe is an heir and descendent of the late Dr. William Sharpe.

8. Upon information and belief, Defendant North Carolina State Board of Education is an agency of the State of North Carolina. Defendant North Carolina State Board of Education is designated as a contingent trustee of the trust established by the Sharpes, to serve under certain circumstances and for the specific purpose of continuing the trust for the purpose for which it was established.

9. Roy A. Cooper, III serves as the Attorney General of the State of North Carolina. Defendant Cooper or his successor, if any, is named in his official capacity.

10. This Court has personal jurisdiction over the Defendants pursuant to N.C. Gen. Stat. §§ 1-75.4.

11. This Court has subject matter jurisdiction in this action pursuant to N.C. Gen. Stat. §§ 7A-240 and 7A-243.

FACTUAL BACKGROUND

12. The allegations contained in Paragraphs 1 through 11 are re-alleged and incorporated by reference as if fully set forth herein.

13. Dr. William Sharpe (sometimes hereafter referred to as “Dr. Sharpe”) was one of the early neurosurgeons practicing in New York City. In 1923, he acquired approximately 810 acres of high land on the mainland adjacent to Queens Creek and Foster’s Bay in Onslow County, North Carolina. In 1930 and 1931, he purchased adjacent property consisting of approximately 2,000 acres of sandy beach outer banks (known as Bear Island) and approximately 7,000 acres of marshland. The high land on the mainland portion was capable of reforestation or cultivation and was known as “The Hammocks.” The land was acquired by him as a place to which he could retreat from the demands of his professional life. The Hammocks became dear to Dr. Sharpe, as did an Onslow County couple with whom he became acquainted and who moved onto the property as its managers and caretakers. That couple were John and Gertrude Hurst (sometimes hereafter referred to as “Mr. and Mrs. Hurst”). Over a four decade period, Dr. Sharpe and Mr. and Mrs. Hurst maintained a mutually beneficial business relationship and warm personal friendship built on mutual trust, shared values and interests, and genuine affection for one another.

14. Eventually, Dr. Sharpe apprised Mr. and Mrs. Hurst of his desire to devise the Hammocks to them. As stated in the Agreement dated September 6, 1950, and recorded in the Onslow County Registry at Deed Book 221, Page 634 (“the Agreement”), Gertrude Hurst, having formerly served as a black teacher in the then racially segregated public school system,

requested Dr. Sharpe instead make a gift of the property in such manner that African-American teachers and their then existing organizations could enjoy the property.

15. Pursuant to Mrs. Hurst's request, and rather than wait until his death, Dr. Sharpe, in 1950, by deed of gift, deeded certain real property to a nonprofit corporation, as trustee. The Hammocks Beach Corporation was the name given to the trustee entity, and its charter spelled out its purpose—to administer the property given to it by Dr. Sharpe “primarily for the teachers in public and private elementary, secondary and collegiate institutions for Negroes in North Carolina...and for such other groups as are hereinafter set forth.” The deed to The Hammocks Beach Corporation as trustee restricted the use of the property “for the use and benefit of the members of The North Carolina Teachers Association, Inc., and such others as are provided for in the Charter of the Hammocks Beach Corporation.” The deed is recorded in the Onslow County Register of Deeds at Deed Book 221, Page 636 (“the Deed”).

16. The terms of the trust Deed from Dr. Sharpe to The Hammocks Beach Corporation, as amplified by the simultaneously executed Agreement, subjected the trust property to numerous rights of use and possession in the Sharpe and Hurst families, including the right to cultivate, to quarry, to raise livestock, to travel over the land incident to taking fin fish and shellfish in adjacent waters, and to reside there. According to a 1987 Consent Judgment entered by the Onslow County Superior Court, the trust property, originally consisted of approximately 10,000 acres. Approximately 2,000 oceanfront acres were, with the concurrence of Dr. Sharpe and Mr. and Mrs. Hurst, conveyed by The Hammocks Beach Corporation as trustee, to the State of North Carolina, without compensation, and now comprise Hammocks Beach State Park. The trustee thereafter acquiesced in the claim by the State of North Carolina of the title to approximately 7,000 acres of marshland.

17. The Hammocks Beach Corporation at one time leased two small portions of the property, consisting of approximately 30 and 26.5 acres, respectively, for summer camp purposes to the North Carolina Agricultural Extension Service (for use by the 4-H organization) and to the Future Farmers of America.

18. Upon information and belief, both tenants long ago abandoned use and possession of the aforementioned leased portions of trust property and the improvements utilized by these tenants are in a state of decay and disrepair. There is an assembly building on the property which, over the years, has been used sporadically. Upon information and belief, the assembly building long ago ceased to be used for this purpose and is now in a state of decay and disrepair.

19. In the Agreement and in the Deed, Dr. Sharpe made certain provisions looking to the possibility that fulfillment of the purposes of the trust might one day become impossible or impracticable. He directed that in such event, and after declaration of same by its Board of Directors, The Hammocks Beach Corporation should convey the property to the North Carolina State Board of Education (hereinafter "the Board") as trustee "for the purpose of continuing the trust," and for the purposes for which the trust was established and further directed that if the Board refused to accept a conveyance for that purpose, the property would instead be conveyed to Dr. Sharpe and to John and Gertrude Hurst and their "heirs and descendants." Specifically, the Deed provides that "if at any time in the future it becomes impossible or impractical to use said property and land for the use as herein specified . . . the property conveyed herein may be transferred to the North Carolina State Board of Education, to be held in trust for the purpose herein set forth, and if the North Carolina State Board of Education shall refuse to accept such property for the purpose of continuing the trust herein declared, all of the property herein conveyed shall be deeded by said The Hammocks Beach Corporation, Inc., to Dr. William

Sharpe, his heirs and descendants and to John Hurst and Gertrude Hurst, their heirs and descendants; the Hurst family shall have the main land property and the Sharpe family shall have the beach property.”

20. In a 1986 action filed by The Hammocks Beach Corporation in Onslow County Superior Court, 86 CVS 1466, the Sharpe and Hurst heirs contended that fulfillment of the trust terms had become impossible or impracticable, that The Hammocks Beach Corporation had acted capriciously and contrary to the intent of the settlor in not declaring its recognition of such, and that the court should declare the trust terminated and either mandate a conveyance of all of the property to the Sharpe and Hurst families or adjudicate title in their names.

21. Prior to the trial of the 1986 action, the parties reached a settlement, approved by the Court in a Consent Judgment, that (1) enabled The Hammocks Beach Corporation to retain title as trustee to a portion of the land to attempt to serve the trust purposes, with additional powers of administration aimed at enabling it to improve the property to the extent reasonably necessary, and (2) vested in the Sharpe and Hurst families a portion of the real property in exchange for their relinquishing rights of immediate use for cultivation, quarrying, raising livestock, fishing, residency, recreation and other activities in the portion to be held solely by The Hammocks Beach Corporation as trustee.

22. In approving the Consent Judgment in 1987, the Court found that there was substantial evidence that the fulfillment of the terms of the trust created by the Deed from Dr. William Sharpe to The Hammocks Beach Corporation was impossible or impracticable. Specifically the Court found that:

The integration of the public schools which occurred following the gift of the property to Hammocks Beach Corporation has impacted on both the constituency which Dr. Sharpe intended to benefit from the trust and on the ability of Hammocks Beach Corporation to obtain financial support for the improvement

of The Hammocks to serve its intended purpose. The North Carolina Teachers Association, Inc., the black teachers organization intended as the primary beneficiary, and several of the all-black youth and civic organizations listed in the Charter of Hammocks Beach Corporation, either do not now exist or are relatively nonfunctional. Only the 4-H and the FFA organizations use the property, and then only during the summer months, and only to the extent of approximately four per cent of the 805 acres held in trust.

The amended charter of Hammocks Beach Corporation calls for a board of directors of thirty-one persons, over half of whom are officers or designees of the North Carolina Teachers Association, Inc., an organization which no longer exists . . . Thus, by reason of a change of circumstances not foreseeable in 1950, financial and physical factors render fulfillment of the terms of the trust impossible, and that is the case whether the trustee be Hammocks Beach Corporation or the Board. Even if the Board could lawfully take title in its name, which under statutes governing titles to state property it cannot now do, its members have disclaimed any interest in the Board's serving as trustee or otherwise attempting to adapt the property to the stated purposes of the trust. In any event, the Board could not, and will not, spend tax revenues for the purpose of administering or improving a racially segregated facility.

The integration of the public schools and the virtual disintegration of the organizations for black people which were contemplated by Dr. Sharpe as primary beneficiaries and financial supporters of the trust are circumstances unforeseen by Dr. Sharpe and, in combination with the rights vested in the Sharpe and Hurst families and the prohibition against the mortgage and sale of property, render the fulfillment of the trust terms impossible or impracticable of fulfillment.

The trust is impossible or impracticable of fulfillment whether the trustee continues to be Hammocks Beach Corporation or whether, in the event the Board would so agree, the trust responsibilities should be assumed by it or by any other agency of state government. Thus, Dr. Sharpe's alternate plan of having the Board assume the trust responsibilities in the event of the impossibility or impracticability of fulfillment of the trust terms also fails for the same reasons.

23. In the Consent Judgment, the Court ordered that The Hammocks Beach Corporation, as trustee, was vested with title to a substantial portion of the real property which was conveyed by Dr. William Sharpe to The Hammocks Beach Corporation, trustee, by the Deed dated August 10, 1950, recorded in the Onslow County Registry at Book 221, Page 636. The Consent Judgment provided that The Hammocks Beach Corporation, trustee, holds title to said property subject to the trust terms set forth in the aforesaid Deed dated August 10, 1950,

recorded in the Onslow County Registry at Book 221, Page 636, and in the Agreement dated September 6, 1950, and recorded in the Onslow County Registry at Book 221, Page 643, including the Plaintiffs' remainder rights. However, the Consent Judgment did provide that the trustee was no longer under a prohibition against the mortgaging or sale of said property, after receiving Court approval and in order to further the purposes of the trust.

24. Despite the fact that The Hammocks Beach Corporation was given additional authority to generate funds to improve the trust property and better effectuate trust purposes, upon information and belief, it has taken no steps since 1987 to improve the trust property or to fulfill the purposes of the trust.

25. Since 1987, The Hammocks Beach Corporation has failed to fulfill the trust terms in that the trust property has not been utilized by the North Carolina Teachers Association, Inc., or the other civic organizations listed in the Charter of The Hammocks Beach Corporation, which either do not exist or are otherwise nonfunctional. In the 19 years since the entry of the Consent Judgment, only the 4-H and the FFA organizations have used the property, and then only during the summer months. As stated, upon information and belief, both of those tenants have now ceased their use and occupancy of even that small portion of the trust property and the improvements formerly occupied by those tenants are in a state of vacancy and decay.

26. As in 1987, fulfillment of the trust terms has become impossible or impracticable.

27. Upon information and belief, The Hammocks Beach Corporation has failed to account for trust funds and has negligently mismanaged said funds.

FIRST CLAIM FOR RELIEF
(Accounting)

28. The allegations contained in Paragraphs 1 through 27 are re-alleged and incorporated by reference as if fully set forth herein.

29. Pursuant to N.C. Gen. Stat. § 36C-4-405.1, the settlor of a charitable trust, the Attorney General, the district attorney, a beneficiary, or any other interested party may commence a proceeding for an accounting of the trustee's administration of the trust. Plaintiffs are remainder beneficiaries and interested parties within the meaning of the aforementioned statute.

30. This Court should order The Hammocks Beach Corporation to account to this Court and all interested parties for its administration of the trust.

SECOND CLAIM FOR RELIEF
(Termination of Trust and Reversion to Contingent Beneficiaries)

31. The allegations contained in Paragraphs 1 through 30 are re-alleged and incorporated by reference as if fully set forth herein.

32. As in 1987, fulfillment of the trust terms has become impossible or impracticable.

33. Pursuant to N.C. Gen. Stat. § 36C-4-410, a court should terminate a trust if the purposes of the trust have become impossible to achieve.

34. The trust should be terminated according to its own terms, as it has now become impossible or impracticable to use the Hammocks property as directed by the trust or to achieve the trust's purposes.

35. The Deed from the grantors provided that "if at any time in the future it becomes impossible or impractical to use said property and land for the use as herein specified . . . the property conveyed herein may be transferred to the North Carolina State Board of Education, to be held in trust for the purpose herein set forth, and if the North Carolina State Board of Education shall refuse to accept such property for the purpose of continuing the trust herein declared, all of the property herein conveyed shall be deeded by said The Hammocks Beach Corporation, Inc., to Dr. William Sharpe, his heirs and descendants and to John Hurst and

Gertrude Hurst, their heirs and descendants; the Hurst family shall have the main land property and the Sharpe family shall have the beach property.”

36. In the 1986 action referenced above, the North Carolina State Board of Education disclaimed any interest it held in serving as trustee or otherwise attempting to adapt the trust property to the stated purposes of the trust.

37. Indeed, as the Onslow County Superior Court found in the 1987 Consent Judgment, “The trust is impossible or impracticable of fulfillment whether the trustee continues to be Hammocks Beach Corporation or whether, in the event the Board would so agree, the trust responsibilities should be assumed by it or by any other agency of state government. Thus, Dr. Sharpe’s alternate plan of having the Board assume the trust responsibilities in the event of the impossibility or impracticability of fulfillment of the trust terms also fails for the same reasons.”

38. Because the trust purposes have become impossible or impracticable because the North Carolina State Board of Education may not serve as successor trustee, and in any event the substitution of the Board of Education would not cure the impossibility or impracticability, the trust and N.C. Gen. Stat. § 36C-4-410 mandate that the trust property be deeded by The Hammocks Beach Corporation to the heirs and descendants of John Hurst and Gertrude Hurst. This Court should enter an order terminating the trust established by Dr. William Sharpe on September 6, 1950 and vesting fee simple title to the trust res in the contingent beneficiaries of the trust, the heirs and descendants of the late Gertrude Hurst and the late John Hurst, as provided in the Deed and Agreement.

39. The beach property has already been conveyed by The Hammocks Beach Corporation to the State of North Carolina.

40. A portion of the original mainland property is still held by The Hammocks Beach Corporation in trust and must, pursuant to the terms of the trust, be conveyed to Plaintiffs, the John and Gertrude Hurst heirs and descendants.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

41. The allegations contained in Paragraphs 1 through 40 are re-alleged and incorporated by reference as if fully set forth herein.

42. Under N.C. Gen. Stat. § 36C-4-405.1, the settlor of a charitable trust, the Attorney General, the district attorney, a beneficiary, or any other interested person may maintain a proceeding to enforce a charitable trust, including a proceeding for breach of fiduciary duty if there is reason to believe that the trust property has been mismanaged through negligence or fraud. Plaintiffs are remainder beneficiaries and interested persons within the meaning of the aforementioned statute.

43. The Hammocks Beach Corporation has negligently mismanaged the trust property by failing to utilize it for the trust purposes and in other ways to be proven at trial.

44. Upon information and belief, it is believed that The Hammocks Beach Corporation has failed to follow corporate formalities or to otherwise regularly carry on corporate affairs for its stated purpose.

45. Because Defendant The Hammocks Beach Corporation breached its fiduciary duty, Plaintiffs are entitled to recover compensatory damages from Defendant The Hammocks Beach Corporation in an amount in excess of \$10,000.00.

46. Because the actions of Defendant The Hammocks Beach Corporation were grossly negligent, Plaintiffs are entitled to recover punitive damages from Defendant The Hammocks Beach Corporation in an amount in excess of \$10,000.00.

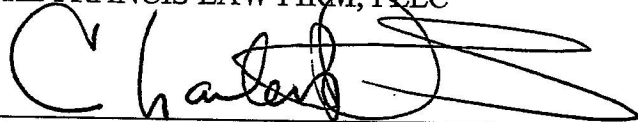
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court that:

1. The Court enter an Order requiring Defendant The Hammocks Beach Corporation to account to this Court and all interested parties for its administration of the trust;
2. The Court enter an Order terminating the trust established by Dr. William Sharpe on September 6, 1950, and vesting fee simple title to the trust res in the contingent beneficiaries of the trust, the heirs and descendants of the late Gertrude Hurst and the late John Hurst, as provided in the Deed and the Agreement;
3. They recover judgment against Defendant The Hammocks Beach Corporation in an amount in excess of \$10,000.00 for compensatory damages;
4. They recover judgment against Defendant The Hammocks Beach Corporation in an amount in excess of \$10,000.00 for punitive damages;
5. They recover interest as allowed by law on any judgment obtained against Defendants;
6. They recover costs and expenses of this action, including reasonable attorney's fees as allowed by law, from Defendants;
7. They recover any further relief that the Court deems appropriate.

This the 15 day of December, 2006.

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