

NORTH CAROLINA COURT OF APPEALS

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HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs-Appellants, )

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-Appellees. )

DESK COURT OF APPEALS  
OF NORTH CAROLINA

2011 NOV 21 PM 1:45

FILED

From Wake County  
No. 06 CVS 18173

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RECORD ON APPEAL

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**STATEMENT OF ORGANIZATION OF TRIAL TRIBUNAL**

The trial of this matter was conducted before the Honorable Carl R. Fox and a jury at the 20 September 2010 civil session of the Wake County Superior Court. The jury returned a verdict in favor of Plaintiffs. The court entered judgment reflecting the verdict of the jury on 26 October 2010.

The Honorable Carl R. Fox also entered an Order on 26 October 2010 in Wake County Superior Court wherein the court stated that it appeared that the North Carolina State Board of Education (the "Board") may now be entitled to tender of appointment as successor trustee to the trust which is the subject of this action (the "Trust") and scheduled a hearing to formally tender appointment to the Board as successor trustee. Plaintiffs appeal from that Order.

This matter was heard by the Honorable Carl R. Fox on 3 January 2011 in Wake County Superior Court. The court appointed the Board as successor trustee of the Trust and entered an Order reflecting that ruling on 12 January 2011. Plaintiffs also appeal from that Order.

Plaintiffs timely filed a Notice of Appeal on 26 January 2011.

On 7 March 2011, Plaintiffs filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with this Court. The Motion for Temporary Stay was allowed by Order entered 8 March 2011, and the Petition for Writ of Supersedeas was allowed by Order entered 24 March 2011.

The record on appeal was filed with the North Carolina Court of Appeals on 11-21-11 and docketed on 12-14-11.

Defendant-Appellees' [sic]  
Counter-Statement of Organization of the Trial Tribunal

The trial of this matter was conducted before the Honorable Car [sic] R. Fox and a jury at the 20 September 2010 civil session of the Wake County Superior Court. The jury returned a verdict in favor of Plaintiffs on the three issues presented. On 26 October 2010 the court entered Judgment reflecting the verdict of the jury and ordering "that The Hammocks Beach Corporation shall be removed as Trustee of the Trust created by Dr. and Mrs. William Sharpe . . . upon the formal appointment of the North Carolina State Board of Education as successor trustee to administer

the trust for the purposes set forth in the 1950 Deed and Agreement or, in the event that the North Carolina State Board of Education refuses to accept appointment to administer the trust . . . , upon entry of an order distributing the trust property pursuant to the terms of the 1950 Deed.”

The Honorable Carl R. Fox also entered an Order on 26 October 2010 in the Wake County Superior Court wherein the court stated that it appeared that the North Carolina Board of Education (the “Board”) may now be entitled to tender of appointment as successor trustee to the trust which is the subject of this action (the “Trust”) and scheduled a hearing to formally tender appointment to the Board as successor trustee. Plaintiffs appealed from that Order by a Notice of Appeal filed and served on 26 January 2011.

On 6 December 2010 Plaintiffs filed a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as successor Trustee and that matter was heard by the Honorable Carl R. Fox on 3 January 2011 in Wake County Superior Court. The court appointed the Board as successor trustee of the Trust and entered an Order reflecting that ruling on 12 January 2011. Plaintiffs also appeal from that Order in the same Notice of Appeal filed and served on 26 January 2011.

On 7 March 2011, Plaintiffs filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with this Court. The Motion for Temporary Stay was allowed by Order entered 8 Marc [sic] 2011, and the Petition for Writ of Supersedeas was allowed by Order entered 24 March 2011.

The record on appeal was filed with the North Carolina Court of Appeals on \_\_\_\_\_ and docketed on \_\_\_\_\_.

### **STATEMENT OF JURISDICTION**

This action was commenced by the filing of a complaint and issuance of summons on 15 December 2006. The parties stipulate that Defendants The Hammocks Beach Corporation, North Carolina State Board of Education and Roy A. Cooper, III, in his capacity as Attorney General of the State of North Carolina, were properly served with process and subject to the personal jurisdiction of the Wake County Superior Court.



060018173

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

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.

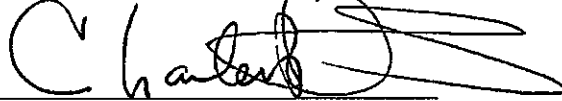
**PRAYER FOR RELIEF**

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.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorneys for Plaintiffs  
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STATE OF NORTH CAROLINA **FILED**

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 06CV018173

WAKE COUNTY

2007 JAN 17 AM 10:31

WAKE COUNTY, C.S.C.

HARRIETT HURST TURNER <sup>BY</sup> and JOHN HENRY HURST,  
HURST,

Plaintiff,

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,

Defendant.

  
**HAMMOCKS BEACH  
CORPORATION'S RULE 12(b)(1)  
and 12(b)(3) MOTION TO  
DISMISS**

Pursuant to Rules 12(b)(1) and 12(b)(3) of the North Carolina Rules of Civil Procedure, Defendant Hammocks Beach Corporation ("Hammocks Beach"), by and through the undersigned counsel, hereby moves to dismiss this matter for the following reasons:

1. On December 15, 2006, Plaintiffs Harriett Hurst Turner and John Henry Hurst ("Plaintiffs") filed the complaint in Wake County, seeking among other things, an accounting, termination of real property subject to a land trust held by Hammocks Beach and monetary recovery for claims of breach of fiduciary duty.

2. The real property and trust are subject to a Consent Judgment entered by the North Carolina Superior Court in Onslow County on October 29, 1987. See October 29, 1987 Consent Judgment (the "Consent Judgment") attached hereto as *Exhibit A*. The Complaint

challenges Hammocks Beach's compliance with and implementation of the provisions of the Consent Judgment.

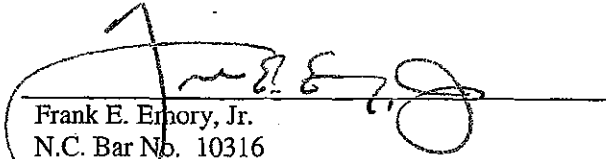
3. Pursuant to Page 17, Paragraph 12 of the Consent Judgment, the Onslow County Superior Court retains jurisdiction to hear "motion[s] filed by any party with respect to either the implementation of the terms of this judgment or compliance therewith."

4. The Onslow County Superior Court retains exclusive jurisdiction of this matter.

**WHEREFORE**, as only the Onslow County Superior Court has jurisdiction to consider the allegations of the Complaint, Hammocks Beach requests that this court dismiss this matter for lack of jurisdiction over the subject matter, and for lack of proper venue.

This the 24<sup>th</sup> day of January, 2007.

HUNTON & WILLIAMS



Frank E. Emory, Jr.  
N.C. Bar No. 10316

Anthony R. Foxx  
N.C. Bar No. 23798

*Attorneys for Defendants*

**HUNTON & WILLIAMS**  
Bank of America Plaza  
101 South Tryon Street, Suite 3500  
Charlotte, NC 28280  
(704) 378-4700  
(704) 378-4890 ~ Fax

# Exhibit A

NORTH CAROLINA )  
COUNTY OF ONSLOW )

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

86-CVS-1466

HAMMOCKS BEACH CORPORATION,  
a nonprofit corporation,

Plaintiff

-vs-

THE FRESH AIR FUND, et al,

Defendants

CLERK OF SUPERIOR COURT  
ONSLOW COUNTY, N.C.

BY *Mary R. Hurst*  
Assistant Deputy Clerk of Superior Court

CONSENT JUDGMENT

87 OCT 29 AM 11:32  
ONSLOW COUNTY, N.C.S.C.

FILED

PRELIMINARY STATEMENT

This action was filed on the 28th day of July, 1986, by Hammocks Beach Corporation, plaintiff herein. Plaintiff is the trustee pursuant to the terms of a charitable trust created by Dr. William Sharpe on September 6, 1950. The original res of the trust was approximately 10,000 acres of beach front and adjacent properties in Onslow County, North Carolina. As a result of several mesne conveyances, the res of the trust now consists of approximately 805 acres. That remaining portion is the subject of this lawsuit.

In this action, plaintiff seeks declaratory relief in the form of a judgment quieting title to the property or, alternatively, ordering an alternative disposition of the property and administration of the trust to fulfill as nearly as possible the manifested general intention of the settlor, Dr. William Sharpe. The living Sharpe and Hurst defendants filed answer claiming that plaintiff has failed to properly administer the trust and asserting



a counterclaim, asking the court to order the trust terminated or, in the alternative, to exercise the statutory equivalent of the cy pres power, or to remove Hammocks Beach Corporation as trustee, or to clarify the property interests held by the parties. Said living Sharpe and Hurst defendants are sometimes hereinafter referred to as the "Sharpe and Hurst defendants" to distinguish them from unborn parties represented by guardians.

Ned S. Hurst, Guardian ad Litem for the unknown and unborn heirs of Gertrude Hurst and the late John L. Hurst, and John T. Carter, Jr., Guardian ad Litem for the unknown and unborn heirs of William Sharpe and wife, Josephine W. Sharpe, have each filed answer similar to that filed by the living Sharpe and Hurst defendants.

Counsel for the Sharpe and Hurst defendants have stated to the Court that they have written authorization from the late Josephine W. Sharpe to represent her interests in this cause, which writing further authorizes William Sharpe to act for her in agreeing to any negotiated settlement. It is unnecessary for the Court to rely on such authorizations, however, since if Josephine W. Sharpe at the time of her death had any interest in subject property (which the Court hereafter finds she did not), that interest was devised by her to The Herald Tribune Fresh Air Fund, a charitable corporation of the State of New York now known as The Fresh Air Fund, and said Fund was duly served with copy of summons and complaint and, as hereinafter recited, claims no interest in said property.

Under the terms of the trust, the North Carolina State Board of Education was designated as contingent trustee subject to certain occurrences as referred to hereinafter. The Charitable Trust Administration Act, N.C.G.S. § 36A-53, requires that in every proceeding brought to modify or construe the terms of a charitable trust, the North Carolina Attorney General be offered an opportunity to appear and be heard. Both the State Board of Education and the Attorney General of North Carolina have been made a party defendant in order to represent the interests of the public and have filed answer.

The dispute between plaintiff and defendants has continued for over a decade. The impediments to the administration of the trust as contemplated by the settlor have existed and frustrated the plaintiff's attempts to develop the property for over thirty years. Considering all circumstances, including the delays, uncertainties, risks, and prohibitive costs inherent in this litigation, the parties hereto, without in any way conceding error in their respective legal positions, have entered into a compromise resolution and agreement and consented to the entry of this Consent Judgment, fully intending to bind themselves, their heirs, assigns, and successors.

Based upon all matters of record in this case and upon the consent of the parties, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Dr. William Sharpe was one of the early neurosurgeons practicing in New York City. In 1923, he acquired approximately 810 acres of high land 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 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 tenants and caretakers. That couple were John and Gertrude Hurst, who became very close to Dr. and Mrs. Sharpe and who acted in loco parentis for the Sharpe children during times when the children would visit The Hammocks during vacations from school.

Eventually, Dr. Sharpe apprised John and Gertrude 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, Gertrude Hurst, having formerly served as a black teacher in the then racially segregated public school system, requested Dr. Sharpe instead to make a gift of the property in such manner that black teachers and various youth organizations could enjoy the property. Pursuant to that

request, and rather than wait until his death, Dr. Sharpe, in 1950, by deed of gift, gave The Hammocks to a nonprofit corporation, most of the incorporators of which were black school teachers. Hammocks Beach Corporation was the name given to such 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 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 Hammocks Beach Corporation."

The terms of the trust deed from Dr. Sharpe to Hammocks Beach Corporation, as amplified by a simultaneously executed agreement, subjected all or portions of The Hammocks 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. The trust property, originally consisting of approximately 10,000 acres, has now been reduced to approximately 805. Approximately 2,000 ocean front acres were, with the concurrence of Dr. Sharpe and Mr. and Mrs. Hurst, conveyed by Hammocks Beach Corporation 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 title to approximately 7,000 acres of marshland.

Hammocks Beach Corporation has leased two areas of The Hammocks, 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 Future Farmers of America. There is an assembly building on the property which, over the years, has been used sporadically. Hammocks Beach Corporation has had irregular meetings there of its board of directors and members.

Although there was, in 1950, no indication that within that decade the United States Supreme Court would decide a case which would eventually desegregate the public school systems, Dr. Sharpe made certain provisions in the deed looking to the possibility that fulfillment of the purposes of the trust may become impossible or impracticable. He directed that in such event, and after declaration of same by its Board of Directors, 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 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."

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.

The trust terms prohibit the mortgaging or sale of property. Hammocks Beach Corporation has, in recent years, not been able even to defray ad valorem taxes on the property and has never improved or developed the property to an extent which approaches its potential or is consistent with the value of the property. Even if financial resources were available, the significant rights of use and occupancy vested in the Sharpe and Hurst families so encumber the land that under modern circumstances it would be totally impracticable to devote funds to improving the land for recreational activities that would conflict with such rights in the

Sharpes and Hursts. 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.

Hammocks Beach Corporation contends that either it should be vested with fee simple title to a portion of the trust property or that the terms of the trust should be modified so that an appropriate portion of the trust property may be held by it free of any rights vested in the Sharpe and Hurst families and with authority to mortgage and sell in its discretion.

The Sharpe and Hurst defendants, on the other hand, contend that fulfillment of the trust terms has become impossible or impracticable, that Hammocks Beach Corporation has 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.

The Fresh Air Fund, devisee under the will of the late Josephine W. Sharpe, has been duly served with copy of summons and complaint and has not filed answer. Its attorney, E. Douglas Hamilton, of the New York Bar, has advised the court by letter that it will not file answer. The late Josephine W. Sharpe had no interest in The Hammocks at the time of the 1950 trust deed other than an inchoate right of dower, and her joinder in the execution of that deed extinguished that interest. At the time of her death, she had no interest in the property, either by reason of the terms



of the trust deed or the terms of her predeceased husband's will, or otherwise. She, therefore, owned no interest which she could have included in the devise to The Fresh Air Fund contained in her will. Certified copy of her duly probated will is appended to written stipulations by the parties approved by the Court on this date.

Ned S. Hurst, Guardian ad Litem for the unknown and unborn heirs of John L. Hurst and wife, Gertrude Hurst, and John T. Carter, Jr., Guardian ad Litem for the unknown and unborn heirs of William Sharpe and wife, Josephine W. Sharpe, have each filed answer wherein they have fully asserted the interests of their wards and they have appeared before the court and otherwise protected their position.

The Attorney General of the State of North Carolina has filed answer and, through Andrew A. Vanore, Jr., Chief Deputy Attorney General, appeared before the Court and asserted the public interest. The Attorney General has advised the Court that the State Board of Education has no interest in succeeding Hammocks Beach Corporation as trustee and would not agree to do so, and otherwise takes no position in respect to this litigation.

In an effort to avoid the risk of a trial of this action and in search of a means of continuing the trust so as to carry out the original intentions of Dr. Sharpe, the parties have negotiated at great length. Through their counsel, they have stated to the court that, subject to the court's approval, they have agreed to

the entry of a judgment which would (1) enable Hammocks Beach Corporation to retain title to a sufficient portion of the land to serve the trust purposes, with additional powers of administration which should enable it to improve the property to the extent reasonably necessary, and (2) vest in the Sharpe and Hurst families a reasonable portion of the land in exchange for their relinquishing rights in that portion to be vested solely in Hammocks Beach Corporation as trustee.

The two aforesaid Guardians and the Attorney General have stated to the Court their belief that the settlement proposed is in the best interest of those they represent.

CONCLUSIONS OF LAW

The court concludes as a matter of law that:

(a) The Court has jurisdiction of the subject matter and over each of the parties to this action.

(b) There is substantial evidence, and the Court finds, that the fulfillment of the terms of the trust created by the deed from Dr. William Sharpe to Hammocks Beach Corporation is impossible or impracticable. If this litigation is not compromised and a trial ensues, Hammocks Beach Corporation will incur a substantial risk that the counterclaims of the defendants Sharpe and Hurst would prevail, with resulting termination of the trust and a conveyance of the real property to the Sharpe and Hurst families.

(c) The settlement which has resulted from negotiations between the parties, whereunder Hammocks Beach Corporation as

trustee would hold title to an appropriate portion of The Hammocks free of any claims of the Sharpes and Hursts and with broader administrative powers, with the remainder of said property being vested in the Sharpe and Hurst defendants, is fair, reasonable, and in the best interests of the present and prospective beneficiaries of the trust, as well as the public interest, and is accordingly approved. The Court finds that such negotiations have been in good faith and at arms' length and further finds that in so negotiating and agreeing to this settlement, Hammocks Beach Corporation, as trustee, has acted properly and in the best interest of the trust.

(d) The agreed settlement is fair and in the best interests of the unknown and unborn Sharpe and Hurst heirs, who have been fully and adequately represented by counsel.

(e) The Fresh Air Fund, a nonprofit corporation of the State of New York which has succeeded to the interests, if any, of the late Josephine W. Sharpe in the subject property, has not filed answer. The court has found that the late Josephine W. Sharpe had no title to the subject property which could have been devised by her to The Fresh Air Fund and, accordingly, The Fresh Air Fund has no interest in the property which is the subject of this action.

ADJUDICATION

IT IS, THEREFORE, BY CONSENT, ORDERED AND ADJUDGED that:

1. Hammocks Beach Corporation, trustee, is vested with title to the following described portion of the real property which was conveyed by Dr. William Sharpe to Hammocks Beach Corporation, trustee, by deed dated August 10, 1950, recorded in the Onslow County Registry at Book 221, page 636:

TRACT I: Being all of Section 3 containing 289.50 acres, more or less, as shown on plat entitled "Section Three, The Hammocks," dated May 1, 1985, prepared by Donald C. Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 74, Slide D-22, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

TRACT II: Being 29.91 acres, more or less, located at the terminus of Secondary Road No. 1552, the western boundary adjoining the waters of Queens Creek, the northern boundary leaving the waters of Queens Creek, and running North 54 degrees 7 minutes East 884.0 feet to a set iron pipe, the eastern boundary running South 36 degrees 33 minutes East 1144 feet to a set iron pipe and the Southern Boundary running South 54 degrees 07 minutes West 1091.59 feet along an old fence on line, all as shown on plat entitled "Section Four, The Hammocks," dated May 1, 1985, prepared by Donald Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 75, Slide D-23, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

2. 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 Agreement dated September 6, 1950, and recorded in the Onslow County Registry at Book 221, page 634. Said trustee shall not, however, be under a prohibition against the mortgaging or sale of said property. On application to the court by motion, copy of which shall be served on the Attorney General, the Court may approve the encumbering of said property, or the sale of a portion thereof, for the purpose of generating funds for use in furtherance of the terms of the trust.

3. Said real property so vested in Hammocks Beach Corporation as trustee shall be free and clear of any rights of the heirs of Dr. William Sharpe or of Gertrude Hurst or of the heirs of John and Gertrude Hurst.

4. The defendants William Sharpe, Jr., and Nancy S. Caird are hereby respectively vested with fee simple title to the following described portions of the real property which was conveyed by deed dated August 10, 1950, from Dr. William Sharpe to Hammocks Beach Corporation:

TRACT I: Being that certain tract of land containing 253.97 acres, more or less, which is all of the land north of that boundary designated as North 54 degrees 7 minutes East 884.0 feet and west of that boundary designated as North 36 degrees 33 minutes East 1144 feet of the 283.88 acre tract shown on that certain plat entitled "Section Four, The Hammocks," dated May 1, 1985, prepared by Donald Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 75, Slide D-23, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

TRACT II: All of that tract designated as "Sharpe Home Place," containing 2.26 acres more or less, as shown on plat entitled "Sharpe Home Place and Section One, The Hammocks," dated May 1, 1985, prepared by Donald Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 72, Slide D-20, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

5. The defendant Gertrude Hurst is hereby vested with fee simple title to the following described portions of the real property which was conveyed by deed dated August 10, 1950, from Dr. William Sharpe to Hammocks Beach Corporation:

TRACT I: Being all of Section One containing 72.06 acres, more or less, as shown on plat entitled "Sharpe Home Place and Section One, The Hammocks," dated May 1, 1985, prepared by Donald Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 72, Slide D-20, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

TRACT II: Being all of that property not designated Town of Swansboro Property, 30 foot right of way, and 75 foot right of way, containing 3 acreage designations of 141.77 acres  $\pm$ , 5.46 acres  $\pm$ , and 18.06 acres  $\pm$ , all as shown on that certain plat entitled "Section Two, The Hammocks," dated May 1, 1985, prepared by Donald Clements, Jr., R.L.S., number L-2460, recorded October 20, 1986, in Map Book 24, Page 73, Slide D-21, in the office of the Register of Deeds of Onslow County, North Carolina, said recorded plat being incorporated herein by this reference for the purpose of providing a particular description.

6. Said Sharpe and Hurst defendants are the owners in fee simple of the real property described, respectively, in the preceding paragraphs four and five, free and clear of any claim of Hammocks Beach Corporation, trustee.

7. The titles hereby adjudged to be vested shall not require further instruments of conveyance. However, each party hereto agrees to comply with any reasonable request of another

party to execute such further document as may be necessary to effectuate the purpose of this Judgment.

8. Neither of the parties to this action who are receiving title pursuant to the foregoing adjudication, nor any heir, assignee, or successor of such party, shall permit or engage in construction of any improvements of any kind (other than street intersections) within a zone extending 100 feet on each side of the center line of State Road 1511, said road being delineated on the aforesaid plats of The Hammocks dated May 1, 1985.

9. The titles herein vested in the parties are subject to a right of way, and said parties hereby grant a right of way, to the State of North Carolina in the access road leading to Hammocks Beach State Park (the Park), said access road running west from the southern end of SR 1511 to the Park, as shown on maps recorded in the Onslow County Registry in Map Book 24, Pages and Slides: p. 72, Slide D-20; p. 73, Slide D-21; p. 74; Slide D-22; and p. 75, Slide D-23. Within thirty days after being so requested by the North Carolina Department of Transportation plaintiff and the defendants Sharpe and Hurst shall convey said right of way to the State by deed or deeds prepared by said Department.

10. The Sharpe and Hurst defendants loaned the sum of \$25,207.86 to Hammocks Beach Corporation to enable it to pay ad valorem taxes and its agreed portion of the cost of surveying the trust property. Hammocks Beach Corporation is indebted to the Sharpe and Hurst defendants for the payment of said funds, together


with accrued interest at the rate of 7 1/2% per annum from October 1, 1985, until the date of the entry of this judgment. Thereafter interest shall accrue at a rate equal to the Wachovia Bank & Trust Co., N.A. prime rate. The full principal sum and accrued interest shall be paid within 60 days after the closing of the first sale by Hammocks Beach Corporation of a portion of the trust real estate but in no event later than August 31, 1989. Title to the property hereinabove adjudicated to be vested in Hammocks Beach Corporation is, until the full payment of said indebtedness, charged with a lien in favor of the payees of said indebtedness which shall be enforceable as if secured by a deed of trust containing statutory powers of foreclosure, with a trustee to be appointed, if a foreclosure shall be called upon, by the Clerk of Superior Court of Onslow County. The Sharpe and Hurst defendants are payees of said indebtedness in the proportions of one-half to William S. Sharpe, Jr., and Nancy S. Caird, and one-half to Gertrude Hurst.

11. This judgment shall be recorded in the Onslow County Registry and shall be cross-indexed to the names of the parties hereto.

12. The court shall retain jurisdiction to hear motion filed by any party with respect to either the implementation of the terms of this judgment or compliance therewith.

13. Each party shall bear its own costs.

This 29<sup>th</sup> day of October, 1987.

  
\_\_\_\_\_  
Judge of Superior Court



Consented To By:

Will S.

William Sharpe

by: Nancy E. Caird  
Will S. atty-in-fact

Nancy E. Caird, by her  
attorney-in-fact, William Sharpe

Gertrude Hurst

Gertrude Hurst

Ned S. Hurst

Ned S. Hurst

Ruth H. Williams

Ruth H. Williams

Harold Hurst Jr.

Harold Hurst, Jr.

Harriett Hurst

Harriett Hurst

Jesse O. Hines Sr.

Jesse O. Hines SR.

Johnell Hurst

Johnell Hurst

John H. Hurst

John H. Hurst

Venice H. Cook  
Venice H. Cook

J. Carter, Jr.  
John J. Carter, Jr., Guardian  
ad Litem for the unknown and  
unborn heirs of the late William  
Sharpe and the late Josephine W.  
Sharpe

Ned S. Hurst  
Ned S. Hurst, Guardian ad Litem  
for the unknown and unborn heirs  
of Gertrude Hurst and  
the late John Hurst.

Andrew A. Vanore, Jr.  
Andrew A. Vanore, Jr.  
Chief Deputy Attorney General

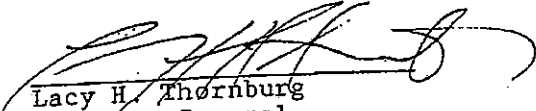
Womble Carlyle Sandridge & Rice

By: Dewey W. Wells  
Dewey W. Wells  
Attorneys for William Sharpe  
and Nancy E. Caird

Warlick, Milsted, Dotson & Carter

By: Carl S. Milsted  
Carl S. Milsted  
Attorneys for Gertrude Hurst

STATE OF NORTH CAROLINA



Lacy H. Thornburg  
Attorney General

HAMMOCKS BEACH CORPORATION

BY: *Kath. B. Jones*

FERGUSON, STEIN, WATT, WALLAS  
& ADKINS, P.A.

BY: *[Signature]*

Attorneys for Hammocks Beach Corporation

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, Nancy S. Caird, a resident of Dublin, Ireland, hereby appoint William Sharpe my attorney in fact and authorize him to act for me in all matters affecting my interest in any real property situated in Onslow County, North Carolina, and in particular my interest in property known as The Hammocks, with the same force and effect and to all intents and purposes as though I were personally present and acting for myself, hereby ratifying and confirming whatever my said attorney in fact shall do by authority hereof. Without limiting the generality of the foregoing, I appoint the said William Sharpe, for me and in my name and on my behalf, to execute and acknowledge all papers appropriate for the prosecution and defense of claims, all documents as may be required by any court in which an action shall be pending affecting said property, and in particular to execute on my behalf all documents which in his discretion may be appropriate in respect to the entry of a Consent Judgement arising out of the negotiated settlement of a civil action now pending styled Hammocks Beach Corporation, plaintiff, v. The Fresh Air Fund, et al, defendants, pending in the Superior Court of the County of Onslow, State of North Carolina, having file number 84-CVS-1466.

This Power of Attorney shall continue in effect until revoked by me or until my death, notwithstanding any incapacity or mental incompetence which occurs to me after this date. No revocation by me shall be effective until the same shall be filed with the Clerk of Superior Court of Onslow County in the cause aforesaid bearing file number 84-CVS-1466.

IN WITNESS WHEREOF, I have signed, sealed and acknowledged this Power of Attorney this 4th day of September, 1987.

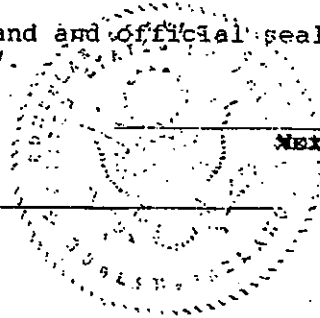
Nancy S. Caird (SEAL)  
Nancy S. Caird

STATE OF IRELAND  
OFFICE OF THE CONSUL GENERAL  
OF THE UNITED STATES OF AMERICA

SS

I, Eileen A. Malloy, Consul of the United States of America at Dublin, Ireland, duly commissioned and qualified, do hereby certify that Nancy S. Caird personally came before me this day and acknowledged the due execution of the foregoing Power of attorney.

Witness my hand and official seal, this 4th day of September, 1987.



Eileen A. Malloy

XXXXXXXXXXXX

EILEEN A MALLOY

Consul of the United States of America

XXXXXXXXXXXXXXXXXXXX

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

WAKE COUNTY

2007 JUN 15 A 10:16  
HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
Plaintiffs, )

vs. )

**ORDER**

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. )  
\_\_\_\_\_  
)

THIS MATTER came on for hearing before the undersigned Judge at the April 16, 2007 term of the Superior Court of Wake County upon the Motion for Protective Order and Motion to Dismiss filed by Defendant, The Hammocks Beach Corporation, and upon Plaintiffs' Motion to Compel. After reviewing the motions, memoranda and other material submitted by the parties and arguments and authorities presented by counsel, the Court finds that Defendant's Motion for Protective Order should be denied. The Court further finds that the Plaintiffs' Motion to Compel should be allowed. Finally, the Court finds that the Defendant's Motion to Dismiss, or in the alternative, motion for a change of venue, should be denied. The Court finds that venue is proper

in Wake County in that Wake County is the location of the trust, and the language of N.C. Gen. Stat. § 36C-2-204 regarding venue governs in this case.

IT IS THEREFORE ORDERED that the Motion for Protective Order of Defendant, The Hammocks Beach Corporation, is denied; that the Motion to Dismiss of Defendant, The Hammocks Beach Corporation, is denied; and Plaintiffs' Motion to Compel is granted. Defendant, The Hammocks Beach Corporation, shall have thirty (30) days from the date of entry of this Order to serve full, accurate and complete responses to Plaintiffs' First Set of Interrogatories and Request for Production of Documents to Defendant The Hammocks Beach Corporation.

This the 14 day of June, 2007.



---

The Honorable Paul G. Gessner  
Superior Court Judge Presiding

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06-CVS-18173

HARRIET HURST TURNER AND  
JOHN HENRY HURST,

Plaintiffs,

v.

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,

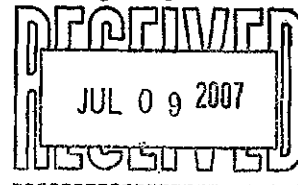
Defendants.

DEFENDANT  
HAMMOCKS BEACH CORPORATION'S  
FURTHER MOTION TO DISMISS AND FOR A  
PROTECTIVE ORDER

Pursuant to Rules 12(b)(6) and 26(c) of the North Carolina Rules of Civil Procedure, Defendant Hammocks Beach Corporation ("Hammocks Beach") hereby moves to dismiss Plaintiff's complaint for failure to state a claim upon which relief could be granted and for a protective order pending resolution of this motion. In support of its motion, Hammocks Beach states as follows:

1. Hammocks Beach is a non-profit entity created in 1950 in a deed pursuant to the request of Gertrude Hurst, predecessor of Plaintiffs. See Complaint, ¶ 15. Hammocks Beach was established to administer the property given to it, approximately 10,000 acres in Onslow County, North Carolina. As a result of the several *mense* conveyances, the *res* of the trust now consists of approximately 805 acres.

2. On December 15, 2006, Plaintiffs filed this action seeking an accounting of various trust assets, recovery of the real property located in Onslow County and monetary damages for breach of fiduciary duty. In particular, Plaintiffs seek to assert their alleged rights





as holders of a reversionary interest in real property created by a 1950 trust instrument held by Hammocks Beach. Exhibit A hereto.

3. In 1987, however, the 1950 trust was modified by a Consent Judgment signed by Plaintiffs and entered by the Onslow County Superior Court. Exhibit B hereto. As part of the Consent Judgment, the real property subject to the trust was divided between Plaintiffs and Hammock Beach. Hammocks Beach relinquished its rights to approximately 490 acres in exchange for the right to retain approximately 320 acres "free and clear" of Plaintiffs' interests. Exhibit B at 13-15. By entering into the Consent Judgment, the parties "fully intend[ed] to bind themselves, their heirs, assigns, and successors." Exhibit B at 3. Twenty years later, Plaintiffs now take the position that they still have an interest in and are entitled to the property conferred to Hammocks Beach by the Consent Judgment. Plaintiffs are wrong.

4. Pursuant to the Consent Judgment, Plaintiffs have no rights to the property that is the subject of this lawsuit and therefore no further rights as beneficiaries of the trust to an accounting or a claim of breach of fiduciary duty. To the extent Plaintiffs seek to relitigate that issue now, they are precluded from doing so by the doctrine of issue preclusion. *See, e.g., NationsBank of North Carolina v. American Dou-Bloon Corp.*, 125 N.C. App. 494, 503-04, 481 S.E.2d 387, 393 (1997) (holding that relitigation of issues barred by the doctrine of issue preclusion where issues were resolved by prior consent judgment between the parties). Plaintiffs' are precluded from pursuing their claims because their rights to the subject property were heard and determined by the 1987 Consent Judgment. As such, Plaintiffs have failed to state a claim upon which relief could be granted and their Complaint should be dismissed.

5. Additionally, Plaintiffs have served expansive discovery requests on Hammocks Beach. Exhibit C hereto. Compliance with Plaintiffs' discovery requests poses an expensive,

substantial burden. Hammocks Beach has operated as trustee to the land in question for more than fifty-six (56) years. Exhibit A at ¶ 5. During this period, Hammocks Beach has accumulated many records and documents from numerous sources and individuals.

6. Given the burdens that Plaintiffs' discovery impose and the fact that this motion to dismiss could dispose of Plaintiffs' case against Hammocks Beach in its entirety by deciding whether Plaintiffs retain any rights to seek the relief they claim after they signed and executed the 1987 Consent Judgment, a protective order pursuant Rule 26(c) of the North Carolina Rules of Civil Procedure is appropriate. This Court is vested with broad discretion to grant a protective order when justice requires, and justice requires such an order here pending resolution of Hammocks Beach's motion to dismiss. *See, e.g., Tilley v. United States*, 270 F. Supp. 2d 731, 734 (M.D.N.C. 2003) ("A protective order under Rule 26(c) to stay discovery pending determination of a dispositive motion is an appropriate exercise of the court's discretion.")<sup>1</sup>

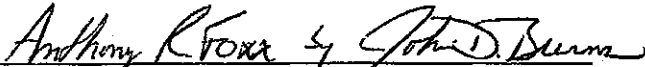
7. In further support of this motion, Hammocks Beach will submit a brief to the Court and parties pursuant to Rule 5(a1) of the North Carolina Rules of Civil Procedure.

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<sup>1</sup> On June 15, 2007, the Court entered an order denying Hammocks Beach's motion to dismiss for improper venue and further denying Hammock's Beach's motion for protective order and granting Plaintiffs' motion to compel discovery. Hammocks Beach is due to return Plaintiffs' discovery by July 16, 2007. Given the dispositive nature of Hammock Beach's Rule 12(b)(6) motion and that this further motion to dismiss is based upon a new and independent ground, Hammocks Beach moves again for a protective order. Should, however, the Court deny Hammock Beach's motion to dismiss, Hammocks Beach would be prepared to respond to Plaintiffs' discovery within 10 days of the Court's decision.

This 5th day of July, 2007.

**HUNTON & WILLIAMS LLP**

  
Frank E. Emory, Jr. [N.C. Bar No. 10316] (NC Bar 24152)  
Anthony R. Foxx [N.C. Bar No. 23798]

*Counsel for Defendant  
Hammocks Beach Corporation*

**HUNTON & WILLIAMS LLP**  
Bank of America Plaza  
101 South Tryon Street ~ Suite 3500  
Charlotte, NC 28280  
(704) 378-4700  
(704) 378-4890 ~ Fax

# Exhibit A

684

AGREEMENT.

9-22-50

DR. WILLIAM SHARPE AND WIFE  
THE HAMMOCKS BEACH CORPORATION INC.  
AND  
JOHN HURST AND WIFE.

NORTH CAROLINA:  
WAKE COUNTY:

THIS AGREEMENT, made this 6 day of September by and between Dr. William Sharpe and wife, Mrs. Josephine W. Sharpe of the State of New York, City of New York, parties of the first part; The Hammocks Beach Corporation, Inc., a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with its principal office and place of business in the City of Raleigh, party of the second part; John Hurst and wife, Gertrude Hurst of Onslow County, North Carolina, parties of the third part:

WITNESSETH: That whereas, the parties of the first part by Deed dated the 10th day of August, 1950, have conveyed to the Hammocks Beach Corporation, Inc., party of the second part, certain property located in Onslow County, North Carolina to be held in trust for recreational and educational purposes 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, Inc., and whereas, the parties of the first part, more than thirty years ago purchased said property and have had as tenants in charge of said property John Hurst and his wife, Gertrude Hurst; and whereas, because of the loyalty and faithfulness to the parties of the first part there has grown a mutual friendship between the said parties of the first part and John Hurst and wife, Gertrude Hurst; and whereas, the said party of the first part, Dr. William Sharpe, discussed with John and Gertrude Hurst the proposition of making a devise to them of all of said land, and the said Gertrude Hurst having at one time been a public school teacher in North Carolina realized the benefit that might accrue to all the teachers of the State and others as provided in the Charter of the Hammocks Beach Corporation, Inc., by the use of said land, and requested the said Dr. William Sharpe to give all of the said property to the teachers and others as provided in the Charter of the Hammocks Beach Corporation, Inc.; and whereas, said parties of the first part desire to have the said John Hurst and wife, Gertrude Hurst, their children and grand-children remain on said property conveyed to the Hammocks Beach Corporation Inc., and enjoy the fruits which have come as a result of their work, and the work of their father and mother, and may have continuous employment on said property with the Hammocks Beach Corporation, Inc., as long as they desire and their capabilities will permit them to perform the services which may be needed on said property by the Hammocks Beach Corporation, Inc.

The said parties hereto do contract and agree as follows: That in consideration of the premises and further in consideration of the sum of One (\$1.00) Dollar in hand paid to the party of the second part by the parties of the first part, and in further consideration of the charitable and generous spirit of the parties of the first part and parties of the third part, the said parties of the second part to contract and agree to and with the parties of the first and third part as follows:

1. That it is understood and agreed that the property conveyed to the Hammocks Beach Corporation, Inc., granted by Dr. William Sharpe, grantor, is never to be mortgaged or sold by the Hammocks Beach Corporation, Inc. except as stated in the deed, the said property may be conveyed to the North Carolina State Board of Education, for the purpose of continuing the trust hereby created, or re-conveyed to Dr. William Sharpe, his heirs and descendants and to John Hurst, his heirs and descendants.
2. That in the development of the property known as The Hammocks Beach Corporation, Inc. the first main building erected will be named "Gertrude E. Hurst Hall", and the second important building shall be named the "Josephine W. Sharpe Hall".
3. It is further agreed by and between the parties of the first part and party of the second part, that John Hurst, Gertrude Hurst, their children and grandchildren shall be permitted to live on and have the use of the mainland in the area where their home is now located, as shown on map and set forth in the deed of conveyance.
4. That the Hammocks Beach Corporation, Inc., party of the second part will employ to work on said project the members of the Hurst family, their children and grandchildren in any capacity for which their abilities would be satisfactory to the Board of Directors, and that there will be no 'outside' labor employed unless the Board of Directors deems it necessary.
5. The party of the second part further agrees and hereby gives to the Hurst family and their heirs, the exclusive right to operate on the land reserved for their use a general store for supply the daily wants and needs of the guests of the project.



6. It is further stipulated and agreed that the Sharpe Family, their children and grandchildren may have the use of the big house on the mainland and its adjacent area as by survey and as set forth in the Deed of Conveyance. They shall further have the right to live in and use the bungalow on the eastern end of the beach property and the adjoining area of five acres, as well as the use of the entire mainland or beach property for recreation, hunting and fishing, and the Sharpe and Hurst family may further use the property for grazing their livestock when such use does not interfere with the activities of the project.

7. It is further agreed between all of the parties to this agreement that the main road on said property as shown on map recently made, shall be opened for use and will be extended along the fence from beside the big barn down to the shore front at the site of the old cotton gin, the future site for the wharf and entrance to the bridge to be constructed across the inland waterway, said road shall be kept open for use of the guests of the Hammocks Beach Corporation, Inc. and its members the Sharpe and Hurst families their children and grandchildren.

It is also understood and agreed that the Sharpe and Hurst families their children and grandchildren shall have the right to own and to operate for the use and convenience of the project and guests of the project, one or more passenger and freight boats, the same may be docked at such place or places on the waters of mainland or the beach as may be desired.

The parties of the first and parties of the third part also agree that any disputes which may arise between the members of the Hurst family over their right to use the land set aside for their use and their rights under the conveyance made by Dr. William Sharpe, to the Hammocks Beach Corporation, Inc., shall be submitted to the members of the Sharpe family for arbitration.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals this day and year first above written.

Dr. William Sharpe (Seal)  
 Mrs. Josephine W. Sharpe (Seal)  
 John L. Hurst (Seal)  
 Gertrude E. Hurst (Seal)  
 Hammocks Beach Corporation, Inc.  
 By Harold L. Trigg, President.

ATTEST: J. W. Seabrook, Secretary.

Corporate Seal.

STATE OF NEW YORK,  
 COUNTY OF KING.

I, Sidney Lieberman, a Notary Public in and for the above named State and County do hereby certify that before me personally appeared this day Dr. William Sharpe and wife Mrs. Josephine W. Sharpe who acknowledged the due execution of the foregoing instrument for the purpose therein expressed.

Witness my hand and Notarial Seal this 6 day of September, 1950.

Sidney Lieberman, Notary Public.

N. P. Seal  
 My com. exp: 3/30/52

NORTH CAROLINA:  
 ONSLOW COUNTY:

I, J. E. Trexler, a Notary Public in and for the above named State and County do hereby certify that before me personally appeared this day John Hurst and wife Gertrude Hurst, who acknowledged the due execution of the foregoing instrument for the purpose therein expressed.

Witness my hand and Notarial Seal this 14 day of September, 1950.

J. E. Trexler, Notary Public.

N. P. Seal  
 My com. exp: Oct. 12, 1951.

NORTH CAROLINA:  
 WAKE COUNTY:

This 15th day of September, 1950, personally came before me J. W. Seabrook, being by me duly sworn, says that he knows the common seal of The Hammocks Beach Corporation, Inc. and is acquainted with H. L. Trigg, who is president of the corporation and that he, the said J. W. Seabrook is Secretary of the said corporation, and saw the said President sign the foregoing instrument and saw the said common seal of said corporation affixed to said instrument by said president and that he said J. W. Seabrook signed his name in attestation of the execution of said instrument in the presence of said President of said corporation.

Witness my hand and seal this 15th day of September, 1950.  
 L. H. Jobs, Notary Public.

N. P. Seal  
 My com. exp: March 3, 1951.

# Exhibit B

Consent Judgment  
*See R pp 18-39*



# Exhibit C

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 96 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
 )  
 Plaintiffs, )  
 )

vs. )

**PLAINTIFFS' FIRST SET OF  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
DEFENDANT, THE HAMMOCKS BEACH  
CORPORATION**

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. )  
 )  
 )  
 )  
 )

TO: ✓ The Hammocks Beach Corporation  
c/o E. B. Palmer  
119 Sunnybrook Road  
Raleigh, North Carolina 27610

and

The Hammock Beach Corporation  
c/o North Carolina Secretary of State  
Post Office Box 29622  
Raleigh, North Carolina 27626-0622

Pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure, Defendant, The Hammocks Beach Corporation, is required to answer the following Interrogatories separately and fully in writing, under oath, and to serve your answers on the undersigned within forty-five (45) days after service of these Interrogatories upon you. Please do not respond to any

individual question by stating, "see document....." These Interrogatories are continuing in nature to the extent required by Rule 26 (e) of the North Carolina Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

The following words have the following meanings:

1. "Document" or "documents" includes, without limitations, writings and printed matter of any kind and description, graphs, charts, photographs and drawings, notes and records of any oral communications and other recordings in whatever form.

2. If you consider any document called for in these Interrogatories to be privileged from production, then you must include in your response a list of documents withheld from production, identifying each document by date, addressee, author, title and subject matter. In addition, you should identify those persons who have seen the document or who were sent copies. Finally, you should state the ground(s) upon which each such document is considered privileged.

3. "Identify" or "identity" as used with respect to a natural person means to state the person's full name, address, and work and home phone numbers, and if a corporation or other entity, give the address, telephone number and name of the person who can be contacted.

4. The term "identify" as used herein in connection with a "document" or "documents" means and/or requires you to:

(a) State the type of document (letter, memorandum, etc.) and date of the document, the name and address of the person originating the document, the name and address of the person, if any, to whom the document was addressed, the names and address of all persons to whom copies of the document were to be or have been sent; and

(b) State whether you, or anyone acting on your behalf, are in possession of the original of the document or a copy thereof, and if not in possession of the original or a copy, furnish the name and address of the custodian of the original or copy.

5. The term "describe in detail" as used herein means:

(a) Describe fully by reference to underlying facts rather than by ultimate facts or conclusions of fact or law; and

(b) Where applicable, particularize as to:

(1) Time;

(2) Place; and

(3) Manner

6. The words "you" and "your" as used herein refer to the party to whom these Interrogatories are propounded.

7. The word "Property" or "property" refers to the real property deeded in trust by Dr. William Sharpe and wife Joseph Sharpe to The Hammocks Beach Corporation in 1950 in the deed recorded in the Onslow County Registry at Book 221, Page 636.

#### INTERROGATORIES

1. State the name and address of each person having any knowledge of relevant facts related to the occurrence which is the basis of this suit, the cause thereof, or the damages resulting therefrom.

#### RESPONSE:

2. Identify every person with whom you consulted, up whom you relied, or who otherwise constituted a source of information for you in connection with the preparation of your answers to Plaintiffs' First Set of Interrogatories and your responses to the Plaintiffs' First Request for Production of Document, listing with respect to each and every person the number(s) of the Interrogatory and/or Request that he or she helped prepare answers or with respect to which Interrogatory and/or Request he or she was consulted, relied upon, or otherwise constituted a source of information.

**RESPONSE:**

3. Identify each expert or consultant the Defendant has retained to provide expert testimony in connection with this litigation, and the subject matters of such consultancy. Also state the name, current address, telephone number and employer of each such expert or consultant, the field of expertise and qualifications, the substance of the facts and opinions to which each expert or consultant is expected to testify, the subject matter on which each expert is expected to testify and a summary of the grounds for each opinion.

**RESPONSE:**

4. Identify all persons who have provided Defendant with statements (oral, written, or otherwise recorded), or with whom you have had any communication regarding the material facts alleged in the Complaint, the events which gave rise to the pending action or to any issue that concerns the pending action and identify, in detail, all such communications and/or statements, give a detailed summary of the facts set out in the statement, and identify every person who has the written or recorded statement in his or her possession, custody or control.

**RESPONSE:**

5. Identify the person responsible for the current operation and functioning of The Hammocks Beach Corporation and state:

- (a) Period of time said person has had these responsibilities;
- (b) The title(s) of said person; and
- (c) Said person's current address and telephone number.

**RESPONSE:**

6. State the full name, address, telephone number, and title of each employee, agent, or representative of The Hammocks Beach Corporation who has knowledge regarding the organization, operation, finances and functioning of The Hammocks Beach Corporation.

**RESPONSE:**



7. Is the Defendant, The Hammocks Beach Corporation, incorporated under the laws of the State of North Carolina, or of any other State? If so, indicate:

(a) The state of incorporation; and

(b) The date on which the articles of incorporation were filed with the Secretary of State;

**RESPONSE:**

8. Provide the name, current telephone number and address of each person who has acted as a Director or served on the Board of Directors of The Hammocks Beach Corporation from the date of incorporation to the date of these Interrogatories. Please provide the dates that the Director(s) served.

**RESPONSE:**

8. Has any salary, fee or other compensation been paid to any director of The Hammocks Beach Corporation, and if so state:

- (a) The name and address of each director paid;
- (b) The period for which payment was made in each case;
- (c) The amount of the payment, if money, in each case; and
- (d) The date of the payment in each case.

**RESPONSE:**

10. List all corporate officers of The Hammocks Beach Corporation from the date of incorporation to the filing of Plaintiffs' Interrogatories. Please provide the following information:

- (a) The name, current telephone number and current address of each corporate officer since the date of incorporation to the filing of Plaintiffs' Interrogatory;
- (b) The period during which each corporate officer served;
- (c) The title of the office held by each corporate officer; and
- (d) The nature of the services performed by each officer

**RESPONSE:**

11. Has any salary, fee or other compensation been paid to any corporate officer of The Hammocks Beach Corporation, and if so state:

- (a) The name and address of each director paid;
- (b) The period for which payment was made in each case;
- (c) The amount of the payment, if money, in each case; and
- (d) The date of the payment in each case.

**RESPONSE:**

12. Since the incorporation of The Hammocks Beach Corporation, list the frequency with which the Board of Directors would meet? Please provide the following information:

- (a) The time and place of each board meeting;
- (b) The name of each director present at each meeting;
- (c) The nature and extent of the business transacted at the each meeting; and
- (d) Whether each meeting and the incidents thereof have been recorded in the

corporation's Minutes Book.

**RESPONSE:**

13. Provide the name, address, and telephone number of the person having present possession of The Hammocks Beach Corporation minutes book.

**RESPONSE:**

14. Has The Hammocks Beach Corporation ever issued shares of stock since its date of incorporation? If so, please state:

(a) The name, current telephone number and current address of the person to whom each individual share was issued;

(b) The date of issuance of each individual share; and

(c) The amount of each class of stock that was issued to each person.

**RESPONSE:**

15. Has consideration for all stock issued been received by The Hammocks Beach Corporation? If so, state:

- (a) Whether such consideration was in money, property, services, or other;
- (b) If consideration was other than money, what was the nature of such consideration in each case;
- (c) Was the fair value of said consideration stated by resolution of the Board of Directors; and
- (d) If so, what was the date of each resolution.

**RESPONSE:**

16. What is the name, current telephone number and current address of each of the present shareholders of The Hammocks Beach Corporation?

**RESPONSE:**

17. Since its date of incorporation, has there been a shareholders meeting for The Hammocks Beach Corporation? If so, please state the following:

- (a) The date and place of each meeting;
- (b) The name and address of each person present at the meeting;
- (c) The nature and extent of the business transacted at each meeting; and
- (d) Whether the minute book of the corporation reflects the circumstances of the above-referenced meetings.

**RESPONSE:**



18. Provide the name, address and telephone number of the person having present possession of The Hammocks Beach Corporation shareholders' Minutes Book.

**RESPONSE:**

19. State whether Defendant The Hammocks Beach Corporation has ever been a defendant in any other land or trust dispute action, and if so state the caption, the court, and file number of each such legal action; the nature of each such legal action; whether such action is currently pending; and the final resolution or disposition of each such legal action that is not currently pending.

**RESPONSE:**

20. Have any plans been adopted or implemented by The Hammocks Beach Corporation since 1987 to improve upon the property? Please identify the plan(s), its stated purpose, and the date in which each plan was implemented or adopted. Also, describe in detail each plan.

**RESPONSE:**

21. State and describe in detail all improvements made to the property since 1987.

Please include the following information:

- (a) The type of improvement made and location of the improvement;
- (b) The purpose of the improvement;
- (c) Provide the date in which the improvement was made; and
- (d) List all contractors who provided services with respect to the above

improvements.

**RESPONSE:**

22. List and describe in detail any activity by The Hammocks Beach Corporation since its date of incorporation that has generated income, and specify the dates in which these activities took place.

**RESPONSE:**

23. Please list and describe in detail all expenditures for The Hammocks Beach Corporation from January 1, 1987 to the present date.

**RESPONSE:**

24. Has The Hammocks Beach Corporation from the date of its incorporation owned any real property other than the property deeded to The Hammocks Beach Corporation as trustee by Dr. Sharpe in 1950? If so, please state:

- (a) The legal description of each parcel of property;
- (b) The date the property was acquired;
- (c) From whom the property was acquired;
- (d) The consideration given for the property; and
- (e) Describe in detail the purpose for acquiring the property.

**RESPONSE:**

25. Since the date of its incorporation, has The Hammocks Beach Corporation transferred any real property either by sale, gift, exchange, or otherwise? If so, please state:

- (a) A description of the property so transferred;
- (b) The method or manner of transfer;
- (c) The name of the person, firm, or other entity to whom transferred;
- (d) The consideration received by The Hammocks Beach Corporation; and
- (e) The time and place of the transfer.

**RESPONSE:**

26. With respect to the transfer by The Hammocks Beach Corporation to the State of North Carolina of approximately 30 acres on or about December 3, 1988, please state:

(a) The amount of consideration received by The Hammocks Beach Corporation for said sale; and

(b) The use and disposition of the sales proceeds received from the State of North Carolina for that transaction.

**RESPONSE:**

27. List all personal property owned by The Hammocks Beach Corporation since its date of incorporation. Please provide the following:

(a) A detailed description of the property;

(b) The date when each item was acquired;

(c) The name, address and telephone number of the person, firm, or other entity from whom the property was acquired; and

(d) The consideration given for each item.

**RESPONSE:**

28. List all persons, charitable organizations, civic organizations or other groups who have given or donated money to The Hammocks Beach Corporation. Please state:

(a) The name, address and telephone number of each person, charitable organization, civic organization, or other group that has given or donated money to The Hammocks Beach Corporation;

(b) The date of the contribution; and

(c) The use to which The Hammocks Beach Corporation put the money to.

**RESPONSE:**

29. List all civic organizations that have used the Hammocks Beach property since January 1, 1987, including the name of the organization, current telephone number, and its current address. Also please state the following:

- (a) Describe in detail the purpose or function of the civic organization;
- (b) The person(s) at the above-referenced civic organization(s) with whom The Hammocks Beach Corporation corresponded or dealt with;
- (c) The dates during which the civic organizations used the Hammocks Beach property; and
- (d) The purpose of the use.

**RESPONSE:**



30. Identify all persons who have resided, temporarily or otherwise, on the Hammocks Beach property since the date of incorporation. Please include the following information:

- (a) The full name of the individual who resided or temporarily stayed on the Hammocks Beach property, in addition to that individual's address and telephone number; and
- (b) The dates in which they resided on the property.

**RESPONSE:**

31. Has The Hammocks Beach Corporation since its date of incorporation ever rented or leased any portion of its property. If so, please give:

- (a) A detailed description of the property rented or leased;
- (b) The name, address and telephone number of the individual or entity that rented or leased the property;
- (c) The date in which the property was rented or leased; and
- (d) The amount of consideration given to The Hammocks Beach Corporation for the rental or lease.

**RESPONSE:**

32. Has any officer, director, shareholder or employee of The Hammocks Beach Corporation ever taken funds directed to The Hammocks Beach Corporation and deposited it in his or her personal or other (than The Hammocks Beach Corporation) business checking, savings, or other accounts? If so, please state:

- (a) The time and place of each transaction;
- (b) The amount of money involved in each transaction;
- (c) Arrangements, if any, for repayment to the corporation; and
- (d) Whether repayment has been made.

**RESPONSE:**

33. Please list all employees of The Hammocks Beach Corporation from January 1, 1987 to the present date and for each, state:

- (a) The employee's name, address and telephone number;
- (b) The employee's period of employment;
- (c) The amount of compensation paid to each employee; and
- (d) The services performed by each employee.

**RESPONSE:**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the North Carolina Rules of Civil Procedure, you are hereby requested to produce the documents requested below within 45 days of service, at 10:00 a.m. at the offices of The Francis Law Firm, PLLC, Two Hannover Square, Suite 2300, Raleigh, North Carolina 27601. The purpose of the production is to allow for inspection and copying of the documents.

Any and all documents, including writings, notes, memoranda, letters, reports, computer compilations, computer reports, data sheets, proposals, shipping and/or receiving records, minutes, descriptions, drafts, checks, telephone message slips, facsimiles, or any other documents of any nature or form including and/or concerning:

1. Any and all documents or things referred to in the Interrogatories served simultaneously with this Request for Production of Documents.

**RESPONSE:**

2. Copy of The Hammocks Beach Corporation articles of incorporation, original bylaws, and any bylaws adopted or amended after the date of incorporation.

**RESPONSE:**

3. Copy of any ledger, register, or any other document or documents listing The Hammocks Beach Corporation officers or board members since the date of incorporation.

**RESPONSE:**

4. Any and all stock registers for The Hammocks Beach Corporation.

**RESPONSE:**

5. All documents relating to any meeting of The Hammocks Beach Corporation shareholders, stockholders or members since the date of incorporation.

**RESPONSE:**

6. All documents relating to the issuance or sale of The Hammocks Beach Corporation stock since the date of its incorporation.

RESPONSE:

7. The corporate Minutes Book for The Hammocks Beach Corporation.

RESPONSE:

8. All documents relating to meetings of The Hammocks Beach Corporation Board of Directors since the date of incorporation.

**RESPONSE:**

9. All federal and state tax returns for The Hammocks Beach Corporation filed since 1987.

**RESPONSE:**



10. All corporate profit or loss statements for The Hammocks Beach Corporation.

**RESPONSE:**

11. All documents related to income generating activity by The Hammocks Beach Corporation since its date of incorporation.

**RESPONSE:**

12. All corporate bank statements for The Hammocks Beach Corporation from 1987 to present.

**RESPONSE:**

13. All documents relating to any salary, fee, or other compensation paid to any Director of The Hammocks Beach Corporation since its date of incorporation.

**RESPONSE:**

14. All documents relating to any salary, fee, or other compensation paid to any other corporate officer or employee of The Hammocks Beach Corporation since its date of incorporation.

**RESPONSE:**

15. All ledgers, lists, or other records that document or record the civic organizations that have utilized The Hammocks Beach Corporation property since the date of incorporation.

**RESPONSE:**

16. All other documents that relate to the use of The Hammocks Beach Corporation property by civic organizations since the date of incorporation.

**RESPONSE:**

17. Copy of all plans and/or resolutions adopted by The Hammocks Beach Corporation to improve upon Hammocks Beach property, and all documents related to the improvement of Hammocks Beach property since 1987, including documents reflecting expenditures on real property improvement.

**RESPONSE:**

18. Copy of all documents relating to The Hammocks Beach Corporation's ongoing expenditures.

**RESPONSE:**

19. All documents relating to the lease of any portion of Hammocks Beach property.

**RESPONSE:**

20. All documents related to the ownership of real property by The Hammocks Beach Corporation since its date of incorporation, notwithstanding how the property was acquired.

**RESPONSE:**

21. All documents related to the transfer of any real property by The Hammocks Beach Corporation either by sale, gift, exchange, or otherwise since its incorporation.

**RESPONSE:**

22. Copy of any document relating to money or other property donated or gifted to The Hammocks Beach Corporation since the date of its incorporation, including gifts from charitable organizations.

**RESPONSE:**

23. All documents relating to any plan considered or adopted by The Hammocks Beach Corporation to mortgage or sell any of the property in order to further the purpose of the Trust.

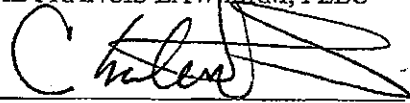
**RESPONSE:**

24. All documents of any kind pertaining to the Plaintiffs, Harriett Hurst Turner or John Henry Hurst.

**RESPONSE:**

This the 15 day of December, 2006.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801



**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs, certify that I served the foregoing on the foregoing date, upon the following parties, along with the Summons and Complaint:

The Hammocks Beach Corporation  
c/o E. B. Palmer  
119 Sunnybrook Road  
Raleigh, North Carolina 27610

The Hammock Beach Corporation  
c/o North Carolina Secretary of State  
Post Office Box 29622  
Raleigh, North Carolina 27626-0622

This the 15 day of December, 2006.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801



and Attorney General admit these allegations.

2. Paragraph 9 of the Complaint alleges that Roy A. Cooper, III, is the Attorney General of the State of North Carolina. The State Board of Education and the Attorney General admit these allegations.

3. Paragraphs 29 and 42 of the Complaint allege that under N.C. Gen. Stat. § 36C-4-405.1, the Attorney General 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. The State Board of Education and the Attorney General admit these allegations.

4. Paragraphs 20 through 23 of the Complaint allege that a Consent Judgment was entered in the case of The Hammocks Beach Corporation v. The Fresh Air Fund, et al., 86 CVS 1466 (Onslow Co. Sup. Ct. filed Oct. 29, 1987) (the Consent Judgment). The State Board of Education and the Attorney General admit these allegations.

5. Paragraphs 36 through 38 of the Complaint allege that under the Consent Judgment the parties and the Court found that because of the impossible or impracticable nature of the Trust the State Board of Education could not serve as trustee and the State Board of Education disclaimed any interest as a contingent trustee. The State Board of Education and the Attorney General admit these allegations.

The remaining allegations do not relate to either the State Board of Education or the Attorney General and the State is not obligated to respond to those allegations.

**MOTION TO DISMISS**

**THE STATE BOARD OF EDUCATION AND THE ATTORNEY GENERAL  
ARE NOT PROPER DEFENDANTS TO THIS PROCEEDING**

Relying upon the allegations and answers recited above, the State Board of Education and the Attorney General show the Court:

1. The Consent Judgment expunged any interest that the State Board of Education may have had in the Trust;

2. While N.C. Gen. Stat. § 36C-4-405.1 authorizes the Attorney General, a district attorney, a beneficiary or any other interested person to maintain a proceeding to enforce a charitable trust, the authority to enforce a charitable trust does not make the Attorney General or any of the other persons who have authority under that statute a proper defendant to this action; and

3. The Attorney General has no present intention of maintaining any action to enforce the Trust.

Therefore, the Complaint fails to state a claim against either the State Board of Education or the Attorney General and they are not proper parties to this action.

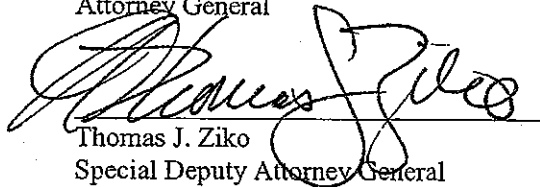
**WHEREFORE**, the State Board of Education and the Attorney General respectfully pray that:

1. The plaintiffs have and recover nothing from these defendants;
2. They be dismissed as parties to the present proceedings; and
3. They be awarded costs for this proceedings and any other relief to which they might be

entitled.

RESPECTFULLY submitted this the 8th day of August 2007.

ROY COOPER  
Attorney General

A handwritten signature in black ink, appearing to read "Thomas J. Ziko", is written over a horizontal line. The signature is stylized and cursive.

Thomas J. Ziko  
Special Deputy Attorney General  
Education Section  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Tel: (919) 716-6920  
Fax: (919) 716-6764  
N.C. Bar No. 8577  
[tziko@ncdoj.gov](mailto:tziko@ncdoj.gov)

**NORTH CAROLINA**

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION**

**WAKE COUNTY**

**06 CV 018173**

**HARRIETT HURST TURNER, AND  
JOHN HENRY HURST,**

**PLAINTIFFS,**

**V.**

**CORRECTED ORDER**

**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.**

FILED  
2007 AUG 24 P 12:14  
WAKE COUNTY, NC

**THIS MATTER** came on for hearing before the undersigned during the August 20, 2007, session of Wake County Superior Court, on the motion of defendants North Carolina State Board of Education and Attorney General Roy A. Cooper, III, (collectively "State Defendants") to dismiss under Rule 12(b)(6) for failure to state a claim. Thomas J. Ziko, Special Deputy Attorney General, appeared on behalf of State Defendants. Charles T. Francis of the Wake County Bar appeared on behalf of plaintiffs Harriett Hurst Turner and John Henry Hurst. Frank E. Emory, Jr., Hunton & Williams, LLP, of the Mecklenburg County Bar appeared on behalf of defendants The Hammocks Beach Corporation.<sup>1</sup>

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<sup>1</sup> The Original Order incorrectly stated Mr. Emory also appeared on behalf of defendants Nancy Sharpe Caird, Seth Dickman Sharpe, Susan Spear Sharpe, and William August Sharpe.

Having reviewed the complaint, the Consent Judgment entered in The Hammocks Beach Corporation v. The Fresh Air Fund, et al., 86 CVS 1466 (Onslow Co. Sup. Ct., filed Oct. 29, 1987), and State Defendants' motion and in light of the absence of any objection from the plaintiffs or other defendants, the Court finds that the motion to dismiss should be **GRANTED**.

**THEREFORE, IT IS ORDERED** that the complaint and all the claims against North Carolina State Board of Education and Attorney General Roy A. Cooper, III, are **DISMISSED WITH PREJUDICE** and plaintiffs have an recovery nothing from State Defendants.

The parties will bear their own costs.

This the 21<sup>st</sup> day of August 2007.

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

The Honorable Allen Baddour  
Superior Court Judge

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

FILE NO.: 06 CVS 18173

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.

FINAL PRETRIAL ORDER

Pursuant to the provisions of Rule 16 of the North Carolina Rules of Civil Procedure and Rule 7 of the General Rules of Practice, a final Pretrial Conference was held in the above-entitled cause on the 21<sup>st</sup> day of September, 2010. Charles T. Francis and Matthew L. Boyatt appeared as counsel for the Plaintiffs and Frank E. Emory, Jr. and Brent A. Rosser, appeared as counsel for Defendant, The Hammocks Beach Corporation

A. It is stipulated that Plaintiffs and Defendant may present any of their respective exhibits in enlarged or power point/electronic form.



B. At the close of the trial, copies or pictures of all exhibits will be submitted to the Court for purposes of the official record unless the parties stipulate to the release of exhibits following trial.

C. It is stipulated that all documents listed by Plaintiffs and Defendant are authentic, and may be introduced without further foundation as to authenticity. However, the parties reserve the right to object to all documents on other grounds. The intent is to avoid the additional time and expenditure required to call witnesses solely to authenticate documents as to which there is no dispute on their authenticity.

D. In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:

1. Plaintiff Harriett Hurst Turner is a citizen and resident of Wake County, North Carolina.

2. Plaintiff Harriett Hurst Turner is the granddaughter of John Hurst and Gertrude Hurst. As such, she is an heir and descendant to John Hurst and Gertrude Hurst.

3. Plaintiff John Henry Hurst is a citizen and resident of Onslow County, North Carolina.

4. Plaintiff John Henry Hurst is the grandson of John Hurst and Gertrude Hurst. As such, he is an heir and descendant to John Hurst and Gertrude Hurst.

5. Defendant The Hammocks Beach Corporation is a non-profit corporation organized under the laws of the State of North Carolina with its principal place of business in Wake County, North Carolina.

6. Defendant The Hammocks Beach Corporation is the Trustee of approximately 290 acres of real property pursuant to the terms of the Trust created by Dr. William Sharpe in 1950.

7. At this time, Defendant The Hammocks Beach Corporation continues to hold title to the above-referenced property as Trustee subject to the trust terms in the Deed dated August 10, 1950 and Agreement dated September 6, 1950 which created the Trust except as those terms were modified by a Consent Judgment filed in Onslow County Superior Court on October 29, 1987.

8. In the 1986 lawsuit leading to the Consent Judgment, the State of North Carolina and the State Board of Education declined to serve as successor trustee to Hammocks Beach Corporation under the original terms of the Trust..

F. The following is a list of all known exhibits the Plaintiffs may offer at trial:

1. 1950 Deed from Dr. William Sharpe to The Hammocks Beach Corporation
2. 1950 Agreement between the Sharpes, Hursts and The Hammocks Beach Corporation
3. N.C. Gen. Stat. § 36(c)-8-801 through § 36(c)-8-817
4. N.C. Gen. Stat. § 36(c)-10-1001
5. Hurst family tree diagram
6. Harriett Hurst Turner Birth Certificate
7. John Henry Hurst Birth Certificate
8. Photos of Hursts and Sharpes
9. Consent Judgment
10. Subpoena to Harry Smith
11. 2006 Property Tax Statement

12. 2007 Property Tax Statement
13. 2008 Property Tax Statement
14. 2009 Property Tax Statement
15. 2010 Property Tax Statement
16. Onslow County Customer Statement – Property Taxes
17. April 7, 2010 letter from Robin W. Hill, Tax Collection Supervisor of Onslow County to E. B. Palmer
18. Charter documents of The Hammocks Beach Corporation
19. Certificate of Amendment to the Charter of The Hammocks Beach Corporation – 1950
20. Articles of Amendment to the Charter of The Hammocks Beach Corporation – 1963
21. Articles of Amendment of The Hammocks Beach Corporation – 1989
22. Bylaws of The Hammocks Beach Corporation
23. Articles of Incorporation of North Carolina Teachers Association, Inc. – 1946
24. Articles of Amendment of North Carolina Teachers Association – 1971
25. Map(s) of property
26. Photos of John Henry Hurst and others at The Hammocks
27. Photo of John Henry Hurst with father or Dr. Sharpe
28. Older photos of Hammocks property
29. Video of Hammocks (from water)
30. Photos of property and buildings from inspection
31. Video of Hammocks property and buildings from inspection
32. John Henry Hurst deposition transcript

33. Harriett Hurst Turner family photos including Paige and Laila
34. Gertrude Hurst photo
35. Photos of buildings and property in earlier years
36. Excerpts from *Brain Surgeon* by Dr. William Sharpe
37. Affidavit of Gertrude E. Hurst dated October 19, 1987
38. All American Express/Ameriprise statements and documents
39. All Mechanics and Farmers Bank records produced by Defendant
40. All IRS filings produced by Defendant
41. All filings to North Carolina Department of Revenue produced by Defendant
42. Transcripts of Harriett Hurst Turner deposition
43. Video of Harriett Hurst Turner deposition
44. Letter from Stephen "Chip" Olmstead to E. B. Palmer dated March 29, 2001
45. Proposal from Stephen "Chip" Olmstead of Tomorrow's Hope to Dr. E. B. Palmer dated March 5, 2002
46. Letter to E. B. Palmer from Mrs. Joanne Olmstead dated June 5, 2001
47. Amended Notice of Deposition *De Bene Esse* of Dewey Wells
48. September 29, 1983 letter from J. LeVonne Chambers to Mr. Andrew S. Vanore, Jr.
49. June 21, 1983 letter from Carl S. Milsted to Mr. J. L. Chambers
50. December 8, 1986 letter from Dewey Wells to Frank E. Emory, Jr. and Carl S. Milsted and December 1, 1986 letter from Dewey Wells to Frank E. Emory, Jr.
51. Answer of Defendant in *The Hammocks Beach Corporation v. The Fresh Air Fund*, et al., 86 CVS 1466
52. Email from Frank Emory to Dewey Wells with attached statements proposed to and signed by Dewey Wells
53. 1950 Deed and Agreement

54. Womble Carlyle lawyer biography: Dewey Wells
55. Transcript of deposition of Dewey W. Wells (with redactions)
56. Video of deposition of Dewey W. Wells (with redactions)
57. Transcript of deposition of E. B. Palmer (with redactions)
58. Video of deposition of E. B. Palmer (with redactions)
59. Lease between The Hammocks Beach Corporation and the 4H Club Foundation of North Carolina dated June 1, 1958
60. Letter from Ernest R Beckford to Frank E. Emory, Jr. dated October 11, 1989
61. Letter from Frank E. Emory, Jr. to Ernest R. Beckford dated October 26, 1989
62. August 29, 2002 Memorandum from Thearon T. McKinney to Dr. E. B. Palmer and others
63. Letter from M. Ray McKinnie and Jon Ort to Frank E. Emory, Jr. dated December 17, 2002
64. Lease from The Hammocks Beach Corporation to the Future Farmers of American, Inc. dated May 20, 1966
65. Minutes from Program and Finance Committee Meeting from June 22, 1991
66. Minutes from The Hammocks Beach Corporation Board of Directors undated but references Minutes from August 10, 1988 needing to be submitted for approval and filed
67. Minutes from The Hammocks Beach Corporation Board of Directors undated but references Minutes from September 9, 1999
68. Minutes from The Hammocks Beach Corporation Board of Directors dated August 14, 1971
69. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 19, 1978
70. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on May 19, 1979
71. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on March 22, 1980

72. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on September 20, 1980 – DATE HANDWRITTEN ON MINUTES

73. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 25, 1980

74. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on June 27, 1981

75. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 22, 1981

76. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on September 14, 1983

77. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on May 19, 1984

78. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on December 8, 1984

79. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on April 25, 1985

80. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 10, 1987

81. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on May 6, 1989

82. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 3, 1989

83. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on January 19, 1991

84. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on March 2, 1991

85. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on June 1, 1991

86. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 22, 1992

87. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 17, 1992
88. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on February 13, 1993
89. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 23, 1993
90. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on December 11, 1993
91. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on April 9, 1994
92. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on September 24, 1994
93. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on November 11, 1994
94. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 31, 1995
95. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on November 12, 1995
96. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on June 30, 1998
97. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 18, 1998
98. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on December 12, 1998
99. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on January 9, 1999
100. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on April \_\_\_\_, 200\_\_ - 1 PAGE HANDWRITTEN PARTIAL MINUTES
101. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on September 18, 2000

102. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 14, 2000
103. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 6, 2003
104. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on August 28, 2004
105. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on November 5, 2005
106. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on January 7, 2006
107. Minutes from The Hammocks Beach Corporation Board of Directors from meeting on October 12, 2006
108. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on September 17, 1988
109. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on May 24, 1991
110. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on November 11, 1994
111. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on May 31, 1995
112. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on April (no date) 1996
113. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on January 17, 1997
114. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on February 6, 1997
115. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on July 23, 1997
116. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on September 18, 2000



117. Minutes from The Hammocks Beach Corporation Executive Committee from meeting on January 4, 2001

118. Minutes from The Hammocks Beach Corporation Program and Finance Committee Meeting of June 22, 1991

119. Minutes from The Hammocks Beach Corporation Committee on Projects of June 5, 1993

120. Minutes from The Hammocks Beach Corporation Special Committee on Planning of July 10, 1993

121. Minutes from The Hammocks Beach Corporation Land Use Committee on August 26, 1989

122. Minutes from The Hammocks Beach Corporation Land Use Committee on June 1, 1991

123. Hammocks Committee Board Meeting Minutes undated and handwritten

124. Detailed description of present and proposed activities

125. Analytical Profile of The Hammocks Beach Corporation dated September 14, 1985

126. Appointment of the Special Task Force document - E. B. Palmer

127. Undated Memo from E. B. Palmer to The Hammocks Beach Corporation Board of Directors regarding absentee voting proxy power

128. Undated proposed plan regarding organization of the Board of Directors of The Hammocks Beach Corporation

129. Memorandum from E. B. Palmer to The Hammocks Beach Corporation Board of Directors dated May 12, 1998

130. Letter from Jackie Bodnarik to E. B. Palmer and attachments regarding Project Breakthrough, Inc., undated

131. Letter from Dr. George L. Saunders with attachments

132. Letter from E. B. Palmer to Dr. George L. Saunders dated December 19, 2005

133. Letter to E. B. Palmer from Dr. George Saunders dated January 5, 2006

134. Letter from E. B. Palmer to George Saunders dated January 9, 2006

135. Letter from E. B. Palmer to Dr. George L. Saunders dated November 21, 2005
136. Proposal from Old North State Medical Society to The Hammocks Beach Corporation for the Institute for the Enhancement of Minority Health
137. Letter from Dr. George L. Saunders to E. B. Palmer dated September 6, 2005
138. Letter from E. B. Palmer to The Hammocks Beach Corporation Board of Directors dated September 12, 2005
139. Shaw University idea for Hammocks Trust Property
140. Comparison of proposals for land use of The Hammocks of 2005
141. Future Farmers of American Lease from 1966
142. Minutes of FFA Board of Directors dated August 4, 1986 and proposed Resolution
143. Memo from Willie J. Randolph to Ruth Jones and E. B. Palmer dated July 6, 1988
144. Internal survey of the goals and desires of the Board of Directors of The Hammocks Beach Corporation undated
145. Memo from Cynthia McKoy to the members of the Board of Directors of The Hammocks Beach Corporation dated December 29, 2005
146. Minutes of The Hammocks Beach Corporation Board of Directors on January 7, 2006
147. Memo to The Hammocks Beach Corporation Board members from Cynthia McKoy regarding meeting on August 15, 2006
148. Memo to The Hammocks Beach Corporation Board of Directors from E. B. Palmer dated October 2, 2006
149. Handwritten notes from The Hammocks Beach Corporation Board meeting undated
150. The S Group Proposal for The Hammocks Beach Corporation Simmons site
151. Letter from Brown M. Sligh to E. B. Palmer dated April 8, 2005
152. Suggested items for consideration, development and agreement between The Hammocks Beach Corporation and the Seaboard Development Services

153. Ocean-O-Gram dated March 3, 2003
154. Resolution of the Board of Directors from August 10, 1988 meeting regarding sale of acres to the State of North Carolina
155. North Carolina General Warranty Deed from The Hammocks Beach Corporation to the State of North Carolina
156. Settlement Statement proposing proceeds estimate
157. Closing Proceeds Estimate
158. Hammocks Shores Resort and the S. B. Simmons Camp brochure
159. Operating Budget of The Hammocks Beach Corporation 1989-90 projections
160. Financial history of The Hammocks Beach Corporation
161. Question No. 8 – a detailed description of present and proposed activities
162. Draft Consent Judgment
163. Proposal to Dr. Palmer and The Hammocks Beach Corporation from Seaboard Development Services
164. Letter from E. B. Palmer to Frank Emory dated August 16, 2006
165. Handwritten letter from E. B. Palmer to Frank Emory dated September 13, 2006
166. Letter from E. B. Palmer to Frank Emory dated April 3, 2006
167. Undated recommendation to Attorney Frank Emory
168. Letter from Stuart Group to E. B. Palmer regarding release of Mitchell Camp
169. Letter from E. B. Palmer to Dr. Philip McKnelly dated May 20, 1992
170. Report for the Palmer Family Reunion Cottage Rentals
171. Expenses provided by Dr. and Mrs. Palmer for painting and interior decoration at Hammocks
172. Letter from E. B. Palmer to Dr. Lafayette Parker dated May 7, 1991
173. Letter from Dr. E. B. Palmer to Mr. Clay Truett dated July 10, 1991

174. Documents from Onslow County Tourism website
  175. Timeline from Sharpe purchase to the filing of current lawsuit
  176. Letter from E. B. Palmer to Frank E. Emory, Jr. dated August 1, 1997
  177. Letter from Frank E. Emory, Jr. to E. B. Palmer in response to August 1, 1997  
letter
  178. Onslow County Fiscal Year 2010-2011 Budget Message document
  179. Article from *Jacksonville Daily News* website – August 9, 2010
  180. Correspondence between Louis Gerald and E. B. Palmer and any and all representatives of The Hammocks Beach Corporation with the North Carolina Wildlife Resources Commission and/or the State of North Carolina regarding the purchase of property
  181. Order Granting Plaintiff's Motion for Sanctions and Denying Defendants' Motion for Protective Order dated August 23, 2007
  182. Order on Plaintiffs' Motion to Activate Sanctions and Strike Answer of Defendant, The Hammocks Beach Corporation dated January 12, 2010
  183. Order Taxing Attorneys' Fees and Costs in Connection with Plaintiffs' Motion to Compel, Motion for Sanctions and Motion to Activate Sanctions and to Strike Answer of Defendant, The Hammocks Beach Corporation dated February 11, 2010
  184. Order Denying Defendant The Hammocks Beach Corporation's Motion for an Amended Protective Order dated March 9, 2010
  185. Affidavit of Dr. E. B. Palmer dated April 15, 2010
  186. Any and all exhibits listed by Defendant, not objected to by Plaintiffs
  187. Any and all discovery responses and supplements thereto, not objected to by Plaintiffs
  188. Any and all exhibits to be used by Plaintiffs for rebuttal purposes, not objected to by Plaintiffs
  189. Any and all exhibits necessary for impeachment purposes
- G. The following is a list of all known exhibits Defendant, The Hammocks Beach Corporation, may offer at trial:

<u>EX. NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>	<u>BATES NO.</u>
1	09/25/48	09/25/48 - HBC's Certificate of Incorporation a/k/a/ Charter	HBC 0018-0024
2	08/10/50	Deed	HBC 0093-0095
3	09/06/50	Agreement Among Parties to the 1950 Deed	HBC 0091-0093
4	06/13/63	Amendment to the Charter of HBC	HBC 0033-0034
5	09/29/83	Letter from J. Chambers, C. Milsted, and D. Wells to AG's Office re: HBC - Sharpe/Hurst Property	HBC 3616-3619
6	05/01/85	Map of HBC Tract I	N/A
7	05/01/85	Map of HBC Tract II and Sharpe Tract I	N/A
8	05/01/85	Map of Hurst Tract I and Sharpe Tract II	N/A
9	05/01/85	Map of Hurst Tract II	N/A
10	09/14/85	Analytical Profile of HBC by Dr. E.B. Palmer	HBC 3563-3595
11	11/26/86	Motion to Amend Complaint by Adding Parties Defendant	N/A
12	10/19/87	Affidavit of Gertrude Hurst re: Hammocks Beach Property and HBC	HBC 3550-3551
13	10/29/87	Consent Judgment	HBC 2325-2346
14	10/29/87	Stipulations and Order	N/A
15	1988	Use of Property and Facility Listing	HBC 3223
16	02/29/88	Gertrude Hurst Deed to Trustees	N/A
17	07/06/88	Memo from W. Randolph to R. Jones and Dr. Palmer re: transferring the lease	HBC 3453
18	09/13/88	Motion in <i>HBC v. The Fresh Air Fund et al.</i> re: Transfer of Trust Property Request	HBC 3212-3215
19	12/01/88	Consent Order re: <i>HBC v. The Fresh Air Fund et al.</i>	HBC 0108-0110
20	05/06/89	HBC Articles of Amendment	HBC 0031-0032
21	01/25/91	Lease Agreement Between HBC and NC Association of Vocational Educators	HBC 0078-0090
22	02/20/01	Letter from Onslow Co. Behavioral Healthcare re: Feasibility of Leasing HBC Property	HBC 0762-0766
23	02/28/01	NC Association of Vocational Educators Report to the HBC Board of Directors	HBC 1412
24	10/09/02	Letter re: Trip to Hammocks Shores Simmons Camp re: African American Boys Program	HBC 0222
25	10/15/02	Letter from Kids for Christ Ministries re: Lease or Purchase of Camp Mitchell	HBC 0221
26	12/03/02	Email from Becki Odum to Dr. Palmer re: rental calendar	HBC 0227-0228
27	12/17/02	Letter from NC Agricultural and Technical State University re: HBC Control of Mitchell 4-H Campgrounds	HBC 2214-2215
28	04/26/03	Mitchell Camp Invoice to Onslow Co. Behavioral Healthcare Services	HBC 0886
29	12/19/05	Fax Transmittal from Onslow County Planning and	HBC 0154

		Development re: Parcel 1320-33 Zoning District	
30	09/16/05	Letter from Venice Cook to Dr. Palmer re: HBC Land	
31	09/27/06	Memorandum of Understanding Between HBC and Seaboard Development Services	HBC 2395
32	12/15/06	Plaintiffs' Complaint	N/A
33	11/21/08	HBC Supreme Court Brief	
34	06/03/09	<i>Tideland News</i> Article, "Pupil visits offer benefits"	N/A
35	09/28/09	HBC Answer to Complaint	N/A
36	11/18/09	<i>Tideland News</i> Photograph of Pirate Fest	N/A
37	11/29/09	www.jdnews.com article, "Pirate Fest '09 kicks off Saturday"	N/A
38	01/04/10	Plaintiffs' Responses to Hammocks Beach Interrogatories and Second Request for Production of Documents	N/A
39	01/08/10	Verification of John Henry Turner	N/A
40	01/11/10	Verification of Harriet Hurst Turner	N/A
41	01/30/10	Email from Dewey Wells to Frank Emory re: <i>Hurst v. HBC</i>	N/A
42	02/16/10	Affidavit of Julius Chambers	N/A
43	02/16/10	Amended Affidavit of Dewey Wells	N/A
44	02/18/10	Deposition Transcript of Harriet Hurst Turner	N/A
45	04/22/10	Deposition Transcript of E.B. Palmer	N/A
46	05/06/10	Onslow Co. Tax Letter	N/A
47	05/27/10	Onslow Co. Minutes	N/A
48	06/24/10	Deposition Transcript of John Henry Hurst	N/A
49	07/17/10	JDNnews.com article re: Summer Camps offer fun, learning	
50	08/04/10	Email from Dewey Wells to Frank Emory re: <i>Hurst v. HBC</i>	N/A
51	08/08/10	ENCToday.com article re: <i>Town Looks to Add New Boat Launch</i>	N/A
52	09/09/10	Deposition Transcript of Harriet Hurst Turner	N/A
53	09/14/10	NC Secretary of State Current Active Status of The Hammocks Beach Corporation	N/A
54	Undated	Photo of Dr. Sharpe and John Louis Hurst	N/A
55	Undated	NC Association of Vocational Educators Report to HBC Board of Directors re: Simmons Camp	HBC 1389
56	Undated	NC Association of Vocational Educators Report to HBC Board of Directors re: Simmons Camp	HBC 1353
57	Undated	Memo from E.B. Palmer to Members of the HBC Executive Committee re: Right-of-Way Transfer	HBC 1361
58	Undated	Handwritten Notes re: current use of 4-H camp	HBC 0273
59	Various	Aerial images of "The Hammocks"	N/A
60	Various	Aerial images of current HBC property	N/A

61	Various	Various photographs of HBC property in use since entry of Consent Judgment	N/A
62		All documents identified, listed or used by Plaintiffs	N/A
63	Various	Photos of Hammocks Beach State Park	N/A
64	Various	HBC's Responses to Plaintiffs' discovery requests and any supplements thereto	N/A
65	Undated	Video of deposition of Harriett Hurst Turner, Parts I and II	N/A
66	06/24/10	Video of deposition of John Hurst	N/A
67	Various	Any and all exhibits to be used for rebuttal purposes	N/A

H. The following is a list of the names and addresses of all known witnesses the Plaintiffs may offer at trial:

1. Ruth Hurst Williams  
Post Office Box 725  
Swansboro, North Carolina 28584
2. Harry Smith  
Onslow County Tax Collector  
Onslow County Tax Office  
39 Tallman Street  
Jacksonville, North Carolina 28540
3. John Henry Hurst  
Post Office Box 725  
Swansboro, North Carolina 28584
4. Harriett Hurst Turner  
Post Office Box 674  
Garner, North Carolina 27529
5. Venice Cook  
Post Office Box 515  
Swansboro, North Carolina 28584
6. Stephen "Chip" Olmstead and/or Joanne Olmstead  
107 Harold Avenue  
Swansboro, North Carolina 28584
7. Dewey Wells  
1890 Pilot Ridge Road  
Blowing Rock, North Carolina 28605

8. Clay Truett  
Hammocks Beach Road  
Swansboro, North Carolina 28584
9. Brenda Herndon  
902 Mingo Place  
Knightdale, North Carolina 27545
10. E. B. Palmer  
119 Sunnybrook Road  
Raleigh, North Carolina 27610
11. Oliver Hill  
Northeast Community Development  
411 Western Boulevard  
Suite 23  
Jacksonville, North Carolina 28546
12. Erik Christofferson or other representatives of the North Carolina Wildlife  
Resource Commission  
NCSU Centennial Campus  
1751 Varsity Drive  
Raleigh, North Carolina 27606
13. Jeffrey L. Hudson, County Manager for Onslow County, or other personnel to  
authenticate Proposed Fiscal Year 2011-2011 Budget Message  
4024 Richlands Highway  
Jacksonville, North Carolina 28540
14. Thomas J. Ziko, Esq. or some other representative of the North Carolina Office of  
the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001
15. Any and all witness listed by Defendant
16. Any and all witnesses to be used for rebuttal purposes
17. Any and all witnesses to be used for impeachment purposes



I. The following is a list of names and addresses of all known witnesses that Defendant, The Hammocks Beach Corporation, may offer at trial:

1. Dr. E. B. Palmer  
119 Sunnybrook Road  
Raleigh, North Carolina 27610
2. Mr. Louis Gerald  
6721 Hillsboro Street,  
Raleigh, North Carolina, 27606.
3. Julius Chambers  
University of North Carolina School of Law  
5104 Van Hecke-Wettach Hall  
Chapel Hill, NC 27514
4. Dewey Wells  
1890 Pilot Ridge Road  
Blowing Rock, North Carolina 28605
5. All witnesses identified, listed or called by Plaintiffs.
6. Carol Tingley  
North Carolina Division of Parks and Recreation  
1615 MSC  
Raleigh, NC 27699

J. Additional consideration has been given to a separation of the triable issues and counsel for all parties are of the opinion that a separation of issues of this particular case would not be feasible.

K. The Plaintiffs contend that the contested issues to be tried by the jury are as follows:

1. As to the claim for trust termination and reversion:
  - a. Since 1987 has it become impossible or impractical to use the trust property and land for the purposes specified by Dr. William Sharpe and his wife in the Deed and Agreement executed in 1950?

b. Has The Hammocks Beach Corporation acted arbitrarily and contrary to its duties as trustee in failing to declare that it has become impossible or impracticable by a vote of the majority of the directors of The Hammocks Beach Corporation?

c. Has the State of North Carolina declined to accept the trust property for the purposes specified by Dr. William Sharpe and refused to serve as successor trustee?

d. In the 1987 Consent Judgment, did the Plaintiffs give up all future reversionary interests in the event of continuing impossibility or impracticability in achieving the trust purposes?

2. As to the breach of fiduciary duties claim:

a. Since the entry of the Consent Judgment in 1987, has The Hammocks Beach Corporation, as trustee, breached any of its fiduciary duties?

b. If so, what amount, if any, are the Plaintiffs entitled to recover as a result of The Hammocks Beach Corporation's breach of its fiduciary duties?

3. As to the accounting claim:

a. Are Plaintiffs entitled to an accounting from The Hammocks Beach Corporation as trustee?

L. Defendant The Hammocks Beach Corporation contends that the contested issues to be tried by the jury are as follows:

1. As to the claim for trust termination:

a. In the 1987 Consent Judgment, have the Plaintiffs met their burden to prove that they retained any future interest in the property the event of continuing impossibility or impracticability in achieving the trust purposes?

b. Have the Plaintiffs met their burden of proving that it has become impossible or impracticable to use the trust property and land for the purposes specified by Dr. William Sharpe and his wife in the Deed and Agreement executed in 1950?

c. Have the Plaintiffs met their burden to prove that the impossibility or impracticability “[has] been declared to exist by a vote of the majority of the directors of The Hammocks Beach Corporation, Inc.”?

d. Has the State of North Carolina declined to accept the trust property for the purposes specified by Dr. William Sharpe and refused to serve as successor trustee?

2. As to the breach of fiduciary duties claim:

a. Have the Plaintiffs met their burden to prove that The Hammocks Beach Corporation owes them a fiduciary duty?

b. If so, have the Plaintiffs met their burden to prove that they suffered any damages as a result of that breach?

c. If so, have the Plaintiffs met their burden to prove that they suffered any damages as a result of that breach?

d. If so, what amount, if any, are the Plaintiffs entitled to recover as a result of The Hammocks Beach Corporation’s breach of its fiduciary duties?

3. As to the accounting claim:

a. Have the Plaintiffs met their burden to prove that they are entitled to an accounting from The Hammocks Beach Corporation?

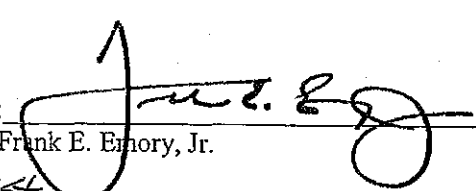
M. Counsel for the parties announce that all witnesses are available and the case is, in all respects, ready for trial. The probable length of the trial is estimated to be eight (8) days.

N. Counsel for the parties represent to the Court that, in advance of the preparation of this Order, there was a full and frank discussion of settlement possibilities. Counsel for the Plaintiffs will immediately notify the Clerk in the event of material change in settlement prospects.


THE FRANCIS LAW FIRM, PLLC  
Attorneys for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone No.: (919) 828-0801

By:   
Charles T. Francis

HUNTON & WILLIAMS  
Attorneys for Defendant, The Hammocks Beach  
Corporation  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280  
Telephone: (704) 378-4700

By:   
Frank E. Emory, Jr.

Approved and Ordered filed this the 21<sup>st</sup> day of September, 2010.

  
Superior Court Judge Presiding

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

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.

**JUDGMENT**

THIS MATTER was heard before the Honorable Carl R. Fox, the undersigned Judge, and a jury duly empanelled during the September 20, 2010 term of the Superior Court, Wake County, and the following issues were submitted to and answered by the jury as follows:

We the jury, return as our unanimous verdict the following answer(s) to the issue(s) submitted:

ISSUE ONE:

Did the Plaintiffs retain any future interest in the trust property after executing the 1987 Consent Judgment?

Yes   X  

No \_\_\_\_\_

If you answer Issue One "Yes" please proceed to Issue Two.

If you answer Issue One "No" this ends your deliberation and you should return to the courtroom to announce your verdict.

ISSUE TWO:

Since 1987, has it become "impossible or impracticable" to use the Trust Property and land for the purposes specified by Dr. William Sharpe and his wife in the Deed and Agreement executed in 1950?

Yes   X  

No \_\_\_\_\_

If you answer Issue Two "Yes" please proceed to Issue Three.

If you answer Issue Two "No" this ends your deliberation and you should return to the courtroom to announce your verdict.

ISSUE THREE:

Has the Board of Directors of The Hammocks Beach Corporation acted arbitrarily, unreasonably or contrary to its duties as trustee by not declaring, by a majority vote of the directors, that it has become impossible or impracticable to carry out the purposes of the Trust consistent with the 1950 Deed?

Yes   X  

No \_\_\_\_\_

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered for Plaintiffs against Defendant in accordance with the verdict of the jury. Based upon the foregoing jury verdict,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that The Hammocks Beach Corporation shall be removed as Trustee of the Trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950, upon the formal appointment of the North Carolina State Board of Education as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement or, in the event that the North Carolina State Board of Education refuses to accept appointment to administer the trust for the purposes set forth in the 1950 Deed and Agreement, upon entry of an order distributing the trust property pursuant to the terms of the 1950 Deed. The Hammocks Beach Corporation shall continue as

Trustee in the interim pending further orders of this Court; however, The Hammocks Beach Corporation is prohibited from transferring or encumbering title to the trust property or entering into leases affecting the trust property. A further order pertaining to taxation of costs may be entered out of term and out of session. The Court retains jurisdiction to consider matters and enter orders necessary to effectuate this Judgment, including but not limited to issues pertaining to any potential successor trustee, distribution of the trust property and other issues that may arise.

This the 26<sup>th</sup> day of October, 2010.



Honorable Carl R. Fox  
Superior Court Judge Presiding

NORTH CAROLINA  
WAKE COUNTY  
2010 OCT 26 11 03:20

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

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.

**ORDER**

THIS MATTER was heard by the undersigned Judge and a jury at the September 20, 2010 term of the Superior Court of Wake County. The jury returned a verdict in favor of the Plaintiffs on all issues and Judgment was entered for Plaintiffs against Defendant. Based upon the verdict of the jury, Judgment was entered removing The Hammocks Beach Corporation as trustee of the Trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950. The Deed creating the Trust 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 and if such impossibility or impracticability shall have been declared to exist by a vote of the Majority of the directors of the Hammocks Beach Corporation, Inc., 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

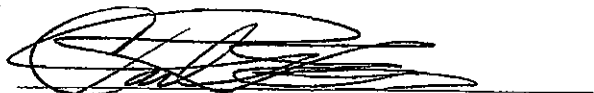


Education shall refuse to accept such property for the purpose of continuing the trust herein declared, all of the property herein conveyed shall be deeded by said Hammocks Beach Corporation, Inc. to Dr. William Sharpe, his heirs and descendents and to John Hurst and Gertrude Hurst, their heirs and descendents; the Hurst family shall have the mainland property and the Sharpe Family shall have the beach property . . .

Although the record indicates that the State has previously declined to serve as successor trustee of this trust, pursuant to the aforementioned Deed creating the trust it appears to the Court that following entry of Judgment upon the jury verdict, the North Carolina State Board of Education may now be entitled to tender of appointment as successor trustee to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

PLEASE TAKE NOTICE that a hearing will be held on November 22, 2010 at 10:00 A.M. in Courtroom 10-D, Tenth Floor, Wake County Courthouse, Raleigh, North Carolina to formally tender to the North Carolina State Board of Education appointment as successor trustee of the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950. The North Carolina State Board of Education shall appear at the above-referenced hearing on November 22, 2010 at 10:00 A.M. or otherwise indicate to the Court by a filing in this action, whether it wishes to accept appointment as successor trustee or whether it refuses to accept such appointment to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

This the 26<sup>th</sup> day of October, 2010.

  
Honorable Carl R. Fox  
Superior Court Judge Presiding

NORTH CAROLINA  
WAKE COUNTY

FILE NO. 06-18173

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

WAKE COUNTY, N.C.

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.

MOTION FOR RECONSIDERATION OF  
ORDER AND  
OBJECTION TO APPOINTMENT OF  
NORTH CAROLINA STATE BOARD OF  
EDUCATION AS SUCCESSOR TRUSTEE

NOW COME the Plaintiffs, Harriett Hurst Turner and John Henry Hurst, by and through counsel, and file this Motion for Reconsideration of Order and Objection to the North Carolina State Board of Education's acceptance of the tender of appointment as successor trustee and to the Court appointing the Board as successor trustee for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

In support of this Objection, Plaintiffs show the Court the following:

- (1) Based upon a Resolution adopted by the State Board of Education dated November 4, 2010, Plaintiffs understand that the Board intends to indicate its acceptance of the tender of appointment as successor trustee to administer said

trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950. The Board's purported acceptance of appointment at this point contradicts the position it took in 1987 that it could not legally serve as successor trustee and, more importantly, reverses the formal position it has asserted throughout the current litigation. The tender of appointment contemplated in this Court's previous order is a mere formality in keeping with the wording of the trust document, as the law of this case and other circumstances legally mandate that the Board reject this appointment and that this Court reject any purported attempt to accept the appointment.

- (2) The jury verdict in this case established that the purposes for which the settlor established the trust are impossible or impracticable of performance by any trustee, including the Board. Accordingly, it is legally impossible for the Board to accept the tender of appointment or for this Court to actually appoint the Board as successor trustee to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.
- (3) The Board is bound by the admissions and position taken in its Answer and Motion to Dismiss previously filed in this matter and the position it has taken throughout this litigation. Accordingly, the Board is estopped and barred from accepting the tender of appointment as successor trustee to administer the trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

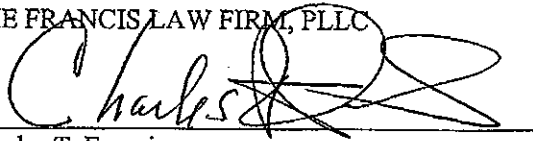
Plaintiffs will submit a Memorandum of Law to the Court prior to the hearing scheduled for January 3, 2010, further explaining and presenting authority for these and other grounds barring the Board from accepting the tender of appointment as successor trustee and this Court from appointing the Board as successor trustee.

WHEREFORE, Plaintiffs request that this Court reconsider its prior Order requesting that the State Board of Education indicate whether it will accept a tender of appointment as successor trustee and revoke said Order and tender, as the Board is legally required to reject this appointment. In the alternative, should the Court not revoke its prior Order and tender, Plaintiffs request that this Court reject any purported acceptance of the tender of appointment as successor trustee by the Board and conclude that the Board cannot appropriately be appointed as successor trustee. Plaintiffs further request that, in the absence of a successor trustee, the trust be terminated and this Court proceed to have the interim trustee, Hammocks Beach Corporation, distribute the trust property, as required in the trust document and according to the settlor's intent, to Plaintiffs, contingent remainder beneficiaries under the trust.

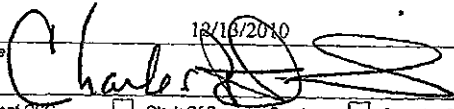
PLEASE TAKE NOTICE that this Motion and Objection to the appointment of the Board as successor trustee will be brought on for hearing at the already scheduled hearing for receipt and consideration of the Board's indication of whether it will accept the tender as successor trustee. This hearing will be held on January 3, 2011, at 10:00 A.M. Tenth Floor, Wake County Courthouse, Raleigh, North Carolina.

This the 6 day of December, 2010.

THE FRANCIS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Charles T. Francis", is written over a horizontal line. The signature is stylized and somewhat cursive.

Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

<b>STATE OF NORTH CAROLINA</b>		File No. <u>06CVS18173</u>
WAKE County	In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
HARRIETT HURST TURNER and JOHN HENRY HURST		Additional File Numbers
<b>VERSUS</b>		<b>SUBPOENA</b> <small>G.S. 1A-1, Rule 45</small>
THE HAMMOCKS BEACH CORPORATION, et al.		
Party Requesting Subpoena <input checked="" type="checkbox"/> State/Plaintiff <input type="checkbox"/> Defendant		<b>NOTE TO PARTIES NOT REPRESENTED BY COUNSEL:</b> Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.
Name And Address Of Person Subpoenaed <b>TO</b> Thomas J. Ziko, Esq., Off. of Attorney General, 114 West Edenton St., 9001 Mail Service Ctr Raleigh, NC 27699-9001		Alternate Address 4404 Pitt Street Raleigh, NC 27609
Telephone No.		Telephone No. 919-781-9741
<p><b>YOU ARE COMMANDED TO:</b> (check all that apply):</p> <p><input type="checkbox"/> appear and testify, in the above entitled action, before the court at the place, date and time indicated below.</p> <p><input checked="" type="checkbox"/> appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.</p> <p><input type="checkbox"/> produce and permit inspection and copying of the following items, at the place, date and time indicated below.</p> <p><input type="checkbox"/> See attached list. (List here if space sufficient)</p>		
Name And Location Of Court/Place Of Deposition/Place To Produce The Francis Law Firm, PLLC 434 Fayetteville Street, Suite 2300 Raleigh, NC 27601		Date To Appear/Produce December 23, 2010
Name And Address Of Applicant Or Applicant's Attorney Charles T. Francis, Esq. The Francis Law Firm, PLLC, PO Box 164 Raleigh, NC 27602		Time To Appear/Produce 2:30 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Telephone No. 919-828-0801		Date 12/16/2010
		Signature 
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge <input type="checkbox"/> Magistrate <input checked="" type="checkbox"/> Attorney/DA <input type="checkbox"/> District Court Judge		
<b>RETURN OF SERVICE</b>		
I certify this subpoena was received and served on the person subpoenaed as follows:		
By <input type="checkbox"/> personal delivery.		
<input type="checkbox"/> registered or certified mail, receipt requested and attached.		
<input type="checkbox"/> telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)		
<input type="checkbox"/> I was unable to serve this subpoena.		
Service Fee \$ <input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature of Authorized Server
		Title

**NOTE TO PERSON REQUESTING SUBPOENA:** A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

**NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).**

**(c) Protection Of Persons Subject To Subpoena**

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which

an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

**(d) Duties In Responding To Subpoena**

(1) Form of response. - A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

**INFORMATION FOR WITNESS**

**NOTE:** If you have any questions about being subpoenaed as a witness, you should contact the person named on the other side of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

**DUTIES OF A WITNESS**

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

**BRIBING OR THREATENING A WITNESS**

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

**WITNESS FEE**

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.

STATE OF NORTH CAROLINA File No. 06CVS18173

WAKE County In The General Court Of Justice  
 District  Superior Court Division

HARRIETT HURST TURNER and JOHN HENRY HURST Additional File Numbers

VERSUS  
THE HAMMOCKS BEACH CORPORATION, et al. SUBPOENA

Party Requesting Subpoena G.S. 1A-1, Rule 45  
 State/Plaintiff  Defendant **NOTE TO PARTIES NOT REPRESENTED BY COUNSEL:** Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO **Name And Address Of Person Subpoenaed**  
Lewis Ledford, NC State Parks & Recreation  
512 N. Salisbury St., Archdale Bldg., 7th Floor  
Raleigh, North Carolina  
**Alternate Address**  
5200 Lenoraway Drive  
Raleigh, North Carolina 27613  
**Telephone No.**

**YOU ARE COMMANDED TO:** (check all that apply):  
 appear and testify, in the above entitled action, before the court at the place, date and time indicated below.  
 appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.  
 produce and permit inspection and copying of the following items, at the place, date and time indicated below.  
 See attached list. (List here if space sufficient)

**Name And Location Of Court/Place Of Deposition/Place To Produce**  
The Francis Law Firm, PLLC  
434 Fayetteville Street, Suite 2300  
Raleigh, NC 27601  
**Date To Appear/Produce**  
December 23, 2010  
**Time To Appear/Produce**  
9:30  AM  PM

**Name And Address Of Applicant Or Applicant's Attorney**  
Charles T. Francis, Esq.  
The Francis Law Firm, PLLC, PO Box 164  
Raleigh, NC 27602  
**Date**  
12/13/2010  
**Signature**  
*Charles T. Francis*  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court  Superior Court Judge  
 Magistrate  Attorney/DA  District Court Judge

**RETURN OF SERVICE**

I certify this subpoena was received and served on the person subpoenaed as follows:  
By  personal delivery.  
 registered or certified mail, receipt requested and attached.  
 telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)  
 I was unable to serve this subpoena.

**Service Fee** \$  Paid  Due **Date Served** **Signature of Authorized Server** **Title**

**NOTE TO PERSON REQUESTING SUBPOENA:** A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.



NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).

(c) Protection Of Persons Subject To Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which

an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties In Responding To Subpoena

(1) Form of response. - A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on the other side of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
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- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

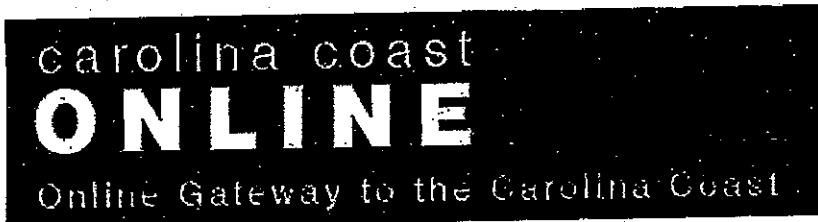
It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.

1. Memo from Lewis Ledford to the State Attorney General's Office quoted and referred to in the article from *Tideland News* attached as Exhibit A.
2. All notes, documents, emails, memoranda, correspondence, writings, papers, record of communications in whatever manner stored or preserved referring to or relating to the position of the Department of Environment and Natural Resources, the North Carolina Parks and Recreation Division or Wildlife Resources Commission in regards to taking a position in the case of *Harriett Hurst Turner and John Henry Hurst v. The Hammocks Beach Corporation*, serving as successor trustee for The Hammocks Beach property that is the subject of the aforementioned case, responding to the Order entered by the Honorable Carl R. Fox attached as Exhibit B or in connection with the State Board of Education's Resolution attached as Exhibit C.
3. All notes, documents, emails, memoranda, correspondence, writings, papers, record of communications in whatever manner stored or preserved referring to or relating to communication with the media or the public in regards to taking a position in the case of *Harriett Hurst Turner and John Henry Hurst v. The Hammocks Beach Corporation*, serving as successor trustee for The Hammocks Beach property that is the subject of the aforementioned case, responding to the Order entered by the Honorable Carl R. Fox attached as Exhibit B or in connection with the State Board of Education's Resolution attached as Exhibit C.
4. All notes, emails, correspondence, memoranda or communication of any nature between the Division of Environment Natural Resources, the North Carolina Division of Parks and Recreation, the Wildlife Resources Commission and David Pearson and/or others purporting to act on behalf of the Friends of The Hammocks and Friends of State Parks.
5. All notes, documents, emails, memoranda, correspondence, writings, papers, record of communications in whatever manner stored or preserved referring to or relating to communication between the Division of State Parks and the North Carolina Department of Public Instruction for the North Carolina State Board of Education in regards to taking a position in the case of *Harriett Hurst Turner and John Henry Hurst v. The Hammocks Beach Corporation*, serving as successor trustee for The Hammocks Beach property that is the subject of the aforementioned case, responding to the Order entered by the Honorable Carl R. Fox attached as Exhibit B or in connection with the State Board of Education's Resolution attached as Exhibit C.
6. All notes, documents, emails, memoranda, correspondence, writings, papers, record of communications in whatever manner stored or preserved referring to or relating to communication between the Department of Environment Natural Resources, the North Carolina Division of Parks and the Council of State or their staff in connection with consideration by the Council of State of the Resolution adopted by the State Board of Education, attached as Exhibit C.

7. All notes, documents, emails, memoranda, correspondence, writings, papers, record of communications in whatever manner stored or preserved referring to or relating to or of *Harriett Hurst Turner and John Henry Hurst v. The Hammocks Beach Corporation*, regarding the position that the State Board of Education, the North Carolina Department of Environment Natural Resources, or the North Carolina Division of Parks is asserting in connection with serving or declining to serve as successor trustee of the Hammocks Beach property.



**TIDELAND NEWS > NEWS**

**Challenge delays ruling on The Hammocks**  
*Tideland News*

By **BRAD RICH**

Published: Thursday, December 9, 2010 10:35 AM EST

Tideland News Writer

Local government support is strong for action that could put stewardship of The Hammocks property in the hands of the state, essentially expanding Hammocks Beach State Park in Swansboro by 289 key mainland acres.

But a decision by the N.C. Council of State – the governor’s cabinet – on that proposal has been delayed from Tuesday until Jan. 3, according to David Pearson of Swansboro, president of the Friends of the Hammocks and Bear Island and Friends of State Parks.

The Swansboro Board of Commissioners and Swansboro Area Chamber of Commerce adopted resolutions last week urging the state board of education to accept appointment as the successor trustee of the property along Queen’s Creek and adjacent to the park. Onslow County commissioners planned similar action this week.

The council of state, according to Pearson, put off the vote at the urging of the attorney for the property owner, the Hurst family.

As the result of a lawsuit, the Wake County Superior Court in September entered a judgment removing The Hammocks Beach Corporation as trustee of the land.

The state Board of Education adopted a resolution Nov. 4 that signaled its willingness to be trustee, and if the council of state approves, it is likely the state Division of Parks and Recreation would manage the property for recreation and education purposes, as set out by the original trust.

But although the change in the status of the land appeared to be almost a done deal last week, Pearson said Monday it’s up in the air again as a result of the delay in the council of state’s consideration.

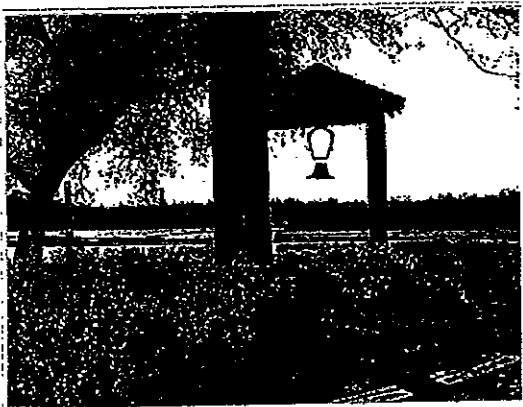
He urged those who want to see the property become a part of, or at least affiliated with the park, to contact Gov. Beverly Perdue and council of state members as soon as possible.

“It is all in doubt until the council of state accepts the resolution by the board of education,” he said. “There’s nothing guaranteed. It could still go back to the family. People who want to see this property become public should not take anything for granted.”

Pearson said the addition of the land to Hammocks Beach would be a great benefit to the public. Included in the tract is the Simmons 4H Camp.

“There is no question the possibilities for education and recreation, regional boat ramps, campsites and an education center are endless,” he said. “There are possibilities for hatcheries, for oysters, for red drum. The

Print Page



Included in the tract at the Hammocks is the former Simmons 4H Camp, a facility situated on the waterfront at Queens Creek. (Cody Foreman photo)

potential economic impacts through increased visitation to the area are tremendous."

The addition of the large tract, Pearson said, would make the park unique, in that it would encompass the entire coastal habitat, from the mainland, with bluff forest 35 feet above sea level, through the estuary to the barrier islands.

It also would ensure better protection of the pristine waters, which are classified as Outstanding Resource Waters, the state's highest classification.

"We'd have room for hiking trails, which we don't have now. And there'd be room for scout jamborees," Pearson added. "We need the public to contact the governor and the council of state to express support."

"Needless to say, I'm in favor of the park acquiring additional property on the mainland," Pearson said. "I hope the state board of education can accept this trusteeship. And I certainly appreciate the efforts by the town of Swansboro and other local governments to help make this a reality."

According to a memo to the Swansboro board from Town Manager Pat Thomas, the September ruling on the lawsuit filed by the Hurst family determined that the Hammocks Beach Corp. should be removed as trustee of the remaining 289 acres of "The Hammocks," which was placed in trust by Dr. William Sharpe in 1950 for various educational and recreational opportunities.

"As the board knows, this very unique, unspoiled and irreplaceable tract ... along Queens Creek has enormous potential for education, recreation and conservation," Thomas wrote to the board.

"The court subsequently determined ... that a hearing should be held to tender to the state Board of Education the opportunity to be appointed as successor trustee to administer the trust.

"Based on communications from its legal counsel, the Hurst family ... is expected to oppose the appointment of the state Board of Education as trustee.

"Although the state had previously signaled a lack of interest in administering the property," the Thomas memo continued, "the state Board of Education recently adopted a resolution indicating its interest ... subject to approval by the Council of State (the governor's cabinet).

"It is generally anticipated that if the Board of Education were named as trustee, management of the property ... would be carried out under an agreement with the N.C. Division of Parks and Recreation and that the property would be administered as an adjunct to Hammocks Beach State Park."

The Swansboro board's resolution urged the governor and council of state to "approve, ratify and support the state Board of Education's resolution to accept appointment as successor trustee, and to accept stewardship of the property on behalf of the state of North Carolina.

"The governor and council of state are urged to direct that the property ... be placed under the management of the Division of Parks and Recreation to ensure fulfillment of the trust requirements and for administration of the property as an adjunct to the operations of Hammocks Beach State Park."

Mayor Scott Chadwick said Thursday that the addition of the property to the park, as an adjunct, would be a great thing for Swansboro.

"It's an incredible opportunity for us," he said. "The park means so much to us, and this will make it even more of a destination for tourists, which will help our businesses."

He also touted the fact that the addition of the property would preserve it in its natural state.

Hammocks Beach State Park was established in 1961 with the donation of Bear Island to the state from the Hammocks Beach Corp. From 1962 to 1966, the state park service established ferry service to the island and constructed an island bath house and refreshment stand, restrooms, water system, maintenance shop and personnel barracks.

In 2001, a new visitors' center was established on the mainland. The park already is one of the state system's top five in terms of educational programming.

In recent years, the park has protected two additional islands, Huggins and Jones, which are accessible only

by boat and include high quality natural communities and remnants of Civil War history.

According to a memo from Lewis Ledford, state parks and recreation division director, to the state attorney general's office, "Careful planning and design would be needed before making final decisions on future uses of the HBC property.

"With some renovations, existing facilities at the Mitchell Camp could continue to be used to host groups and activities such as boy and girl scouts, family reunions, environmental education and ... Swansboro's pirate festival.

"The state parks system operates similar facilities at several other parks and the division would be interested in partnering with the town in mutually beneficial ways.

"In addition, UNC-Chapel Hill, the N.C. Museum of Natural Science, the Audubon Society and other potential partners have expressed some interest in working with the ... division ... to develop a coastal education facility to host university field classes and research activities."

Ledford concluded by noting that, "At 289 acres, the HBC property is thought to be one of the largest privately owned tracts of natural forest on the East Coast.

"The N.C. Division of Parks and Recreation, through Hammocks Beach State Park, is certainly capable of fulfilling the recreational and educational purposes of the Hammocks Beach Corporation Trust."

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[x] Close Window

Order [filed 26 October 2010]  
*See R pp 122–123*

STATE BOARD OF EDUCATION RESOLUTION ON  
HURST v. HAMMOCKS BEACH CORP., et al.  
06 CV 018173 (Wake Co. Sup. Ct., Judgment Entered Oct. 26, 2010)

WHEREAS, In 1950 Dr. Sharpe deeded approximately 810 acres of coastal property in Onslow County known as "The Hammocks" to the nonprofit Hammocks Beach Corporation "in trust for recreational and educational purposes 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, Inc. (the "Trust"); and

WHEREAS, The Trust provides that in the event it becomes impossible or impracticable to use said property and land for the use as herein, the property 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 Hammocks Beach Corporation, Inc., to Dr. William Sharpe, his heirs, and descendants and to John Hurst and Gertrude Hurst, their heirs and descendants; and

WHEREAS, A jury has returned a verdict in *Hurst v. Hammocks Beach Corp., et al.* 06 CV 018173 (Wake Co. Sup. Ct.) finding that it has become impossible or impracticable to use the trust property and land for the purposes specified in the trust; and

WHEREAS, The Wake County Superior Court has entered a judgment on the jury's verdict removing the Hammocks Beach Corporation as trustee upon appointment of the North Carolina State Board of Education as substitute trustee; and

WHEREAS, The Wake County Superior Court has entered an order setting a hearing for November 22, 2010, to formally tender to the North Carolina State Board of Education appointment as successor trustee of the Trust; and

WHEREAS, The State Board of Education desires to preserve the property which the Trust currently controls for educational and recreational purposes, provided that can be done consistent with the State Board of Education's constitutional and statutory obligations; now therefore be it

**RESOLVED**, That, the North Carolina State Board of Education accepts appointment as trustee of the Trust, **PROVIDED** the Council of State approves the transfer of the title to the North Carolina State Board of Education under G.S. § 146-26.



Chairman  
NC State Board of Education

11/4/10  
Date



State Superintendent  
NC Department of Public Instruction





NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

DEC 14 4:11:09

FILE NO.: 06 CVS 18173

IN THE GENERAL COURT OF JUSTICE

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, BY )

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. )

**NOTICE OF TAKING DEPOSITION**

You are hereby notified that on Thursday, December 23, 2010, at 2:30 p.m. at the offices of The Francis Law Firm, PLLC, 434 Fayetteville Street, Suite 2300, Raleigh, North Carolina 27601, the Plaintiffs will take the deposition of Thomas Ziko, Special Deputy Attorney General, Office of the North Carolina Attorney General, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure. The deposition will be taken before a Notary Public or some other officer duly authorized to administer oaths. The deposition will continue until its completion, or such other time and place as may be agreed upon by all parties.

This the 13th day of December, 2010.

THE FRANCIS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Charles T. Francis", written over a horizontal line.

Charles T. Francis  
Attorneys for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

12/13

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

WAKE COUNTY

Case No. 06-00009

U.S.C.

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. )

**NOTICE OF TAKING VIDEO DEPOSITION**

You are hereby notified that on Thursday, December 23, 2010, at 9:30 a.m. at the offices of The Francis Law Firm, PLLC, 434 Fayetteville Street, Suite 2300, Raleigh, North Carolina 27601, the Plaintiffs will take the deposition of Lewis Ledford, Director, North Carolina State Parks and Recreation, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure. The deposition will be taken before a Notary Public or some other officer duly authorized to administer oaths. The deposition may be videotaped. The deposition will continue until its completion, or such other time and place as may be agreed upon by all parties.

This the 13th day of December, 2010.

THE FRANCIS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Charles T. Francis", written over a horizontal line.

Charles T. Francis  
Attorneys for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

12117

STATE OF NORTH CAROLINA

COUNTY OF WAKE

HARRIETT HURST TURNER and  
JOHN HENRY HURST,  
Plaintiffs,

v.

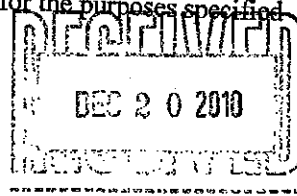
THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina  
Defendants,

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

RESPONSE TO MOTION FOR  
RECONSIDERATION OF ORDER  
AND TO OBJECTION TO  
APPOINTMENT OF THE  
NORTH CAROLINA STATE  
BOARD OF EDUCATION AS  
SUCCESSOR TRUSTEE

NOW COMES the North Carolina State Board of Education ("SBE," or "the Board") pursuant to this Court's Order of October 26, 2010, entering the Board's appearance in this action and submitting to the Court's jurisdiction in compliance with the Order, and responding to the Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education filed December 6, 2010. For the following reasons, the Board submits that the Motion and Objection should be denied:

1. Following trial in this matter, the jury found: (i) that the Plaintiff Hurst heirs retained a future interest in the trust property after executing the 1987 Consent Judgment; (ii) that it had become "impossible or impracticable" to use the Trust Property and land for the purposes specified



by Dr. and Mrs. Sharpe in the 1950 Deed and Agreement; and (iii) that the HBC Board of Directors had acted arbitrarily, unreasonably or contrary to its duties as trustee. Based on this verdict, on October 26, 2010, the Court entered an Order removing HBC as trustee "upon formal appointment of the North Carolina State Board of Education as successor trustee to administer the trust set forth in the 1950 Deed and Agreement." The Court set a hearing to formally tender to SBE appointment as successor trustee, and ordered the SBE to appear or otherwise indicate to the Court by a filing in the action, whether it wishes to accept appointment as successor trustee.

2. On November 4, 2010, the Board adopted a resolution accepting appointment as successor trustee of the Trust, subject to approval of the Council of State. (A true and accurate copy of the Resolution is attached as Exhibit 1 and incorporated herein.)

3. The SBE is an agency of the State created by the North Carolina Constitution, Art. IX, sec. 4, and desires to preserve the Trust property for educational and recreational purposes, in keeping with the charitable intent of the settlors of the Trust.

4. Plaintiffs' representations to the jury during closing argument and to this Court following the jury's verdict estop them from now moving for reconsideration or objecting to the SBE's appointment as successor trustee. Plaintiffs clearly told the jury that if it ruled for them on all three issues and removed HBC as trustee, the property would be tendered to the SBE for its determination whether it wished to serve as successor trustee:

MR. FRANCIS: Now, so you won't be confused about it, there is language in the deed, Exhibit Number 1, that talks about the state's role in being successor trustee and declining that and what's going to happen. That issue is not before you, and so you haven't heard any evidence about it. If you vote no on any of these issues, then The Hammocks Beach Corporation will continue as it has as the trustee. That will be the effect of a no on any of the issues.

If that's what you think should happen, that's how you should -- based on the evidence, that's how you should vote. **If you vote yes, yes, yes, then the next step in this process for the Court to undertake is that there will be a tender to the state to see whether they wish to serve as a successor trustee.** So that you're not confused about that from the language in the deed, I wanted you to know that is what's going to happen. [Emphasis added.]

...  
If these two great men, these two fast friends would come walking back in here last -- I can't even remember -- Wednesday, I think, when we started the evidence, and they sat right there and listened to the evidence, and they heard all the evidence of the uses that this trust has been put to, the land and property has been put to for the last 23 years, and they were considering whether it was possible or practicable to continue, what do you think that these great men would do? You know what they would do. **They would vote yes, yes, and yes, and they would terminate The Hammocks Beach Corporation as trustee of this trust so they can move on to the next phase as this great man intended. And that's what you ought to do in your verdict.** [Emphasis added.]

(Oct. 1, 2010, T pp. 32-34) (True and accurate copies of pertinent transcript pages are attached hereto as Exhibit 2, and incorporated herein.)

5. As a result of counsel's summation, the jury's verdict is necessarily affected by the representation that the Trust could continue with the SBE as successor trustee, if the Board accepted tender of the Trust. The jury's verdict, which was induced by Plaintiffs' representation, cannot now be "reconsidered."

6. Furthermore, following the verdict, plaintiffs' counsel clearly and unambiguously represented to this Court that tender to the Board was the appropriate next step required under the 1950 Deed and Agreement, and if the Board accepted, there would be no reason to proceed further:

MR. FRANCIS: It seems to me that you just said the next step is to ascertain whether the State Board of Education is going to serve as successor trustee or is going to, and as I understood may be the case, reiterate their declination to serve.

THE COURT: Absolutely.

MR. FRANCIS: And it seems to me that it's really not necessary for the Court to have a hearing just on that issue. They can just make that known to me and Mr. Emory and then submit that as a motion in the cause in this case without having a hearing on it. **And then if they choose to be the successor trustee, then we don't need to get to the next issue because they take it over.** [Emphasis added.]

(Oct. 4, 2010, T p. 37)

7. The Court entered its order of October 26, 2010 consistent with those statements by plaintiffs' counsel. Specifically, the Court ordered:

The [SBE] shall appear at the above-referenced hearing on November 22, 2010 at 10 A.M. or otherwise indicate to the Court by a filing in this action, whether it wishes to accept the appointment as successor trustee or whether it refuses to accept such appointment to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

Plaintiffs lack standing to object to their own representation to this Court. The Board has elected to serve as successor trustee, subject to the approval of the Council of State. As counsel advised the Court, that ends the matter.

8. Plaintiffs' contention that the jury verdict established that the Trust settlors' purposes are impossible or impractical for anyone to carry out also contradicts representations made to this Court and to the jury at trial.

9. Plaintiffs' counsel argued to the jury in closing argument that impossibility and impracticability related to "this trustee," i.e., the Hammocks Beach Corporation ("HBC"):

MR. FRANCIS: Okay. Now, to go on quickly, though, in case you know, some of you had concerns about [impossibility], the instructions will say impractical also, and the definition of impractical is impossible in practice. It is not actually going to occur. Right? **So not possible in practice under this trustee, obviously, is what we're talking about.**



**And so with respect to that, very quickly, the evidence that the trust is impractical of fulfillment under the Hammocks Beach Corporation is --** [counsel proceeds to discuss prior Consent Judgment]. . . . [Emphasis added.]

...

The second reason that the trust is impracticable of fulfillment **under this trustee** is because of the decline of the -- the buildings that you have seen. [Emphasis added.]

(Oct. 1, 2010, Tpp. 21-22)

10. Therefore, the jury, in voting in favor of the Plaintiffs, acted with the belief that the impossibility and impracticability related to "this trustee," the HBC. Again, the jury's verdict, which was induced by Plaintiffs' representation, cannot now be "reconsidered."

11. During the charge conference, prior to summation, Plaintiffs' counsel clearly and unambiguously argued the same theory to the Court. For example:

MR. FRANCIS: . . . I think it would improve the language and go to the point of this if you would add -- after the word "impractical," add "for the Hammocks Beach Corporation." So in other words, it would say, "Since 1987, has it become impossible or impractical **for The Hammocks Beach Corporation or this trustee** to use the trust property and land for the purposes specified," so forth and so on. [Emphasis added.]

(Sept. 30, 2010, Tp. 94)

MR. FRANCIS: I mean, I think, you know, one of the things that is an implicit suggestion is if it is practicable by anybody then it's not impossible or impractical. **And we absolutely agree that it is practicable by some trustee. It's just not this trustee.** [Emphasis added.]

(Sept. 30, 2010, Tp. 100).

MR. FRANCIS: If you consider that, I would ask you to just look at the alternative disposition clause in the deed, which, as I said, has this concept that once there's impossibility and impracticability, **you can go to another trustee, which clearly suggests that they're referring to impossibility or impracticability under that trustee.** That's the reason why we suggest it, you know, means and available resources.

**So the concept would be – if you’re saying Hammocks Beach Corporation doesn’t have the means or available resources, then it’s impractical, then you go to the state entity he was contemplating, which would have more resources. That’s why we’re – that’s why we’re suggesting that, the language we proposed. [Emphasis added.]**

(Sept. 30, 2010, Tpp. 102--103)

12. The Plaintiffs also incorrectly assert that the SBE’s previous rejection of the successor trusteeship, and the SBE’s Answer and Motion to Dismiss filed in this litigation now preclude the Board from acting as trustee.

13. The State Board of Education’s 1987 refusal to act as successor trustee was the result of two impediments which have since been resolved. First, as originally drafted, the trust was racially discriminatory in effect. Second, parcels of the trust property were subject to a right of commercial use by the Sharpe and Hurst families which would have prevented the State from fully executing its duties as trustee.

14. The 1987 consent judgment divided the trust estate between the HBC, as trustee, and the heirs of Dr. Sharpe, Gertrude Hurst, and John and Gertrude Hurst, and removed any use by the Sharpe and Hurst heirs (over the Trust property). Additionally, the North Carolina Association of Teachers was eventually merged into the North Carolina Association of Educators, an association open to all educators, and the 1989 amendments to the HBC Charter removed any discriminatory treatment and restated the purposes of the Trust consistent with those under federal and North Carolina law, 12 U.S.C. § 501(c)(3), and N.C. Gen. Stat. § 36C-4-405(a).

15. At the time the SBE filed its Answer and Motion to Dismiss in 2007, the SBE believed that the 1987 Consent Judgment expunged any interest it may have had in the Trust.

However, this legal view was subsequently proven to be incorrect, and, as demonstrated by the citations to the transcript, was not the basis for the subsequent litigation in the case.

16. In Turner, et al. v. Hammocks Beach Corporation, et al., 363 N.C. 555, 561, 681 S.E.2d 770, 775 (2009), the Supreme Court held that the 1987 Consent Judgment was ambiguous with respect to whether Plaintiffs retained future interests in the land. This decision calls into question the SBE's understanding of the Consent Judgment.

17. In 2007, the HBC had not been removed as trustee, nor had the SBE been tendered appointment as successor trustee. As this Court stated during the charge conference, the SBE was not actually empowered to decline the Trust until the Trust was actually tendered to the Board. The Court noted: "you're getting an advisory opinion, at best, about what their position would be, or an opinion, their -- an indication of what their position would be, because there's nothing to offer them until such time as there is no trustee. . . ." (Sept. 30, 2010, T p. 115)

18. Thus, there is no legal or policy reason why the SBE may not now take title to the property as successor trustee. No residual heir has changed his or her position in reliance on the prior disclaimer; thus, no inequity will arise because of the disclaimer. The end result of the SBE's succeeding as trustee is that the charitable intent of the trust settlors, Dr. and Mrs, Sharpe, will be accomplished. It is public policy of North Carolina to preserve, to the fullest extent possible, the manifested intent of the grantor to bestow a gift for charitable purposes. Edmisten v. Sands, 307 N.C. 670, 300 S.E.2d 387 (1983).

19. In addition, the Plaintiffs' Motion for Reconsideration fails to comply with Rule 59 of the Rules of Civil Procedure, for the following reasons.

20. The Plaintiffs' Motion for Reconsideration is untimely. Rule 59(e) requires that a motion to alter or amend a judgment "shall be served not later than 10 days after entry of the judgment." N.C. Gen. Stat. § 1A-1, Rule 59(e). The Plaintiffs served their Motion for Reconsideration on or about December 6, 2010, well more than 10 days after the entry of the October 26, 2010 judgment. Therefore, the Plaintiffs' Motion for Reconsideration should be dismissed for being untimely.

21. The Plaintiffs also fail to state a basis listed under Rule 59(a). Instead, the Plaintiffs use their Motion for Reconsideration as a means to put forth new arguments that were not, but could have been, previously made. As shown, Plaintiffs made precisely the opposite arguments. Motions to alter or amend judgments are limited to the grounds listed in Rule 59(a). Therefore, the Plaintiffs' Motion for Reconsideration should be dismissed on these grounds.

For all of the foregoing reasons, the Plaintiffs' Motion for Reconsideration and Objection to Appointment should be denied. The State Board of Education reserves the right to file a Memorandum of Law supporting this Response at the appropriate time.

WHEREFORE, North Carolina State Board of Education respectfully request that this Court enter an order:

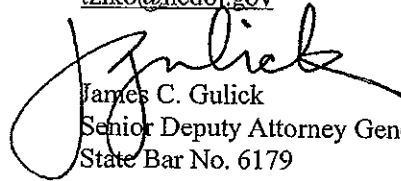
1. Denying the Motion for Reconsideration of Order and Objection to Appointment,
2. Granting such other relief as the Court may deem just and proper.

Respectfully submitted this the 17<sup>th</sup> day of December, 2010.

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ATTORNEYS FOR  
NORTH CAROLINA  
STATE BOARD OF EDUCATION

**STATE BOARD OF EDUCATION RESOLUTION ON  
HURST v. HAMMOCKS BEACH CORP., et al.  
06 CV 018173 (Wake Co. Sup. Ct., Judgment Entered Oct. 26, 2010)**

**WHEREAS**, In 1950 Dr. Sharpe deeded approximately 810 acres of coastal property in Onslow County known as "The Hammocks" to the nonprofit Hammocks Beach Corporation "in trust for recreational and educational purposes 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, Inc. (the "Trust"); and

**WHEREAS**, The Trust provides that in the event it becomes impossible or impracticable to use said property and land for the use as herein, the property 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 Hammocks Beach Corporation, Inc., to Dr. William Sharpe, his heirs, and descendants and to John Hurst and Gertrude Hurst, their heirs and descendants; and

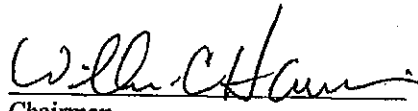
**WHEREAS**, A jury has returned a verdict in *Hurst v. Hammocks Beach Corp., et al.* 06 CV 018173 (Wake Co. Sup. Ct.) finding that it has become impossible or impracticable to use the trust property and land for the purposes specified in the trust; and

**WHEREAS**, The Wake County Superior Court has entered a judgment on the jury's verdict removing the Hammocks Beach Corporation as trustee upon appointment of the North Carolina State Board of Education as substitute trustee; and

**WHEREAS**, The Wake County Superior Court has entered an order setting a hearing for November 22, 2010, to formally tender to the North Carolina State Board of Education appointment as successor trustee of the Trust; and

**WHEREAS**, The State Board of Education desires to preserve the property which the Trust currently controls for educational and recreational purposes, provided that can be done consistent with the State Board of Education's constitutional and statutory obligations; now therefore be it

**RESOLVED**, That, the North Carolina State Board of Education accepts appointment as trustee of the Trust, **PROVIDED** the Council of State approves the transfer of the title to the North Carolina State Board of Education under G.S. § 146-26.

  
Chairman  
NC State Board of Education

11/4/10  
Date

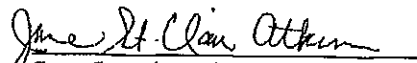
  
State Superintendent  
NC Department of Public Instruction



EXHIBIT 2-TRANSCRIPT PAGES

from

OCTOBER 1, 2010 TRANSCRIPT



1 find -- you should find for the plaintiffs and answer this  
2 question yes.

3 Okay. Now, to go on quickly, though, in case,  
4 you know, some of you had some concerns about that, the  
5 instructions will say impractical also, and the definition  
6 of impractical is impossible in practice. It is not  
7 actually going to occur. Right? So not possible in  
8 practice under this trustee, obviously, is what we're  
9 talking about.

10 And so with respect to that, very quickly, the  
11 evidence that the trust is impractical of fulfillment under  
12 The Hammocks Beach Corporation is -- and I'm just going to  
13 tick it off; you got it in your memory already, I know.  
14 First, there was a prior finding in the Consent Judgment to  
15 that effect. All right. The prior finding says -- I'll put  
16 this over here. The prior finding says there is substantial  
17 evidence, and the court finds that the fulfillment of the  
18 terms of the trust created by Dr. Sharpe to HEC is  
19 impossible or impracticable. If this litigation is not  
20 compromised and a trial ensues, HBC will incur a substantial  
21 risk that the counterclaims of the defendants and the Hursts  
22 would prevail. Okay? So that was the finding back at that  
23 time.

24 All right. So the question then is on  
25 practicability, has it gotten better or worse since then.



1 All right. It's gotten worse. All right. It's become less  
2 practicable since then because since that time the camps  
3 have gone out of use. There's much less use. Their money  
4 is in a much worse situation. The buildings have  
5 deteriorated and so forth and so on. And so if it was  
6 impracticable then, then necessarily it has got to be  
7 impracticable now.

8 The second reason that the trust is impracticable  
9 of fulfillment under this trustee is because of the decline  
10 of the -- of the buildings that you have seen. And, you  
11 know, I don't need to keep saying -- I don't need to show  
12 you all of the pictures anymore. You have seen that, right?  
13 You know what the condition of those buildings are, but  
14 they -- and that's important because it's not that the deed  
15 requires that you have buildings for recreational use, but  
16 to the extent that you're holding yourself out as a camping  
17 facility how can you have camping activity when there's no  
18 place for the children or the adults to camp.

19 Would you flash that up just a moment.

20 MR. SAPP: (Complies.)

21 MR. FRANCIS: All right. That's what -- that's  
22 what the facilities look like at the Simmons camp. All  
23 right. So how is it practicable of any kind of use if  
24 that's what they look like? Now, the ones at the Mitchell  
25 camp do look a little better but you still can't sleep

1 after 23 years since the Consent Judgment, four years of  
2 this case, two weeks of trial, it's that it's become  
3 impossible and impractical for this trustee to fulfill the  
4 trust purposes.

5           And I am -- and then in effect asking you for one  
6 more chance, a third chance, I'm reminded of the story of  
7 the magician and the king. You-all know that story? The  
8 king calls his favorite magician into the court and he says,  
9 "I want you to make that horse talk." And he says, "Yes,  
10 sire, but if you could just give me three more days." And  
11 he goes out of the presence of the king, and a fellow  
12 magician says, "Man, you know you can't make that horse  
13 talk. Why did you ask for three more days?" And the  
14 magician who was with the king said, "Well, that's true, but  
15 in three days anything can happen. The king could die. The  
16 horse could die. Maybe I can make it talk. Who knows."  
17 Right. The horse is not going to talk. It is not going to  
18 become possible or practical for this trustee to execute its  
19 responsibilities consistent with the trust purposes, and so  
20 therefore you should vote yes, yes, and yes.

21           Now, so you won't be confused about it, there is  
22 language in the deed, Exhibit Number 1, that talks about the  
23 state's role in being successor trustee and declining that  
24 and what's going to happen. That issue is not before you,  
25 and so you haven't heard any evidence about it. If you vote

1 no on any of these issues, then The Hammocks Beach  
2 Corporation will continue as it has as the trustee. That  
3 will be the effect of a no on any of the issues.

4 If that's what you think should happen, that's  
5 how you should -- based on the evidence, that's how you  
6 should vote. If you vote yes, yes, yes, then the next step  
7 in this process for the Court to undertake is that there  
8 will be a tender to the state to see whether they wish to  
9 serve as a successor trustee. So that you're not confused  
10 about that from the language in the deed, I wanted you to  
11 know that that is what's going to happen.

12 Finely, finally, I promise. If -- if these two  
13 friends, okay, these two great men could come walking back  
14 in here -- I was trying to have all my exhibits organized  
15 today so I wouldn't fumble around like yesterday, and I  
16 thought about taping some of them up on the IMAX screen, but  
17 I don't think it would have been effective.

18 If these two great men, these two fast friends  
19 would come walking back in here last -- I can't even  
20 remember -- Wednesday, I think, when we started the  
21 evidence, and they sat right there and listened to the  
22 evidence, and they heard all the evidence of the uses that  
23 this trust has been put to, the land and property has been  
24 put to for the last 23 years, and they were considering  
25 whether it was possible or practicable to continue, what do

1 you think that these great men would do? You know what they  
2 would do. They would vote yes, yes, and yes, and they would  
3 terminate The Hammocks Beach Corporation as trustee of this  
4 trust so they can move on to the next phase as this great  
5 man intended. And that's what you ought to do in your  
6 verdict.

7 Thank you so much for giving us two weeks of your  
8 life, and thank you so much for the attention that you have  
9 shown to me and Mr. Emory through this process.

10 THE COURT: Thank you.

11 \*\*\*\*\*End of Excerpt\*\*\*\*\*

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

13 MONDAY, OCTOBER 4, 2010

14 MORNING SESSION

15 \*\*\*\*\*Beginning of Excerpt\*\*\*\*\*

16 (The jury is not present.)

17 THE COURT: All right. Based upon the jury's  
18 verdict, it would appear that under -- I'm looking at  
19 36(c)-7-704, which provides for vacancy and trusteeship and  
20 appointment of successor. It would appear that the next  
21 order of business with regard to the -- after this verdict  
22 is that the person designated in terms of the trust is -- is  
23 designated or appointed to act as trustee. That would be,  
24 according to the -- the deed of the North Carolina State  
25 Board of Education, and that should the North Carolina State

1 disbursement of the trust proceeds -- the trust property and  
2 land. That seems --

3 What do you say about that, Mr. Francis?

4 MR. FRANCIS: I agree with that, Your Honor.

5 THE COURT: Okay.

6 MR. FRANCIS: It seems to me -- if I could just  
7 follow up on what you were saying?

8 THE COURT: Yes.

9 MR. FRANCIS: It seems to me that you just said  
10 the next step is to ascertain whether the State Board of  
11 Education is going to serve as successor trustee or is going  
12 to, and as I understood may be the case, reiterate their  
13 declination to serve.

14 THE COURT: Absolutely.

15 MR. FRANCIS: And it seems to me that it's really  
16 not necessary for the Court to have a hearing just on that  
17 issue. They can just make that known to me and Mr. Emory  
18 and then submit that as a motion in the cause in this case  
19 without having a hearing on it. And then if they choose to  
20 be the successor trustee, then we don't need to get to the  
21 next issue because they take it over.

22 If they decline to be the successor trustee, then  
23 it would seem to me it would be our responsibility as the  
24 prevailing party, and the one who is seeking to terminate  
25 the trust, to give notice to all of the Sharpe descendants