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NORTH CAROLINA)
COUNTY OF ONSLOW)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
86-CVS-1466

HAMMOCKS BEACH CORPORATION,)
a nonprofit corporation,)

A TRUE COPY
CLERK OF SUPERIOR COURT
ON SLOW COUNTY

Plaintiff)

BY *[Signature]*
Assistant, Deputy, Clerk Superior Court of
ON SLOW COUNTY, N.C.
CONSENT JUDGMENT

-vs-)

THE FRESH AIR FUND, et al,)

Defendants)

FILED
OCT 29 AM 11:33
ON SLOW COUNTY, N.C.

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.

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could retreat from the
Hammocks became dear to Dr.

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 acquired 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 over each of the parties to this action.
- (b) There is substantial evidence, 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 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 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 29th day of October, 1987.

David E. Smith
 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 Hurst Cook
Venice H. Cook

JTC
John T. 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

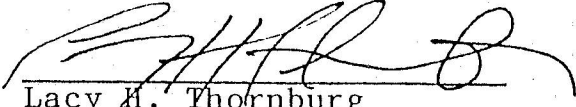
Womble Carlyle Sandridge & Rice

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

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
Attorney General

HAMMOCKS BEACH CORPORATION

BY: *Ruth B. Jones*

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

BY: *[Signature]*

Attorneys for Hammocks Beach Corporation