

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

ASSOCIATION TO PRESERVE THE
EATONVILLE COMMUNITY, INC., and
BABETTA ROSE LEACH HATLER,

Plaintiffs,

v.

SCHOOL BOARD OF ORANGE

Defendant.

Case No.: 2023-CA-005295-O

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND SUPPLEMENTAL RELIEF**

1. Founded in 1887 by newly emancipated African Americans, the Town of Eatonville, FL (“Eatonville” or “the Town”) is one of the first all-Black incorporated municipalities in the United States and one of the last to survive intact to the present day. Black residents comprise approximately 73% of Eatonville’s current population.

2. This action concerns real property (“the Hungerford property”) located in the Town that, with the help of charitable donors, was set aside for the education of the Town’s children by newly emancipated people seeking to carve out a future for themselves and their descendants.

3. Long denied education under the U.S. system of slavery and a segregated school system,

5. The School Board has been engaged in efforts to sell the remaining parcels of the property for its own profit after agreeing to pay what it contends are the successor trustees of the original trust \$1 million in exchange for the release of the 1951 deed restriction/restrictive covenant in 2022 (“the 2022 Deed Release”).

6. Most recently, the School Board had executed a sales contract with a private developer to build a mixed-use residential/commercial development on the property. The developer terminated the sales contract on March 31, 2023. This is the latest in a series of actions taken by the School Board to profit off the sale of the Hungerford Property over the past several decades.

7. This action seeks a declaration from this Court that the 1951 deed restriction/restrictive covenant (attached as Exhibit 1)

11. This Court has jurisdiction to issue a declaratory judgment and supplemental relief pursuant to Fla. Stat. § 86.011 (2022).

12. This Court has jurisdiction to construe deeds and determine any question of construction or validity pursuant to Fla. Stat. § 86.021 (2022).

13. The circuit court

17. Defendant School Board of Orange County, FL, is a district school board located in Orange County, FL, formed in accordance with the provisions of § 4(b), Art. IX of the state constitution, with the powers to operate, supervise, and control all free public schools in the Orange County public school district. *See Fla. Stat. § 1001.32(2) (2022)*. The School Board has the capacity to sue and be sued.

STATEMENT OF FACTS

Historical Background of the Hungerford Property

18. Shortly after the Town’s incorporation in 1887, the first residents prioritized education for the Town’s children and set aside a large tract of donated land (“the Hungerford Property”) to establish the Robert Hungerford Normal and Industrial School (“the Hungerford School”).

19. The Hungerford School was named in memory of Robert Hungerford, whose parents Edward and Anna Hungerford donated 160 acres of land for the school and whose descendant, Ms. Hatler, brings this litigation.

20. Established in 1897, the Hungerford School was the first school for Black children in Central Florida and operated as a private school in the model of Booker T. Washington’s Tuskegee Normal and Industrial Institute.

21. For more than half a century, the Hungerford School served as a center of Black excellence and a backbone of the community.

22. There were few public schools offered to Black children in Central Florida at the time that the Hungerford School was established.

23. The school and its property were part of a charitable trust.

24. The original trust document, dated April 20, 1899, conveyed the Hungerford Property to eight trustees “and their successors and assigns forever.”

25. The trust settlors, Edward Hungerford and Anna Hungerford, executed a trust deed and conveyed the Hungerford Property to the trustees in fee simple title for the purpose of “the creation of a public charitable trust consisting of a coeducational normal school for negroes.”

26. In *Jordan v. Landis*, 175 So. 241 (Fla. 1937), the Florida Supreme Court found that the 1899 trust instrument did not support the right of trustees to convey the property, but rather to hold it in trust and continue it in a state of succession forever.

27. The *Landis* court stated that trustees who hold land conveyed to them in trust have no other rights than are given in the trust instrument.

28. The *Landis* court found that the trustees named in the deed of 1899 had no authority expressly or impliedly given to convey the property because none was given by the trust instrument or by the order of a court of chancery.

29. The *Landis* court cancelled a deed from January 1924 because the transfer of trust property was made without authority of law and was therefore void.

The School Board’s Acquisition of the Hungerford Property

30. Education was long denied to African American children as part of the systematic deprivation of human dignity and fundamental liberties on the basis of race under the brutal U.S. system of slavery.

31. During Reconstruction, Black civil rights activists across the U.S. South were at the forefront of calling for public school systems to educate all children as part of their fight to dismantle a pervasive system of laws and policies that denied educational opportunity based on race or color.

32. In 1951, the School Board acquired the Hungerford School and Hungerford Property—over 300 acres—through contested court proceedings, over the objection of Ms.

Hatler's grandmother, Constance Hungerford Fenske, the heir of the original donors of the Hungerford Property and the settlors of the Hungerford School trust.

33. The 1951 deed applied to the following legal description of the real property in Orange County, FL:

The SE 1/4 of the SE 1/4, the W 1/2 of the SE 1/4, the E 1/2 of the SW 1/4 and the NW 1/4 of the SW 1/4, all in Section 35, Township 21 South, Range 29 East, the NW 1/4 of the NE 1/4 of Section 2, Township 22 South, Range 29 East, and the E 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 21 South, Range 29 East, with the exceptions and reservations hereinafter set out, together with all and singular the tenements and hereditaments thereunto belonging or in anywise appertaining.

The following real estate was reserved and excepted

38. The School Board purchased the land from the Hungerford School successor trustees in exchange for \$16,571.56 and rent in the amount of \$416.67. *See Coddington v. Ervin*, No. 23174, at 3 ¶¶ 9–10 (Fla. 9th Jud. Cir., May 9, 1951); attached as Exhibit 1.

39. The School Board’s purchase price of \$16,571.56 for the Hungerford School and Property was a fraction of its estimated market value at the time, which was over \$200,000. Brief of Appellant at 107, 109, *Fenske v. Coddington*, 57 So. 2d 452 (Fla. 1952) (No. 22-558).

40. The School Board’s use of the Hungerford School and Property was restricted to the operation of a public school for Black children. Specifically, the circuit court ordered “[t]hat upon conveyance of said real and personal property to The Board of Public Instruction of Orange County, Florida, said real property shall be used as a site for the operation of a public school

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would be the best, and also with regard to any and all other questions involved herein.

Id. at 1 ¶ 2.

The School Board's Dual System of Public Schools

alternative school providing vocational training and career education for non-college bound students.

52. Eatonville residents initiated a lawsuit to preserve the name of the school due to its historical significance to the town.

53. Over Eatonville residents' clear opposition, the School Board renamed the Hungerford School as "Wymore Career Education Center."

54. The School Board closed the school in 1999, but then reopened it as Hungerford Preparatory High School.

55. The School Board closed Hungerford Preparatory High School in 2009.

56. The School Board closed the school a year earlier than originally planned to save

The 1974 Court Decision Releasing the 1951 Deed Restriction/Restrictive Covenant from Portions of the Hungerford Property

69.

76. The School Board did not have the legal authority to unilaterally consent to removal of the deed restriction/restrictive covenant without first petitioning and receiving approval from the circuit court as it had in the 1974 proceedings.

77. Eatonville and the School Board did not have adverse and antagonistic interests to each other, which are required elements of an action for declaratory judgment under Ch. 86 of the Florida Statutes.

78. Even though Eatonville and the School Board appeared to be adversarial parties in this lawsuit, they were cooperating, and indeed were contractually obligated to each other, to achieve the same goal—the release of the 1951 deed restriction/restrictive covenant requiring that the property be used for the education of Black children.

79. Because the property at issue was no longer part of the trust property controlled by the successor trustees of the Hungerford Chapel Trust, the trustees named as defendants in the lawsuit were not proper parties.

80. The Florida Attorney General was not a party to the 2011 *Allen* lawsuit.

81. If the lawsuit involved trust property, then the Florida Attorney General was a proper party to represent the rights of a qualified beneficiary of a charitable trust having its principal place of administration in the State: in *Allen*, the children of Eatonville or the public at large were the intended beneficiaries of the deed restriction/restrictive covenant restricting the use of the land for educational purposes.

83. The Florida Attorney General may represent the interests of charitable trust beneficiaries and the public with regard to the existence of a general charitable purpose, *see* Fla. Stat. §§ 736.0110(3), 736.0405, warranting the use of the cy pres doctrine, *see* Fla. Stat. § 736.0413. The Florida Attorney General may also represent beneficiary interests where, as here, there is a failure or lack of authority of the trustees to protect those interests.

84. Florida has long followed the rule that the beneficiaries of a trust are indispensable parties to a suit seeking to terminate the trust and dispose of trust property. Assuming, as the parties in the 2011 *Allen* litigation did, that the successor trustees of the Hungerford Chapel Trust retained a legal interest in the Hungerford Property, then there was a failure to join the beneficiaries as an indispensable party.

85. Without the Florida Attorney General, there were no parties properly representing the interests of the public and the intended beneficiaries of the trust, in an action to dissolve a restrictive covenant instituted to effectuate the purposes of the original charitable trust.

86. The Town of Eatonville and the Hungerford Chapel Trust executed a joint stipulation for release of restrictive covenant in 2011, which was subsequently approved by the circuit court.

87. The School Board, the owner of the Hungerford Property, is not a signatory to the 2011 joint stipulation.

88. Eatonville and the Hungerford Chapel Trust agreed as follows in the 2011 joint stipulation:

that the restrictive covenant/deed restriction described in the complaint filed in the above styled case shall

described in Exhibit 'A' attached to the Complaint filed in the above styled cause, that is purchased by the town's developer.

89. In 1951, the circuit court's final decree in *Coddington v. Ervin* described the deed restriction/restrictive covenant as follows:

That upon the conveyance of said real property to the Board of Public Instruction of Orange County, Florida, said real property be used as a site for the operation of a public school thereon for negroes with emphasis on the vocational education of [N]egroes and to be known as "Robert Hungerford Industrial School"

of the original trust. Assuming, as the parties in the *Allen* litigation did, that the property at issue was still trust property, then there was a failure to join an indispensable party in the 2011 *Allen* litigation, the Florida Attorney General, and the 2015 settlement agreement is void.

96. The Town of Eatonville voluntarily dismissed the case on November 23, 2015.

97. After dismissal of the case, the parties subsequently executed a First Amendment to Settlement Agreement in 2016.

98. The 2016 amended settlement agreement was recorded with Orange County as Do(C)2nTc 0.002 r[Sith

104. There is no indication from public court filings who will benefit from the \$1 million dollars in exchange for releasing a deed restriction/restrictive covenant intended to benefit the children of Eatonville.

105. There is no indication from public court filings why the settlement agreement was amended to provide for an exchange of money, when the prior settlement agreement approved by the circuit court did not contain such a provision.

106. The School Board's fiscal impact statement for the amended settlement agreement, presented at a December 13, 2016, School Board Meeting, stated: "The Amendment to the Settlement will provide a \$1,000,000 payment to the Trust. However, without lifting the educational restrictions the entire parcel would be substantially restricted in its overall value."

107. The School Board also noted that it had sold a portion of the Hungerford tract for \$1,400,000 to Host Dime, LLC, and that those proceeds would be used to compensate the Trust and record the relevant documents.

108. The 2016 settlement agreement is void because it extinguishes a deed restriction/restrictive covenant that furthers the charitable purpose of a public trust.

109. The Hungerford Chapel Trust has no authority to release a deed restriction/restrictive covenant that is for the public benefit and is not specific to a personal interest or duties held by the trust. The 1951 deed restriction/restrictive covenant benefits the children of the Town of Eatonville, and the public at large, whose interests were not represented in the 2011 litigation, nor in the private contract entered into in 2016 by the parties to the 2011 litigation.

110. The Hungerford Chapel successor trustees are not acting for the benefit of the public charity as originally established and retain no authority to remove a deed

covenant. The fact that the Hungerford Chapel Trust successor trustees retained no legal interest in the Hungerford Property was confirmed by this Court in 1974.

118. The deed restriction/restrictive covenant is a public right related to the School Board's title to the land, not a private interest held by the Hungerford Chapel Trust.

119. The Hungerford Chapel Trust successor trustees have no authorization, either in the trust instruments or under law, to release this deed restriction/restrictive covenant.

120. Due to the lack of legal authority, the deed release is void and the 1951 deed restriction/restrictive covenant remains valid and in effect as to the portions of the Hungerford Property currently owned by the School Board that were not released from the deed restriction/restrictive covenant in 1974.

121. This Court retains the ability to apply cy pres to modify, instead of extinguish, the deed restriction/restrictive covenant to ensure that the charitable purposes of the trust continue in connection with the use of the land. Full removal of the educational restriction, which would defeat the purpose of the original charitable trust, is not required or warranted.

The School Board's Actions to Sell the Hungerford Property

122. The School Board and Eatonville entered into various sales contracts related to the Hungerford Property, the most recent from 2019 (and as subsequently amended), where the School Board, upon selecting a developer, would sell the land to Eatonville for \$10 million plus reimbursement of other costs.

123. These costs were not specifically enumerated, but included reimbursement for any costs, expenses, liabilities, or commissions associated with acquiring, releasing, purchasing, redeeming, or clearing the Hungerford Chapel Trust's interest in the property.

161. A “best interests” analysis under Florida law is typically a fact-intensive inquiry.

162. Rule 6A-2.0010 of the Florida Administrative Code was adopted to implement Chapter 1013 of the Florida Statutes.

163. Rule 6A-

174. The School Board's decision to dispose of the Hungerford Property is not in the best interests of Eatonville children, who are the intended beneficiaries of this land held in trust for educational purposes for more than a century.

175. The "best interests" of the community and the youth in the historic Town of Eatonville should specifically be part of the inquiry by the School Board in determining whether the sale of the property is in the "best interests of the public."

176. Public comment at multiple community meetings in Eatonville, as well as at the Eatonville Town Council meeting on February 7, regarding the proposal to develop the property questioned why there is no effort being made to continue to use the land in a way that benefits the youth or that promotes education for the current residents of Eatonville.

of the public, and complies with the School Board's duties under law and under the 1951 deed restriction/restrictive covenant.

180. The School Board has the ability and the legal obligation to preserve the land for educational purposes in alternative ways that will benefit the community and its children and in ways that recognize the educational, aesthetic, emotional, and economic benefits of preserving this historic land.

P.E.C.'s Interest in Preserving the Hungerford Property for Educational Purposes

181. P.E.C. was incorporated in 1988 as a Florida 501(c)(3) nonprofit corporation.

182. P.E.C. has an interest in preserving the historic Hungerford Property for educational and cultural heritage tourism that will bring economic prosperity to Eatonville today and ensure Eatonville's posterity.

183. P.E.C.'s mission is to promote Eatonville, Florida's considerable heritage and historical and cultural resources as a means for the community's revitalization and economic development via programming which promotes pride of heritage, educational excellence, and the cultural arts. Additionally, the P.E.C. seeks to preserve and protect the community for posterity.

184. P.E.C.'s vision is to make Eatonville an internationally recognized cultural tourism destination for the arts and culture throughout the African Diaspora, with special emphasis on the multi-disciplines as represented by the life and work of Zora Neale Hurston.

■ P.E.C. began as a grassroots movement of Eatonville and neighboring Maitland residents, and interested citizens in Orange County, who fought the expansion of Kennedy Boulevard (from the intersection of Wymore Road and East Kennedy Boulevard in Eatonville to the intersection of Lake Avenue and U.S. 17-92 in Maitland), the main thoroughfare connecting the two communities, from two lanes to five lanes.

186. P.E.C.'s opposition to the lane-widening of Kennedy Boulevard is now codified in Eatonville's 2018 Comprehensive Plan, Mun. Ord. 2018-01, in Policy 1.12.22.

187. P.E.C.'s address is 344 E. Kennedy Blvd., Eatonville, FL 32751.

188. The P.E.C.'s principal place of business is located in close proximity to the

cultural contributions that persons of African ancestry have made to the United States and to the world.

195. Now in its 34th season, the ZORA!® Festival is the country's longest running arts and humanities festival celebrating the cultural contributions that people of African ancestry have made throughout the African diaspora.

196. During the month of January, as well as on a year-round basis, people travel to historic Eatonville from across the country, and from around the world, to visit the Hurston Museum and to attend the ZORA!® Festival.

197. For over three decades, P.E.C. utilized the Hungerford school campus and facilities to present the annual ZORA!® Festival and other programs, such as educational conferences.

~~198.~~ In addition to festival programs, P.E.C. presented summer teacher training workshops and special public programs on education and heritage.

199. In the 2000s, P.E.C. used the Hungerford Property to store the organization's historical archives as well as festival equipment and materials on campus. P.E.C. moved everything in the year prior to the school being demolished.

200. P.E.C. also operates the Excellence Without Excuse (E-WE) Community Arts Lab and Learning Center, an academic support system, to help Eatonville's children be successful in school and life. E-WE provides academic, afterschool and summer programs to support students with schoolwork when such help may not be available to them; to help students reach at least their appropriate grade level in reading, math, science, and writing skills; to provide them needed access to reliable technology; and, in the summer, to help students retain and build on what they have learned in school.

201 Since it began in 1997, E-WE

216. Since the time that Eatonville was founded in the wake of Emancipation, the Town's development has been organized around the use of the Hungerford Property for educational purposes.

217. The Hungerford Property has been utilized for the educational benefit of the Black children of the Town continuously for more than a century, including during many years of court-supervised desegregation orders spanning the latter half of the twentieth century and into the beginning of the twenty-first century.

218. The property at issue is a site of national significance in American history.

219. P.E.C. has an interest in ensuring that the Hungerford Property's unique historical and cultural significance is considered and protected in land use decisions about the development of this land.

220. P.E.C.'s objections to the developer's proposal, a developer selected by the School Board, detailed the ways in which the planned development would not benefit the community and instead would have served as a catalyst for gentrification and displacement of a historical Black community.

221. P.E.C.'s objections to the developer's proposal—a proposal only made possible by the School Board's actions failing to safeguard the property for educational and public purposes—raised concerns about the increased intensity/density of the proposed residential/commercial uses of the land, the lack of affordable housing, the increased traffic, the failure to account for increased infrastructure needs, and the lack of any attention to historic and cultural preservation that will impact P.E.C. and its mission.

222. By participating in this sale—and agreeing to pay the Hungerford Chapel trustees \$1 million in exchange for the anticipated profits from selling unencumbered land—the School

Board failed to protect land entrusted to it for educational purposes that is sacred to the preservation of the history of the Town and, due to its size and location in the heart of Eatonville, pivotal to the Town's future economic and cultural survival.

223. Now that the sales agreement has been terminated by the developer, P.E.C. seeks to ensure that the School Board complies with Florida law and acts on its obligations to ensure the disposal of the property is consistent with the public interest and the purpose of the original charitable trust.

224. The 1951 deed restriction/restrictive covenant was made for the benefit of the children of the Town, and P.E.C. has an interest in protecting and preserving this restriction that runs with the land and benefits its museum and activities in the Town as neighboring properties of the Hungerford Property and as an organization engaged in historical preservation and education.

225. Most recently, P.E.C. received a grant from the Florida Humanities, with funds from the National Endowment for the Humanities, to host a series of "Community Conversations: Principles of Land Development in Historic Eatonville."

226. This series of discussions, hosted in the Winter, Spring, and Fall of 2023, was for the purpose of informing the public about the importance of preserving and developing the land in the Town of Eatonville.

227. P.E.C.'s mission depends on responsible development of the Hungerford Property, in a way that preserves its history and continues its public purpose of education. P.E.C.'s interest in the Hungerford Property and its future development is therefore greater than the interest of the public at large.

228. If the Hungerford Property is allowed to be sold in this manner in the future, without any court scrutiny of the deed, the deed release, and the School Board's failure to comply with its

duties under law

246. Ms. Hatler believes that the School Board's actions—namely, its attempts to buy out the deed restriction/restrictive covenant on the Hungerford Property and bypass State law governing disposal of the Property—threaten Eatonville's legacy as a beacon for educational

253. This Court has the power to construe any question of construction or validity of the deed and the deed release under Fla. Stat. § 86.021 (2022).

254. There is a bona fide, actual, present, practical need for the declaration. Whether Defendant School Board has clear title to the land allowing it to sell the Hungerford Property without the 1951 deed restriction/restrictive covenant dedicating the property to educational uses, is a bona fide dispute.

255. The declaration deals with a present, ascertained, or ascertainable set of facts or present controversy as to a set of facts.

256. Plaintiffs have an immunity, power, privilege, or right that is dependent upon the facts or the law applicable to the facts.

257. Plaintiffs have an actual, present, adverse, and antagonistic interest in determining whether the 1951 deed restriction/restrictive covenant continues to restrict the use of the land for educational purposes.

258. P.E.C. operates nonprofit educational and civic facilities (the Hurston and E-WE) on properties that are located in close proximity to the Hungerford Property and in the past on the property itself, which has been dedicated for educational purposes for more than a century for the benefit of neighboring properties and the Town's children. The Town has been built around the use of this property for this specific purpose since 1897, and again since 1951, when the deed restriction/restrictive covenant was put in place in connection with the conveyance of the land to the School Board.

259. Plaintiff P.E.C.'s ability to shape the future development of this property in a way that protects its history and safeguards the Town's future depends on clarity as to the School

Board's obligations and legal duties related to disposal of the Property and the 1951 deed, which inures to the benefit of the children of the Town and the Town's neighboring properties.

260. Plaintiff Ms. Hatler's family donated the land on which the Hungerford School historically stood and established the trust defining the original educational purposes of the land. The Hungerford School was a memorial to her family.

261. Ms. Hatler's ability to carry forward the Hungerford family's historical involvement in the educational purposes of the Hungerford Property and protect her family's name depends on clarity as to the School Board's obligations and legal duties related to disposal of the property and the 1951 deed, which inures to the benefit of the children of the Town and the Town's neighboring properties.

262. The antagonistic and adverse interests at issue are before the court by proper process.

263. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded by curiosity.

264. This Court has the power to grant full relief to this action, which lies in equity, in the form of a declaration of rights and related relief supplemental to the grant of a declaratory judgment as necessary and proper.

**SECOND CLAIM FOR RELIEF
AGAINST DEFENDANT SCHOOL BOARD
Florida's Declaratory Judgment Act § 86.011
Compliance with Statutory Procedures for Disposal of School Property**

265. Plaintiffs incorporate and re-allege paragraphs 1 through 247 as if fully set forth here.

273. The School Board's actions impact P.E.C.'s mission to preserve the history and future of Eatonville by disregarding the best interests of the public in its decision-making around the demolition and sale of the property.

274. The School Board's actions impact Ms. Hatler's ability to safeguard the Hungerford family's historical mission to further the educational opportunities for children in Eatonville and preserve the Hungerford family's legacy.

275. The antagonistic and adverse interests at issue are before the court by proper process.

276. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded by curiosity.

277. This Court has the power to grant full relief to this action which lies in equity, in

of the Hungerford Property until it has complied with its legal obligations under the 1951 deed and under Florida law;

IV. Award costs as are equitable pursuant to Fla. Stat. § 86.081 (2022); and

V. Award such other relief as this Court deems just and proper.

Dated: July 12, 2023

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