IN THE SUPREME COURT OF THE STATE OF VERMONT

CASE NO. 25-AP-148

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead
Plaintiff/Appellant

v.

The President & Fellows of Middlebury College
Defendant/Appellee

APPEALED FROM: Vermont Superior Court, Civil Division, Addison Unit
CASE NO. 23-CV-01214

APPELLANT'S REPLY BRIEF

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead,
Plaintiff/Appellant

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STATEMENT OF CROSS-APPEAL ISSUES

1. Should this case be dismissed on the ground that the Court lacks subject matter jurisdiction?

2. Should judgment on the Mead Estate's claims be affirmed on the alternative ground that the law of charitable gifts, not contract law, governs claimed conditions on charitable donations?

3. Should judgment on the Mead Estate's contract claim be affirmed on the alternative ground that the undisputed facts cannot establish any enforceable contractual obligation to maintain the Mead name on Middlebury's chapel?

4. Did the trial court correctly rule that there was no specific contractual obligation to maintain the Mead name on Middlebury's chapel in perpetuity and that Middlebury had satisfied the reasonable term of any obligation that might exist by maintaining the name for more than a century?

5. Did the trial court correctly grant summary judgment on the Mead Estate's claim for breach of the implied covenant of good faith and fair dealing?

6. Did the trial court correctly grant summary judgment on the Mead Estate's claim for promissory estoppel?

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

1. The Parties and Mead Memorial Chapel

Middlebury College is not a public charity.

"This case does not involve a charitable trust."[1]

Middlebury College is a private educational institution.

Middlebury College's endowment is valued at $1.5 billion.

Mead did not offer to donate money.

He offered to erect a chapel to be known as the "Mead Memorial Chapel".

Mead's offer was accepted *verbatim* by the Trustees.

From 1914 to 1916, Mead erected the Mead Memorial Chapel. He approved the architectural plans (which detailed the "Mead Memorial Chapel" signage specifications), negotiated the purchase of materials and labor, supervised the construction, and paid the labor and material invoices both directly and through the college, completing his payments in 1916.

The funds that Mead spent on the construction of the Mead Memorial Chapel preceded the institution of the charitable donation income tax deduction which was not instituted into the very new US Tax Code until 1917. Thus, obtaining the benefit of a tax deduction could not have been a motive for Mead's offer to erect the chapel.

The facts of this case are unique and easily distinguishable from so-called "donor" cases. That is because John Abner Mead was not a donor of funds, he was the builder of a chapel that was to memorialize his ancestors and symbolize the Vermont character. The chapel was offered to Middlebury College with the highly respected Mead family name attached, an essential term of the contract that was not just accepted, but was enthusiastically embraced by the Defendant and used successfully by the College for marketing purposes far and wide.

[1] Ruling on Middlebury's Motion to Dismiss, 08/04/2023 at p. 2-3 (emphasis supplied). PC Vol. I – p. 008-009.

Middlebury College's website explains the importance and significance of the Mead Memorial Chapel which symbolizes the aspirations of the College, just as Mead intended:

> "This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."
>
> "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"

PC-Vol.I-334 and PC-Vol.IV-260.

Middlebury College's Professor Emeritus, History of Art and Architecture, Glenn Andres who detailed the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stated: **"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."** PC-Vol.I-334.

In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. PC-Vol.I-335.

After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which they used to "stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." PC-Vol.I-336 and PC-Vol.IV-232-246.

In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold. PC-Vol.I-336 and PC-Vol.IV-247-251. In December of 1916, John Abner Mead agreed to pay additional amounts over and beyond the final agreement with

the Trustee for Hymn Boards to be installed in the Mead Memorial Chapel at cost of $1,559.39. PC-Vol.I-337 and PC-Vol.IV-252-256.

John Abner Mead made other financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel, i.e., $1,000 in 1918 to the Endowment Fund. He left no provision for Middlebury College in his Last Will and Testament. PC-Vol.I-337 and PC-Vol.IV-257-258.

2. <u>Mead's Charitable Gifts to others - Risk vs. Trust</u>

It is true that Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." PC-Vol.I-337 and PC-Vol.IV-271. Defendant seeks to make much of the fact that in establishing the Community House, Mead signed a reversionary deed that was obviously prepared by a real estate attorney, a fact that has no bearing on his offer to Middlebury College made two years earlier. Factually there is no relevance for the following reasons:

1) The deed was signed two years after Mead's offer to the college,
2) The deed was obviously prepared by a real estate attorney,
3) The deed was required in order to convey real estate,
4) The conveyance of real estate was for the purposes of setting up the youth center, a new, unknown, and undoubtedly risky venture that had some significant chance of failure which was appropriate to protect with such a deed.

Another fundamental difference relating to the risk that this comparison raises is the issue of trust. From the Trustees' Letters accepting Mead's offer, to Rev. Barton's Acceptance Speech at the Groundbreaking, to Dr. Brainerd's Acceptance Speech at the Dedication Ceremony, to Mead's Eulogy by President Thomas, to the Board's tribute to Mead in their 1920 Minutes, to the hundreds of letters between Thomas and Mead, we see that Mead was not only held in the highest esteem for his amazing accomplishments and beneficence, but was a "beloved classmate bound together for 56 years by ties of the warmest friendship", and served on the Board with the other Trustees for decades, working in concert with one another to build a College of great importance, even if their "updated curriculum" included Eugenics.

It is the trust that Mead had with his fellow trustees and their shared understanding that a promise to name a building as a memorial to honor and remember ancestors, was a promise forever. Moreover, this was a religious chapel that was to memorialize the Mead ancestors who embodied and symbolized the "simplicity and character of the inhabitants" of the area and the removal of the Mead name is a breach of a sacred promise that was made through the prayers and dedications offered to the Mead Memorial Chapel and Governor Mead.

One can suppose and legally infer, that it is that trust, that prevented the insertion of some sort of language such as "in perpetuity" with regard to the name Mead Memorial Chapel. However, there is no evidence to suggest that "in perpetuity" language was even being used at that time and place in history. Therefore, we have absolutely no evidence to suggest that it would have ever occurred to the parties, to specify that a name in quotation marks with the verbiage "the same to be known as", would have only temporary effect for some finite time period. A name is a name as long as the named someone or something exists.

Moreover, Middlebury was in the business of enticing donors to make massive donations towards needed buildings, offering naming rights to donors who were only providing 25% of the cost to construct buildings, not the 98% that Mead paid. So, why would anyone think there would ever be a reason to expect that the name of one so revered, who was a giant of his time and a hero to Vermont and to Middlebury College, would ever be removed from a sacred chapel that was blessed and dedicated with a Scripture Lesson from the original Mead family Bible, with a Cornerstone filled with Little John's Bible and his family tree, and with the Chime of Bell inscriptions with the Mead names and Bible verse? It would have been inconceivable to all of the parties in 1914, that the Mead Memorial Chapel name would ever be removed, unless the building burned down and no longer existed.

In addition, there was simply no need to insert the term "in perpetuity", because it was understood and repeatedly demonstrated by the many examples, that it was universally understood: by the parties, the faculty, the newspapers, and the public, that the Mead Memorial Chapel would bear the Mead family name for as long as the Chapel existed. Being made from the most beautiful Vermont marble, that was expected to be a very, very long time, lasting for the

future generations who were specifically and repeatedly referenced by the Trustees.

3. **Defendant's Pattern & Practice re: Alterations to Named Buildings**

There is other evidence that should be considered regarding the Defendant's pattern and practice of obtaining donor approval and consent to significant changes or alterations to buildings. In particular regarding the Mead Memorial Chapel.

On June 14th, 1920, about 6 months after John Mead's death, Pres. Thomas wrote to Mead's son-in-law, Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

> "My thought is that it is something that ought to be borne in mind to be done at the proper time and that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead."

PC-Vol.IV-260.

On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed Mrs. Hinsman's (Mead's daughter) strong desire that it be restored stating, "[we] feel it quite a calamity if the spire was removed entirely. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with." PC-Vol.IV-261.

On May 8th, 1931, Pres. Moody wrote to Carl Hinsman saying the matter was settled and that they would proceed with repairs to the spire. PC-Vol.IV-262.

On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, in which he stated:

> . . . And **we did wish to have your consent to any change made in a building given to the college by your father.**
>
> **In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr**

> **family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement.** He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. **We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.**

PC-Vol.IV-263.

Moreover, in 1985, when a donor offered a 36 bell carillon to add to the original 11 bells donated by the Meads, 7 of the original 11 bells were recast and were ordered to be re-engraved with Mead's gift and Bible verse:

> "Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:
>
> GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
> PRESENTED TO MIDDLEBURY COLLEGE BY
> JOHN ABNER AND MARY SHERMAN MEAD
>
> A. D. 1915
>
> RING IN THE VALIANT MAN AND FREE
> THE LARGER HEART THE KINDLIER HAND
> RING OUT THE DARKNESS OF THE LAND
> RING IN THE CHRIST THAT IS TO BE"

PC-Vol.IV-264, 115-119.

4. <u>Other Named Buildings</u>

President Thomas was particularly active in the business of enticing donors to make massive donations towards needed buildings, offering naming rights even when not requested by the donor. The following examples were found by Plaintiff among the Middlebury College document archives:

- **<u>Pearsons Hall</u>** - On February 9, 1910, Pres. Thomas wrote to D. K. Pearson soliciting money and stating, "***We want to call it Pearsons Hall, if you will let us.***" PC-Vol.I-343 and PC-Vol.V-008-021, (020).

- **<u>McCullough Gymnasium</u>** – On February 9, 1910, Pres. Thomas wrote to John G. McCullough: "But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement." PC-Vol.I-343 and PC-Vol.V-022-037, (023-024).

- **<u>Gifford Memorial Hall</u>** - On July 20, 1939, The President and Fellows of Middlebury College acknowledged Mrs. Giffords generous offer which contained the exact same verbiage as the Mead Offer Letter 25 years earlier:

> "...in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, <u>to be known as, "The James M. Gifford Memorial Hall for Boys"</u>, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.

PC-Vol.I-345 and PC-Vol.V-043-062 (062).

But perhaps, the most important document which was discovered in the Gifford Building archives is the October 31, 1940 Board Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

> "The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."

PC-Vol.I-346 and PC-Vol.V-063.

This letter provides us with a definitive admission by the Defendant that Mead was absolutely considered one of "the great names of the College" and using his name and others, to entice Mrs. Gifford to donate $250,000 in funds to erect a memorial to her husband, with the promise that Gifford's name would be "preserved" forever, just like the other greats of the College. This is also evidence of Middlebury College's use of naming rights as an enticement to donors and it is further proof that the 2021 actions of the Defendant in removing the Mead name, was in contravention of the promises, understanding and agreement between the parties, which Defendant has breached with its erasure of John Abner Mead and the Mead family name.

B. OTHER IMPORTANT POINTS

The issues on appeal turn on one main question: whether there was a clear meeting of the minds (contract) or an enforceable promise (Promissory Estoppel) regarding whether the name, “Mead Memorial Chapel” was permanent, that is, whether the Mead name would remain on the chapel as a memorial, for as long as the building existed.

Plaintiff/Appellant’s believes that Mead’s Offer (which was accepted *verbatim*) is unambiguous, and that it strains credulity to suggest that the 1914 Trustees of Middlebury College did not intend that the Mead Memorial Chapel would be the name of the chapel for as long as the chapel existed.

While the 2021 Trustees may no longer like the deal that was struck by their predecessors, they don’t have the legal right to undo or void the College’s performance or to frustrate the essential purpose of the contract.

Plaintiff/Appellant as the non-moving party is entitled all reasonable inferences. Therefore, based upon all the facts and circumstances, it is reasonable to infer that the parties’ intent was that the memorial chapel named in honor the Mead family was intended to be named Mead Memorial Chapel for as long as the building lasts.

Contrary to Defendant’s claim, Plaintiff does object to and takes issue with the notion that a reasonable time for the name to adorn the Chapel is 100 years. That is not a reasonable time in light of all of the facts and circumstances, which establishes without doubt that the intent of the parties was a permanent memorial with the Mead name adorning the chapel.

ARGUMENT

I. The Estate has Standing and Court has Subject Matter Jurisdiction

A. The Estate has Standing and the Special Administrator is fully authorized to bring a legal action on behalf of the Estate.

Vermont law permits a special administrator to "commence, prosecute, or defend, in the right of the deceased, actions that survive to the executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased," and to "prosecute or defend the actions commenced in the lifetime of the deceased." 14 V.S.A. § 1401; see also id. § 1451 (surviving actions include "actions that survive by common law").

A special administrator "may commence and maintain actions as an administrator." Id. § 963. *Maier v. Maier,* 216 Vt. 33, 39–40 (2021). See also *State v. Therrien*, 161 Vt. 26 (1993) (Wife of developer, against whom state brought claim on behalf of buyers of lots with defective septic and well systems, was proper party for substitution after developer's death, both as executrix and distributee. V.R.C.P. Rule 25(a)(1); 14 V.S.A. §§ 1401, 1417.); *Estate of Kuhling by Kuhling v. Glaze, 208 Vt. 273* (2018) (An executor of an estate may commence, in the right of the deceased, actions which survive, and are necessary for the recovery and protection of the property or rights of the deceased.)

Vermont law also permits Special Administrators, as the Settlor, a co-trustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust:

> **§ 405. Charitable purposes; enforcement**
>
> (a) A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes; or other purposes the achievement of which is beneficial to the community.
>
> (b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the Probate Division of the Superior Court may select one or more charitable purposes or

beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) **The settlor of a charitable trust,** the Attorney General, **a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.**

Vt. Stat. Ann. tit. 14A, § 405 (West). Furthermore, Vermont statutory law imposes principles of equity not inconsistent with Vermont statutes:

§ 106. Common law of trusts; principles of equity

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this State.

Vt. Stat. Ann. tit. 14A, § 106 (West).

Turning to the case at bar, the Estate of John Abner Mead was lawfully reopened, all heirs were notified and appeared in the Probate Court and consented to the appointment of the Special Administrator for the purposes of bringing suit against Middlebury College regarding the removal of the Mead family name from the memorial chapel. Consequently, the Rutland County Probate Court appointed Governor Douglas as Special Administrator of the Estate for the purpose of investigating and prosecuting the claim. If there was a breach of contract, a breach of a covenant, or a claim for promissory estoppel, the Estate is the party in interest, which is exactly who is suing the College through the lawfully appointed fiduciary, the Special Administrator.

A lawfully appointed fiduciary of an estate has standing to bring an action on behalf of the estate but must do so within a reasonable time. Vermont's statute of limitations for breach of contract is six years (12 V.S.A. 511) from the date the cause of action accrues, which was in 2021 when the Mead name was stripped from the Mead Memorial Chapel and the breach occurred. Thus, if the contract was breached in 2021, the Probate Court empowered the Special Administrator to pursue the breach of contract and/or breach of conditional gift claims in 2022, and after diligently investigating the claim, a Complaint was filed in 2023, unquestionably within a reasonable time as it is still four (4) years before the statute of limitations would bar the claims.

In summary, Plaintiff is fully authorized, as a duly appointed Special Administrator by the Vermont Superior Court, Rutland Unit, Probate Division, under the laws of the State of Vermont, to bring suit on behalf of the Estate of

John Abner Mead for breach of contract for a contract performed during his lifetime, and now breached after his death, as well as other and alternate claims relating to the same. Thus, the Court should deny Defendant's request for dismissal of the case based upon the erroneous suggestion that the Estate lacks standing to sue.

B. The Court has Subject Matter Jurisdiction

The Civil Division of the Superior Court has subject matter jurisdiction over the breach of contract, covenant and promissory estoppel claims brought by the Special Administrator. In the 2021 Vermont Supreme Court case *Maier v. Maier*, 216 Vt. 33 (2021), the special administrator sought enforcement of the parties' agreement which was executed during husband's lifetime by his guardian on his behalf, and the parties intended to be bound by it independent of any divorce action. The Court explained:

> ¶ 35. **The civil division is a court of general jurisdiction**. See 4 V.S.A. § 31; *Quinlan v. Five-Town Health All., Inc.*, 2018 VT 53, ¶ 27, 207 Vt. 503, 192 A.3d 390. As such, we presume that the civil division has "jurisdiction over all civil actions unless the Legislature has clearly indicated to the contrary." *Lamell Lumber Corp. v. Newstress Int'l, Inc*., 2007 VT 83, ¶ 7, 182 Vt. 282, 938 A.2d 1215. . . . we see no other statutory provision that would divest the civil division of its jurisdiction to entertain a breach of contract claim in this case. . . .
>
> ¶ 36. . . . **Consistent with the civil division's role as the court of general civil jurisdiction, such suits by executors or administrators of an estate to enforce a contract of the decedent are typically brought in the civil division of the superior court.** See, e.g., *Baldauf v. Vt. State Treasurer*, 2021 VT 29, —— Vt. ——, 255 A.3d 731 (involving suit filed in civil division by wife as administrator of deceased husband's estate alleging breach of contract); *Estate of Kuhling v. Glaze,* 2018 VT 75, 208 Vt. 273, 196 A.3d 1125 (involving suit filed in civil division by estate against decedent's surviving niece for breach of contract); *Benson v. MVP Health Plan, Inc.,* 2009 VT 57, 186 Vt. 97, 978 A.2d 33 (involving suit filed in civil division by administrator of estate alleging breach of contract against health insurer).

¶ 37. **Accordingly, the special administrator may seek to enforce the parties' agreement in the civil division of the superior court.**[5]

Maier v. Maier, 216 Vt. 33, 48–49 (2021)(footnote omitted)emphasis supplied).

Furthermore, the Plaintiff adopts and incorporates the Trial Court's Ruling on Middlebury's Motion to Dismiss, dated 08/04/2023 regarding the Court's Subject Matter Jurisdiction and Donor Standing which provides as follows:

> *Donor standing*
>
> To the extent that the underlying transaction falls under gift law, the parties refer to the propriety of a special administrator, as opposed to the Attorney General, bringing a suit of this sort on behalf of a donor's estate as one of standing, which in turn appears to lead them to characterize the matter as affecting the court's subject matter jurisdiction. The court presumes, however, that they use the term standing euphemistically to refer to the real-party-in-interest rule or simply whether there can be a cause of action. As the Vermont Supreme Court recently has summarized,
>
> > Vermont courts' subject-matter jurisdiction is limited to "actual cases or controversies." Standing is one of several prerequisites to satisfy the case-or-controversy requirement. It is thus "fundamentally rooted in respect for the separation of powers of the independent branches of government." "The gist of the question of standing is whether [the] plaintiff's stake in the outcome of the controversy is sufficient to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."
>
> Ferry v. City of Montpelier, 2023 VT 4, ¶ 11 (citation omitted). Middlebury does not argue that this case presents these sorts of issues and somehow strikes at the heart of the separation of powers among the branches.
>
> Rather, it argues that Governor Douglas is trying to do what only the Attorney General properly can. Rule 17(a) requires that "Every action shall be prosecuted in the name

of the real party in interest." Standing is frequently confused, often harmlessly, for other doctrines, including the real-party-in-interest rule and basic cause of action principles. See 13A Wright & Miller, Federal Practice & Procedure: Civil 3d § 3531. However, such "conceptual confusions" can have unintended consequences. Id. ("But conceptual labels may carry real consequences. Lack of 'standing' to raise a federal claim may persuade a court that it lacks subject-matter jurisdiction and cannot exercise supplemental jurisdiction. A decision characterized in standing terms may not carry the claim-preclusion consequences that should flow from what in fact is a dismissal for failure to state a claim." (footnotes omitted)).

A real-party-in-interest defect or the mere lack of a cause of action does not affect the court's subject matter jurisdiction, and the matter may be raised under Rule 12(b)(6) (failure to state a claim upon which relief may be granted) rather than Rule 12(b)(1) (defect in subject matter jurisdiction).4 5B Wright & Miller, Federal Practice & Procedure: Civil 3d § 1357.

Middlebury raises this issue only to the extent that this case falls under gift law as opposed to contract law. Either way, the court is not persuaded that there is a real party-in-interest defect or that the cause of action automatically fails because it is brought by an administrator on behalf of the donor's estate rather than by the Attorney General. Middlebury essentially argues that under the common law of Vermont, only the Attorney General can enforce a limitation on a completed gift in a charitable trust. It cites as authority only one Vermont case in which the Attorney General was involved in litigation over a charitable trust. **This case does not involve a charitable trust.**

More to the point, Middlebury has come forward with no concrete authority that would compel Vermont's Attorney General to take action in a case of this sort or require her to consider it. Nor has it convincingly explained why the Attorney General would have any interest at all in enforcing the disputed naming right "condition" in this case. While Middlebury points to out-of-state authority generally in support of its "standing" argument under the common law, that authority is not monolithic. See generally, e.g., Smithers v. St. Luke's-Roosevelt Hosp. Ctr., 723 N.Y.S.2d 426 (2001)

> (permitting wife of deceased donor to sue to enforce terms of charitable gift). The law in Vermont on this matter is substantially undeveloped, and the Vermont Attorney General has not attempted to intervene in this action or otherwise assert any exclusive authority to bring suit. Nor is there any statute or case law clearly so providing. It is apparent that Middlebury is not concerned that it should be facing a different adversary so much as it is simply trying to get the case dismissed. Without more compelling authority that the Vermont attorney general has exclusive authority to sue, in these circumstances, the court declines to conclude that the special administrator of Governor Mead's estate is an improper party to do so.

Ruling on Middlebury's Motion to Dismiss, 08/04/2023 at p. 2-3 (emphasis supplied). PC Vol. I – p. 008-009.

C. Vermont Law Does Not Bar Plaintiff's Claims

The Constitution of the State of Vermont, **Chapter I - A Declaration of the Rights of the Inhabitants of the State of Vermont** guarantees a remedy at law secured to all:

> **Article 4. [Remedy at law secured to all]**
>
> Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws.

Vt. Const. Ch. I, Art. 4.

Plaintiff has three claims: Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and alternatively, Promissory Estoppel. The primary remedy sought is Specific Performance or an Equitable Order to restore the Mead family name to the Mead Memorial Chapel. Alternatively, monetary damages are sought. Plaintiff believes it has established the elements for a breach of contract action. The historical documents provide

undisputed evidence of an offer, acceptance, and bargained-for consideration, which the parties renegotiated and modified twice after the original contract was accepted. The removal of the Mead family name was a breach of an essential term and central purpose of the contract.

While this case involves highly unique facts: the construction of a named memorial chapel by Mead, not a charitable pledge of funds, the following cases illustrate how courts have evaluated charitable pledges and naming rights agreements as enforceable contracts, and the various outcomes based on the specifics of each agreement and applicable law.

If a donor's pledge is induced by the promise of public recognition, courts have held that the arrangement is an enforceable contract rather than a mere gift. *See* William A. Drennan, Charitable Pledges: Contracts of Confusion, 120 Penn St. L. Rev. 477, 505 (2015).

The seminal, albeit complex, case on this issue is *Allegheny College v. National Chautauqua County Bank*, 159 N.E. 173 (N.Y. 1927), Mary Yates Johnston pledged $5,000 to the college, stipulating that the funds be used to create the "Mary Yates Johnston Memorial Fund" for ministry students. She paid $1,000 during her lifetime—which the college set aside for that specific purpose—but she later attempted to repudiate the remaining $4,000. Following her death, the college sued her estate.

Writing for the court, Justice Cardozo avoided the then-emerging doctrine of promissory estoppel, finding instead that an enforceable bilateral contract existed. His analysis centered on several key principles:

- Assumption of Duty: By accepting the initial $1,000, the college impliedly bound itself to fulfill the donor's memorialization request. Had the college treated the money as an anonymous donation, the donor would have been justified in refusing further payment.
- Sufficiency of Consideration: Cardozo famously noted that even "inadequate" consideration is legally sufficient to support a contract, stating that the "longing for posthumous remembrance" is a significant human desire, the gratification of which constitutes a "good" in the eyes of the law.
- Mutual Obligation: The college's duty to perpetuate the donor's name provided the necessary legal consideration to make the $5,000 pledge a binding obligation.

In *Woodmere Academy v. Steinberg*, 385 N.Y.S.2d 549 (N.Y. App. Div. 1976), the donor pledged $375,000, paying $175,000. In exchange, the school named its library after the donor's spouse, providing an "unconditional and unqualified assurance" the name would remain. The court enforced the pledge as a unilateral contract, finding the school fulfilled its obligation by naming the library.

In *Stock v. Augsburg College*, 2002 WL 555944 (Minn. Ct. of App. April 16, 2002) (unpublished opinion), the donor intended his $500,000 donation to be an exchange for naming the communications wing after him, not a conditional gift to the general fund. The court agreed a contract existed and that the college breached it by not naming the wing. However, the donor's claim was ultimately barred by the statute of limitations.

In *In re Carson Estate*, 37 A.2d 488, 489 (Pa. 1944), a school sought to raise funds for a new building to be named the "John F. Carson Memorial Hall." A sister-in-law pledged $5,000, payable upon construction beginning. The school raised insufficient funds and only placed an inscription on an existing building. The Pennsylvania Supreme Court ruled it was a contract with mutual obligations, and because the school failed to construct the *new* building as specified in the agreement, the sister-in-law was not obligated to pay the balance.

In *Paul & Irene Bogoni Foundation v. St. Bonaventure University*, No. 102095/08, 2009 WL 6318140 (N.Y. Sup. Ct. Oct. 6, 2009), the Bogoni Foundation pledged $1.5 million for the "Paul and Irene Bogoni Library Addition." After the Foundation contributed $1.1 million, the university sued for the balance. The court found a unilateral contract had been formed and the university prevailed, enforcing the collection of the remaining $900,000.

According to the Restatement, regardless of the terminology used, if a donation is made to a charity subject to a valid specific restriction regarding the purpose to which the donated asset is to be devoted or the terms by which the donated asset is to be administered, the charity is legally bound by the restriction. Restatement of the Law, Charitable Nonprofit Orgs. § 4.01 TD No 3 (2019). With regard to Naming restrictions, the Restatement provides that “[t]he terms governing a gift may specify the duration of a naming restriction, which may be, for example, a term of years or in perpetuity. **If the terms governing a gift do not specify the duration of a naming restriction, a court will**

determine the duration based on the nature and circumstances of the gift." Id. (emphasis supplied).

D. Gift Law is Irrelevant to this Case

1. The Conditional Gift Claim was Dismissed with Prejudice

Plaintiffs' initial complaint included an alternate claim for breach of a conditional gift. However, Plaintiffs stipulated to dismissal with prejudice of the alternate Breach of Conditional Gift claim **at the Defendant's insistence**, resulting in the Trial Court dismissing the claim with prejudice. Consequently, the Gift claim is no longer part of the case. As this Court has repeatedly emphasized, a "live controversy" must exist for it to exercise jurisdiction and an issue becomes moot when "the reviewing court can no longer grant effective relief." Because the Conditional Gift claim has been dismissed with prejudice, it is not subject to appellate review.

2. Defendant failed to plead Gift Law as an Affirmative Defense

Defendant's Affirmative Defenses are as follows:

AFFIRMATIVE DEFENSES

1. Failure to state a claim upon which relief can be granted.
2. Lack of standing.
3. Waiver/estoppel.

Dated at Burlington, Vermont, this 3rd day of December, 2024.

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CONCLUSION

In the case before the Court, an examination of all of the facts and circumstances, the words and actions of the Trustees amount to an undeniable quid pro quo or promise to name the Chapel the "Mead Memorial Chapel" and that agreement or promise was reasonably interpreted and relied upon by Governor Mead when he decided to erect the Chapel. That promise, that the Chapel would be named as a memorial to the Mead ancestors was reasonably expected by Mead to be forever, or as long as the Chapel existed, because that

is what a memorial is and does. It memorializes people or events so that, just as repeatedly articulated by Middlebury College's President, Trustees, and Faculty, future generations will be made aware of history.

Wherefore, Plaintiff/Appellant respectfully requests that this Honorable Court reverse the Trial Court and Deny the Defendant's Motions for Summary Judgment and allow the case to proceed to trial on the merits.

CERTIFICATE OF COMPLIANCE WITH WORK-COUNT LIMIT

Pursuant to V.R.A.P. 32(a)(4)(A)(ii) and 32(a)(4)(D), I hereby certify that the foregoing brief contains 5,995 words, exclusive of the content identified in V.R.A.P. 32(a)(4)(C). In so certifying, I have used and relied on the Microsoft Word word-count tool.

DATED at Randolph, County of Orange and State of Vermont, this 2nd day of January 2026.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff/Appellant

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