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Vermont Superior Court
Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **Addison Unit**	**CIVIL DIVISION** **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS, **Special Administrator of the** **Estate of John Abner Mead,** ***Plaintiff,*** **v.** **THE PRESIDENT AND FELLOWS** **OF MIDDLEBURY COLLEGE,** ***Defendant.***	)))))))))))

MIDDLEBURY COLLEGE'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RENEWED MOTION TO DISMISS FOR LACK OF STANDING

Plaintiff's Opposition leaves no serious question as to Middlebury's entitlement to judgment in its favor. On the central issue in this litigation—whether John Mead's 1914 gift gave rise to an enforceable condition that the College maintain the Mead name on its Chapel in perpetuity—Plaintiff acknowledges that the law requires an express and unequivocal statement of intent for the parties to a contract or conditional gift to be bound perpetually. *See* Opposition[1] at 48, 51. The Opposition concedes that the gift documents contain no such express language. *See id.* at 37 (suggesting that it was the parties' mutual trust "that prevented the insertion of some sort of language such as 'in perpetuity'

[1] All references and citations to the "Opposition" herein refer to the amended version of Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Motion to Dismiss filed on July 25, 2024.

with regard to the name Mead Memorial Chapel"). Plaintiff seeks to brush away this absence by arguing that "[t]here was simply no need to insert the term 'in perpetuity'" under the circumstances because, he asserts, it was "universally understood . . . that the . . . Chapel would bear the Mead name for as long as the Chapel existed." *Id.* at 37-38. Whether or not there actually existed such an unwritten understanding, the law required a clear statement; Plaintiff cannot evade the fact that the gift documentation lacks the explicit language that would be necessary to impose a perpetual obligation. That fact alone is dispositive of the suit.

Middlebury's Motion laid out a number of other reasons the Court should grant the College summary judgment, and the Opposition, the bulk of which is devoted to factual exegesis, fails to offer a cogent response to any of them. Among other things:

- The Opposition does not attempt to justify the application of contract law to the subject matter of restricted charitable gifts—contrary to the weight of authority—nor does it cite a single case in which a court applied contract principles to enforcement of gift restrictions.

- The Opposition fails to offer any argument supporting the treatment of Mead's donation of funds as a conditional gift where the gift documents contained no language of condition and reversion.

- The Opposition does not contest the fact that, absent an enforceable contract to maintain the Mead name on the Chapel in perpetuity, Plaintiff's claim for breach of the covenant of good faith and fair dealing fails.

- The Opposition does not respond at all to the arguments for dismissal of

Plaintiff's unjust enrichment claim.

For these reasons, Middlebury is entitled to summary judgment on all counts.

As to Middlebury's renewed motion to dismiss for lack of subject matter jurisdiction, the Opposition completely ignores the substance of the argument. In responding, the Opposition simply cites authority for the proposition that a special administrator is authorized to bring claims on behalf of the decedent—a point both undisputed and irrelevant. The question is not whether former Governor Douglas has authority to act on behalf of the Mead estate in pursuing available claims as a general matter, but rather whether the specific, gift-related claims asserted here are ones that a donor or the donor's estate has standing to pursue. The common law answers that question firmly in the negative—and Plaintiff does not address or dispute the substantial authority cited by Middlebury establishing that neither a donor nor a donor's heirs have an interest in a completed gift sufficient to confer standing. As Plaintiff has failed to proffer any support for the Court's exercise of subject matter jurisdiction over the Estate's claims, Middlebury respectfully requests that the Court dismiss the case on that ground as well.

A. Plaintiff's Opposition Does Not Provide a Colorable Basis upon Which His Contract Claims Could Proceed.

There is little in the Opposition that squarely responds to Middlebury's arguments for summary judgment on Plaintiff's contract claims—and the arguments advanced in the Opposition fail to supply Plaintiff a viable theory in contract law.

First, the Opposition does not acknowledge or attempt to address the fact that

the transaction at issue was a gift, a subject matter governed by property law principles rather than contract. *See* Motion at 18-23 (discussing legal framework for restricted gifts). Plaintiff simply <u>assumes</u> that contract law may apply to the asserted restrictions on Mead's gift, without making any attempt to marshal legal support for his position. For the reasons set forth at length in Middlebury's Motion, that assumption is incorrect. Indeed, it is telling that, throughout the entire Opposition, the only section in which Plaintiff himself cites any legal authority that pertains to a gift transaction is in his brief argument on his claim for breach of a conditional gift. *See* Opposition at 51-52. This is no surprise, for claims such as those Plaintiff seeks to bring here have long fallen under the law of conditional gift. Contract law has no application.

Second, even if contract law did apply, the law will avoid imposing a perpetual contractual term "unless compelled by the unequivocal language of the contract," as the Opposition correctly recognizes. *Id.* at 48. No such unequivocal language appears here. While Plaintiff may argue that express language was unnecessary because there was a universal understanding that the parties intended a perpetual contractual obligation to maintain the Mead name on the Chapel, supported by "hefty extrinsic evidence," *id.* at 37, 47, that argument fails on both the law and the facts.

To start with, Plaintiff is wrong in suggesting that, where the gift documentation omitted any terms regarding "the timeframe that the [Mead] name was to adorn the building," *id.* at 47, the Court would be entitled look to extrinsic evidence to evaluate whether a perpetual naming condition was imposed. That is not

how the law on perpetual contractual terms operates. Rather, because public policy disfavors perpetual contract obligations, *see Glacial Plains Coop. v. Chippewa Valley Ethanol Co., LLLP*, 912 N.W.2d 233, 236 (Minn. 2018), courts will not find and enforce such an obligation unless there is a clear statement of intent to impose a perpetual term <u>in the contract itself</u>. *See, e.g.*, *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, 976 F.3d 239, 246 (2d Cir. 2020) (absent "clear statement of perpetuity," contract terminable at will); *Parker v. Union Planters Corp.*, 203 F. Supp. 2d 888, 901 (W.D. Tenn. 2002) (where there was "no clear statement of indefinite duration," contract did not impose perpetual term); *Open Lake Sporting Club v. Lauderdale Haywood Angling Club*, 511 S.W.3d 494, 502–03 (Tenn. App. Ct. 2015) (collecting cases for proposition that perpetual rights will not be created absent clear language). Thus, where a contract lacks clear language expressly imposing a perpetual term, that does not open the door to extrinsic evidence; rather, it requires the conclusion that the contract term at issue was not intended to be perpetual. *See Glacial Plains Coop*, 912 N.W.2d at 236 ("[W]e construe ambiguous language regarding duration against perpetual duration.").

Moreover, the extrinsic evidence here, even were it considered, would not support the conclusion that the parties "unequivocally" intended Mead to have a perpetual naming right. The Opposition relies on a varied assortment of facts in an effort to establish an intent to create a perpetual obligation, none of which is compelling. For example, Plaintiff cites the existence of a number of other Middlebury buildings named after trustees and donors, as well as instances of

Middlebury consulting with donors or their families on occasion when making alterations to buildings, as evidence of a "pattern and practice" with respect to naming. *See* Opposition at 11-12, 38-42. The fact that Middlebury—like most well-established colleges—has a number of buildings named after trustees/donors and takes steps to maintain relations with donors and their families is unremarkable and has no bearing on the question before the Court. The evidence Plaintiff cites does not establish that Middlebury has a pattern and practice of <u>granting contractually enforceable perpetual naming rights to donors</u>—nor, certainly, that the grant of such rights was intended in connection with the specific gift at issue here.

Plaintiff also recounts various statements from Middlebury's Trustees and personnel lauding Mead and his gift in lofty terms. Many of these speak to the lasting impact the Middlebury community expected the gift to have, as in the following from the Board of Trustees upon the occasion of Mead's death: "In the gift of the Mead Memorial Chapel he endowed our college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor." *See id.* at 5, Ex. 42; *see also, e.g.*, *id.* at 33, Ex. 34 ("[T]he noblest deed of all—the one for which future generations will hold you most in grateful remembrance—is the erection of his spacious and attractive chapel . . . ."). A couple also referenced the fact that the Chapel would bear Mead's name. *See, e.g.*, Opposition at 23, Ex. 28 (speech from James Barton noting that Chapel would "bear

the name of one so long and so honorably connected with this institution").

There is a clear difference between expressing gratitude to a generous donor and recognizing that the fruits of his donation would long benefit the College, and contractually committing to maintain his name on the Chapel forever. The references to the expectation that the Chapel would bear the Mead name are unremarkable, given that the building was in fact named the "Mead Memorial Chapel" at its outset—and for more than a century thereafter. The fact that Middlebury used the Mead name on the Chapel does not mean that it committed to preserve the name forever. None of the public statements Plaintiff cites unambiguously reflect an agreement to permanent naming rights (nor, again, could such extrinsic evidence be used to imply into the Gift Letter a perpetual term that was absent from its face).

Finally, Plaintiff also notes that the plans for the Chapel were marked "Mead Memorial Chapel" and contained a design detail depicting the sign for the Chapel over the main entrance door. Opposition at 26-29. To the extent that these plans were relevant to construing the supposed terms of Mead's gift—and Plaintiff offers no clear argument for how that would be so—they would only establish an understanding at the time of the design that the Chapel was going to be called "Mead Memorial Chapel" at the outset. Again, this is no surprise, as that is the name the Chapel bore for more than a century following its completion. What is absent is any indication that the parties specifically contemplated and agreed that Mead would have a contractual naming right—and that such right would be

permanent and irrevocable. Absent a clear statement that a permanent naming right was intended, Plaintiff's claim fails.

B. Plaintiff's Claim for Breach of the Implied Covenant Fails Absent a Contract to Maintain the Mead Name in Perpetuity.

The Opposition accurately lays out the basic contours of a claim for breach of the implied covenant of good faith and fair dealing, including the fact that the claimant need not show a breach of the underlying contract. However, Plaintiff dodges the critical point: a contract must, in fact, exist between the parties governing the subject matter in order for an implied covenant claim to arise. *See Monahan v. GMAC Mort. Corp.,* 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298. Plaintiff neither addresses nor disputes this core element of the claim—which, as laid out in Middlebury's Motion, is dispositive here. Plaintiff can indulge in all the scurrilous rhetoric he wants and accuse the College of "framing . . . Mead for its crimes," Opposition at 50, but in the absence of a contract that Mead's name would stay on the Chapel for time immemorial, Plaintiff has no implied covenant claim.

C. Plaintiff Has Not Made Out a Viable Conditional Gift Claim.

The Opposition admits that conditions subsequent on a gift "must clearly be expressed, and, if it is doubtful whether a clause in a deed is a condition subsequent, courts will always lean against construing it as such." Opposition at 51 (quoting 14 C.J.S. Charities § 33). Plaintiff nonetheless persists in contending that the removal of the Mead name from the Chapel represents the breach of a supposed condition on Mead's gift, triggering the failure and reversion of the gift—despite the absence of

any express language imposing a perpetual naming condition or any provision for reversion of the gift. Plaintiff makes two passing arguments in favor of this position, neither of which has merit.

First, Plaintiff suggests that the absence of the terms "in perpetuity" is not dispositive because "there is no evidence to suggest that 'in perpetuity' language was even being used at that time and place in history." Opposition at 37. This is nonsense. There is nothing magical about the term "in perpetuity"; other language indicating permanence could have been used, and, indeed, various phrases were being used to indicate a perpetual obligation at or around the time of Mead's gift. *See, e.g.*, *Dykeman v. Jenkines*, 101 N.E. 1013, 1015 (Ind. 1913) (bequest requiring that benefitted "hospital shall forever be named and designated 'Mary Dykeman Hospital'"); *Herron v. Stanton,* 147 N.E. 305, 308 (Ind. App. Ct. 1920) (1890s bequest imposing naming requirement for school and gallery and dictating that "the use of such name or names shall be perpetual, or so long as said gallery and school are severally maintained"); *Lupton v. Leander Coll.*, 187 N.W. 496, 499 (Iowa 1922) (1903 pledge by donor requiring "strictest compliance with [the] conditions [of the gift] forever," and requiring that donated funds be "forever held sacred"); *Univ. of Vt. v. Wilbur's Estate*, 105 Vt. 147, 163 A. 572, 578 (1933) (referring to 1929 gift pledge on various "terms and conditions," including that the University erect "a museum to be known and designated in perpetuity as the 'Robert Hull Fleming Museum'"). If former Governor Mead had wanted to assure the permanent use of his name on the Chapel, he could have expressed that condition in any number of ways—but he did

not.

Second, although Plaintiff does not dispute that Mead's Gift Letter lacks any provision for reversion, he suggests that such formality was unnecessary given the "trust" and "ties of warmest friendship" between Mead and Middlebury's Trustees and personnel. *See* Opposition at 35-38. Plaintiff attempts to distinguish on this ground Mead's 1916 gift to the Rutland Community House—which expressly provided for reversion in the event that any number of detailed conditions precedent were violated—noting that the Community House was a new project and an "undoubtedly risky venture."[2] *Id.* at 36. The nature of the ventures to which Mead was donating and his relationship with the donees have no relevance to the determination of whether his gifts were properly subject to conditions subsequent. As explained in Middlebury's Motion, the law disfavors conditional gifts and construes gift instruments to avoid finding a conditional gift wherever possible. *See Pres. & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 101 Vt. 325, 143 A. 384, 390 (1928). Plaintiff does not cite any authority—and the undersigned is unaware of any—for the proposition that the degree of "trust" between the donor and donee or the riskiness of the venture to which the donation is applied may relax the law's stringent requirements for establishing the existence of a conditional gift. As the documentary record for Mead's 1914 gift to Middlebury falls far short of meeting those requirements, Middlebury is entitled to judgment in its favor on the conditional

[2] Plaintiff also speculates, without evidence, that the Community House deed was "obviously prepare[d] by a real estate attorney." Opposition at 35.

gift claim.

D. The Traditional Bar on Donor Standing Applies to Plaintiff's Claims and Requires Dismissal.

The Opposition does not offer any substantive rebuttal to Middlebury's renewed motion for dismissal on standing grounds. Instead, Plaintiff merely emphasizes his statutory authority to "commence and maintain actions as an administrator." Opposition at 52 (quoting 14 V.S.A. § 963). This misses the point. Plaintiff's authority to pursue claims on behalf of former Governor Mead is uncontested here, but only extends so far as the decedent himself would have a right of action. *See* 14 V.S.A. § 1401 (administrator may commence and prosecute actions "in the right of the deceased"). The well-established and "almost universal[]" common law donor-standing rule bars donors from pursuing the types of claims advanced by Plaintiff here. *See Siebach v. Brigham Young Univ.*, 361 P.3d 130, 137 (Utah App. Ct. 2015). Because the common law would deny former Governor Mead himself standing to bring claims seeking to enforce alleged gift restrictions (whether in contract, the law of conditional gift, or otherwise), Plaintiff—who stands in Mead's shoes in this action—likewise lacks standing to proceed. Plaintiff's Opposition offers no argument to the contrary. Accordingly, Middlebury respectfully requests that the Court grant its Rule 12(b)(1) Motion to dismiss for lack of standing/subject matter jurisdiction.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in Middlebury's

Motion, the Court should grant the Motion and enter judgment in Middlebury's favor on all claims.

Dated at Burlington, Vermont, this 5th day of August, 2024.

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