

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART I

2003

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THE TENNESSEE DIVISION OF THE)		
UNITED DAUGHTERS OF THE)		
CONFEDERACY,)		
)		
Plaintiff,)	v	
vs,)		NO. 02-3095-1
THE VANDERBILT UNIVERSITY)		
)		
Defendants)		

MEMORANDUM

This case is before the Court on a motion for summary judgment, filed by Defendant, Vanderbilt University ("Vanderbilt" or "Defendant") against the Plaintiff, The Tennessee Division of the United Daughters of the Confederacy ("UDC" or "Plaintiff"), pursuant to Rule 56, Tenn. R. Civ. Proc.

In UDC's complaint, it seeks damages for breach of contract and injunctive relief, which would prohibit Vanderbilt from removing the name "Confederate" from a dormitory building on Vanderbilt's George Peabody College ("Peabody") campus and a declaratory judgment declaring the parties' rights and obligation under contracts entered into between UDC and Peabody, the predecessor to Vanderbilt, concerning the naming of the building as Confederate Memorial Hall.

Vanderbilt's motion for summary judgment seeks dismissal of UDC's claims and further, a declaratory judgment that Vanderbilt may remove the name, "Confederate" from the building on Peabody's campus.

For reasons hereinafter stated, Vanderbilt's motion for summary judgment is granted.

The material facts are not in dispute. The disputed facts are not material or relevant to the issues to be determined by the Court. Those undisputed material facts are stated by Vanderbilt, as follows:

1. UDC was formed in 1892 in the post-Civil War South. (Charter of UDC).
2. The UDC's charter states that its purpose is "... to honor the memory of those who served and those who fell in the service of the Confederate States; to protect, preserve and mark places made historic by Confederate valor; to collect and preserve the material for a truthful history of the War Between the States; to record the part taken by Southern women in patient endurance of hardship and patriotic devotion during the struggle, and in untiring efforts after the war during the reconstruction of the South; to fulfill the sacred duty of benevolence towards survivors and towards those dependent upon them; to assist descendants of worthy Confederates in acquiring proper education; and to cherish the ties of friendship among the members of the organization." (Charter of Plaintiff, Appendix 1, and Defendant's Motion for Summary Judgment).
3. Under the General By-Laws of the Plaintiff, Tennessee Division of the UDC, those persons eligible for membership in the UDC are "women at least 16 years of age who are lineal or collateral blood descendants of men and women who served honorably in the Army, Navy, or Civil Service of the Confederate States of America, or gave Material Aid to the Cause." (General By-Laws of the Plaintiff, November 2001, Appendix 2).
4. Excluded from membership is any person whose "Confederate ancestor" took the Oath of Allegiance to the United States of America before April 9, 1865, the date of General Robert E. Lee's surrender to General Ulysses S. Grant at Appomattox, Virginia. (Id).

5. Under the Charter and By-Laws of the Tennessee Division of the UDC, only the "widows, wives, mothers, sisters or lineal descendants of men who served honorably in the Army or Navy of the Confederate States; or who served in the civic service of the Confederate States, or one of the Southern states; or who gave personal service to the Confederate cause; or those women who, wherever living, gave aid and comfort to the Confederate states during the War, ... are eligible for membership" (Current Tennessee Division By-Laws, Appendix 3, Article II).

6. According to its By-Laws, among the purposes of the UDC is to "promote the correct use of the Confederate Flag" (Appendix 2, Article XV, Section 7), and to "promote interest in a fair and impartial history of the War Between the States." (Appendix 2, Article XV, Section 14)

7. The UDC encourages its chapter to use "Dixie Land " and other Southern songs in its meetings. (Appendix 2, Article XV, Section 26).

8. The order of business for the annual general convention of the UDC includes a salute to the Confederate flag and a singing of "Dixie Land". (Appendix 2, Standing Rules, [Paragraph] 8).

9. The By-Laws of the Plaintiff Tennessee Division of the UDC contain similar provisions.

10. Under those by-laws, certain "special days" are set forth to be observed annually including: (a) the birthday of Jefferson Davis, President of the Confederate States, (b) the birthday of Robert E. Lee, Commander-in-Chief of the Confederate Army, (c) the birthday of Raphael Semmes, Rear Admiral, Confederate States Navy, (d) the birthday of General Thomas Jonathon (Stonewall) Jackson, and (e) the birthday of Lieutenant General Nathan Bedford Forrest. (Appendix 3, Article XXV, Article 3).

11. The flag of the UDC and its Tennessee Division, is the "Stars and Bars" of the Confederate States of America. (Appendix 3, Article XXVII).

12. Volume I of the Minutes of the Tennessee Division of the UDC recognizes as one of the objects and purposes of the organization:

To instruct and instill into the descendants of the people of the south a proper respect for and pride in the glorious war history, with a veneration and love of the deeds of their forefathers, which have created such a monumental military renown, and to perpetuate a truthfiil record of the noble and chivalric achievement of their ancestors. All with the view of furnishing authentic information, from which a conscientious historian will be enabled to write a correct and impartial history of the Confederate side during the struggle for Southern Independence.

(UDC Volume I Minutes, Appendix 4, Article II)(Emphasis Added).

13. At its annual general convention in November, 1953, the UDC approved the development of a Catechism on the History of the Confederate States of America, which was first printed in October, 1954 and revised in 1999. (Deposition of Janet Johnston ("Johnston"), Ex. 5, Appendix 5).

14. The stated purpose of that "Catechism" was to "teach the truths of our Confederate history..." (Id.).

15. In that Catechism, the following questions are addressed:

Q. What causes led to the War Between the States? How was this shown?

A. The disregard of those in power for the rights of the southern states and by the passage of laws annulling the rights of the people (sic) the south.

Q. What were these rights?

A. The right to regulate their own affairs, one of which was to hold slaves as property.

Q. How were the slaves treated by their owners?

A. The slaves, were treated, in most cases with kindness and care. Many claims 'of cruelty and abuse were found to be the result of plantation overseers.

Q. What was the feeling of the slaves toward their masters?

A. The slaves, for the most part, were faithful and devoted. Most slaves were usually ready and willing to serve their masters.

Q. How did the Slaves act during war?

A. Many slaves protected and cared for the wives and families of the soldiers and continued to work on the plantations and farms. Though often prompted by enemies of the south to burn and plunder the homes of their masters, by far the great majority remained loyal.

Did any blacks, free or slave, serve in the Confederate Army?

A. Yes, it was originally thought that only body servants accompanying their masters actually fought, but later research indicates that many blacks joined on their own when President Jefferson Davis -finally agreed they

could serve, late in the War. While statistics are few, the States of Louisiana, Tennessee and Virginia had large groups of Black soldiers who served with distinction and individual units came from other Southern states as well.

16. In 1934, the Plaintiffs Nashville, Tennessee Chapter voted to see "that the last meeting place of the Ku Klux Klan in Nashville and from which the last ride was made, is suitably marked." (Last Ride of Ku Klux Klan, Appendix 6).

17. In approximately 1902, the Plaintiff UDC conceived of the idea to raise funds to build a dormitory to provide low-cost room and board for needy daughters and granddaughters of Confederate veterans.

18. The proposal was also submitted to the Tennessee Legislature.

19. In 1906, Ms. Tennice Pilkerton Dozier wrote to the President of the Board of Trustees of what was then George Peabody College for Teachers ("Peabody") describing the purpose of the home and proposing its location on the Peabody campus. (Letter from Tennie Pinkerton Dozier, Appendix 7).

20. Ms. Dozier expressed the intention of the UDC to raise \$50,000 for construction of a building "commensurate with [a] memorial" to the Tennessee men and women of the Confederacy and to harmonize with the other College residences. (Id.).

21. Ms. Dozier stated that the management of the building was to be "in the hands of the College authorities with recommendations from the Board of Trustees of the UDC or Advisory Board." (Id.).

22. On January 21, 1913, the Plaintiff entered into a contract with Peabody expressing the intention of the UDC to raise "a fund of not less than \$50,000 for the erection of a women's dormitory on the grounds of the George Peabody College for Teachers." (January 21, 1913 Contract, Appendix 8).

23. In that agreement, Peabody committed to construct the building "in such design and plan as the said Board may select, and the title to the said building and the control of the management of same shall be vested in the Trustees of the George Peabody College for Teachers." (Id.).

24. The Plaintiff was "invited by the Trustees of the George Peabody College for Teachers to maintain throughout the future an advisory relationship with regard to the management of said building." (Id.).

25. The contract provided that as a condition of the gift by the Plaintiff UDC, "The Building when constructed shall be used as a home for the women descendants of Confederate soldiers and that the Tennessee Division of the United Daughters of the

Confederacy shall have the right to nominate such occupants of the building as they may wish from among the women students of the college or prospective students, but the right is reserved to the authorities of the college to reject any such nominations." (Id.).

26. The contract further provided that any students occupying the building who were nominated by the Plaintiff "shall be charged no room rent and the other dormitory expenses for such students will be charged on an estimated cost basis." (Id.).

27. On or about June 17, 1927, the Confederate Memorial Hall Committee, acting for and on behalf of the Tennessee Division of the UDC, entered into a second contract with Peabody. (Deposition of E. Gordon Gee ("Gee"), Ex. 5, Appendix 9). That contract recites that the committee "has succeeded in raising funds" for the contemplated building and intended to raise "other and additional funds which will be necessary in order to build the Confederate Memorial Hall as contemplated." (Id.).

28. Pursuant to a resolution adopted by the Plaintiff, the funds which had been collected were deposited with the Trustees of Peabody which acknowledged receipt of a sum of \$17,421.47 and agreed that when the funds were sufficient, Peabody would "erect a building on its property conforming to plans and specifications to be agreed upon by the parties hereto and said building shall be used for the purposes contemplated by said parties." (Id.).

29. On June 13, 1933, the Committee reported that with the interest accumulated on the funds raised by the Committee, the sum of \$50,000 would be in hand on or about January 1, 1934, and resolved that "in view of the present low cost of building and the prospective rising prices ... that the building should be begun as soon as the plans, etc. could be completed." (Committee Report, Appendix 10).

30. The resolution authorized Peabody to secure plans for the building and let the contract to begin construction as soon as possible "provided the contract shall not call for an amount in excess of the funds available for that purpose." (Id.).

31. A document was apparently drafted in September, 1933, expressing the desire to construct a building costing "at least \$150,000 instead of \$50,000" and reflecting that Peabody had applied "to the National Recovery Administration for a loan and grant for the purpose of securing additional money to make up said \$150,000 and if said loan and grant is secured, the larger building will be erected instead of a building costing \$50,000," (Gee, Ex. 6, Appendix 11).

32. The parties have been unable to locate an executed copy of the 1933 agreement.

33. In the document, the parties expressed their agreement and approval of the plan which had been developed provided that "there shall be set apart in said building the first and second floors which shall be used for the purposes set out in the other contracts

entered into by the parties; and there shall be placed on said building an inscription naming the building "Confederate Memorial." (Id.).

34. The document further provided "...that if, and when, [Peabody] secures the additional money from the National Recovery Administration, it will erect the building conformable to the plans and specifications approved by the parties, but if said money is not secured from the National Recovery Administration, the building will be erected according to the terms of the contracts previously entered into between the parties; it being the intention of the parties that this contract shall be void and of no effect in case said money is not obtained from said National Recovery Administration. (Id.).

35. Although Peabody attempted to obtain the \$100,000 in funds from the National Recovery Administration, that request was denied on the grounds that Peabody was not a "Public" institution. (Letter from E. H. Foley, Jr., Assistant General Counsel of Federal Energy Administration and Public Works to Mr. Bradley Walker, Esq., Appendix 12).

36. Despite Peabody's inability to obtain the funds from the NRA, the Executive Committee of Peabody authorized the borrowing of that amount from the College's endowment funds in order to build the dormitory. (Minutes of Board of Trustees Meeting of June 8, 1934, Appendix 13).

37. Only July 12th, 1934, the Peabody Executive Committee awarded the contract for the construction of "Confederate Memorial Dormitory. . . at a guaranteed upset price of \$131,294, or less." (July 12, 1934 Contract Award, Appendix 14).

38. The building was completed in 1935 and apparently administered according to the terms of the 1927 agreement between Peabody and the UDC until the late 1970's.

39. In 1978, Vanderbilt entered into a lease with Peabody, which provided for two of the Peabody dormitories, including the building known as Confederate Memorial Hall to be utilized by Vanderbilt students. (Deposition of Stephen A. Caldwell ("Caldwell") Deposition Excerpts, pp. 14-15, Appendix 15).

40. In April, 1978, when the Plaintiff UDC learned that the dormitory was to be leased to Vanderbilt by Peabody, Ms. Mary Sneed Jones, Chairman of the Confederate Memorial Hall Committee, write to Dr. John Dunworth, President of Peabody, to ask what were the plans for "room awards" to be given to young women nominated by the UDC and what would be the disposition of various furnishings, portraits, etc., and "other Confederate items." (Johnson, Ex. 6, Appendix 16).

41. Ms. Sneed suggested that Peabody lease another dormitory to Vanderbilt. (Id.).

42. Dr. Dunworth responded by returning to the UDC various items, which were apparently donated to the Tennessee State Museum. (Johnson, Ex. 7, Appendix 17).

43. Once Vanderbilt began utilizing the building for its students, no more than four students designated by the UDC for reduced cost rent remained in the dormitory and after they graduated, no students were housed in that building in accordance with the original purpose of the building's construction. (Caldwell, pp. 15-16, Appendix 15).

44. In 1979, Vanderbilt acquired Peabody through a merger agreement under which Peabody became a part of Vanderbilt, with Vanderbilt as the surviving entity. (Defendant's Response to Request for Production of Documents, Attachment I, Appendix 18).

45. At the time Vanderbilt acquired the Peabody campus, most of the Peabody buildings had fallen into disrepair and were in need of significant maintenance and modernization to meet then current building and safety codes. (Affidavit of Judson Newberry Paragraph 2, Appendix 19).

46. In 1987 and 1988, Vanderbilt expended approximately Four Million Nine Hundred Thousand (\$4,900,000.00) Dollars refurbishing Confederate Hall and East Hall dormitories. (Id.).

47. Approximately \$2.5 million was spend on Confederate Hall alone. (Id_).

48. No money was contributed by the UDC to the maintenance or renovation of the building after its initial construction in 1934. (Johnson, pp. 34-35, Appendix 15).

49. Following integration of the Vanderbilt student body in the 1960's, throughout the 1970's and 1980's, the University began to increase its efforts to recruit minority students and faculty members. (Affidavit of Pat Pierce, Appendix 20).

50. In the 1988-1989 academic year, the propriety of maintaining the name "Confederate Hall" was discussed by various student groups, including the Racial Environment Project and Interhall, a representative organization of students who live in University residence halls. (Wyatt pp. 8, 16, Appendix 15).

51. In the spring of 1989, Vanderbilt's Student Government Association ("SGA") passed a resolution recommending the installation of a plaque on the building "designed to explain why the building is "Confederate." Pursuant to that resolution, a commemorative plaque was designed and installed on the building in December of 1989. (Wyatt pp. 8, 16, Caldwell, p. 18, Appendix 15; and 1989 memo regarding plaque, Appendix 21).

52. That plaque remains on the building and Vanderbilt has expressed no intention to remove that plaque. (Id.).

53. Vanderbilt has continued its efforts to recruit minority students, including African-American students, to the present, increasing its African-American undergraduate student enrollment to 371 in the 2002-03 academic year. (Pierce Affidavit).

54. In March, 2000, the Vanderbilt SGA passed a resolution recommending that the name of Confederate Hall be changed because "regardless of the original intent of the United Daughters of the Confederacy in 1935, individuals at Vanderbilt University feel offended by the name of the residence facility..., the demographic population at Vanderbilt University has significantly changed since 1935..., and Vanderbilt University is an institution committed to respecting all individuals regardless of their racial identity." (Defendant's Response to Plaintiffs First Request for Production of Documents, Attachment H (Appendix 18)).

55. In October, 2002, the SGA passed a second resolution, again supporting the change of the name of Confederate Memorial Hall since "...members of the community have resolved not to live in Confederate Memorial Hall..., Vanderbilt University should strive to be a place in which all students are challenged but not excluded from feeling a part of their campus and their dorms, ...Vanderbilt University is not proud of the legacy of slavery that is attached to the name of Confederate Memorial Hall or of some of the actions of the United Daughters of the Confederacy..." (Id., Appendix 18).

56. In February, 2000, Dr. E. Gordon Gee was named Chancellor of Vanderbilt. (Gee Depo. P. 20).

57. Soon after assuming his duties in July, 2000, Dr. Gee began to hear complaints from students, prospective students, faculty members and prospective faculty members regarding the maintenance of the building designated as "Confederate Memorial Hall" on the University's campus as being contrary to the University's stated goals and ideals of racial diversity. (Gee Depo. Pp. 55-51, Appendix 15).

58. In the summer of 2002, Dr. Gee, in consultation with the senior management officials of the University, made the decision to change the name of the building and received support of the Executive Committee of the Board to carry out that action. (Gee Depo. Pp. 25-30, Appendix 15).

59. In a memorandum to the University's Board of Trustees in October, 2002. Dr. Gee explained his action as follows:

As trivial as it may sound on first blush, the presence of a building named "Confederate Memorial Hall" has been identified by former, current and prospective students, faculty, staff and friends as one of the barriers to achieving the kind of inclusive and welcoming environment that is essential for a world-class university. This has come through consistently over the past 14 years, ever since the controversy first surfaced when the

residence hall was renovated. A number of students, faculty and staff has refused to live or attend events in the building, and they marveled (not in a positive way) that our campus was being used to commemorate a system that, however noble the intention, had come to stand for values that were not consistent with Vanderbilt's beliefs and ethos.

Simply put, the name of a building, and this building in particular, is a blunt instrument. It carries with it no footnote, no explanation of the circumstances of its construction-which itself was intended by the UDC to recognize a certain version of history. The original name of the building was established at a different time in history to commemorate values that do not reflect those of a university dedicated to educating all and meeting the aspirations of our broadest society. Students were assigned to live in a building that many believed stood in opposition to the University's core values. It implied an endorsement, if not a celebration, of a system that is at the very least offensive to many people.

That we shall have a building on our campus whose very name gives active offenses to a cross-section of people from around the world is troubling, to say the least. And, I should add, it strongly reinforces the worst stereotypes, still held by too many regardless of their geography, of Vanderbilt as an institution trapped in a long-distant past.

(Gee Depo., Ex. 3) (emphasis added).

60. In the fall of 2002, the Plaintiff was advised of the University's decision regarding the name of the Building. (Gee Depo. p. 70, Appendix 15; Ex. 15, Appendix 22).

61. Representatives of the University and the Plaintiff met on at least two occasions to discuss a possible resolution of the name change including other possible names for the building. (Gee Depo. O. 74-75, Appendix 15).

62. Further discussion between the parties ended when this action was filed.

63. As of this date, the stone engraving on the building remains, as does the plaque describing the history of the building, which was placed on the building in 1989. (Caldwell Depo. P. 10, Appendix 15).

64. The University has changed the name of the building on University maps, and on its website, and it is now referred to as "Memorial Hall." (Id.).

Under the provisions of Rule 56.04, Tenn. Rules of Civ. Proc., the summary judgment sought shall be granted, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

In Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993), The Tennessee Supreme Court made a finding that the issues that lay at the heart of evaluating a summary judgment motion are: (1) whether a factual dispute exists; (2) whether a disputed fact is material to the outcome of the case; and (3) whether the disputed fact creates a genuine issue for trial. Id. at 214.

The issue presented to the Court, whether Vanderbilt has shown a sufficient basis for modification of the parties' contracts to allow Vanderbilt to remove the name, "Confederate" from the building on Vanderbilt's Peabody campus. The answer to this question is yes.

A.

UDC opposes the motion for summary judgment and argues that Vanderbilt has not shown a legal basis for modification of the contracts to name the building, "Memorial Hall".

UDC relies on the contracts between the parties. However, the 1913 and 1927 contracts do not require Peabody to name the building, "Confederate Memorial Hall".

The 1933 contract requires Peabody to name the building, "Confederate Memorial Hall." However, the Court finds the 1933 contract to be null and void, because the condition precedent of Peabody obtaining a construction loan from the National Recovery Administration never occurred.

However, the course of dealing between the parties persuades the Court to conclude that it was the intention of the parties that the building would be named "Confederate Memorial Hall."

B.

When UDC and Peabody entered into the contracts for the construction of the dormitory building, segregation based on race was legal and practiced in the southern states of America. Now racial segregation has been declared illegal, because of the passage of federal civil rights acts and decisions of the United States Supreme Court.

When UDC and Peabody executed the contracts, they apparently did not realize that public policy, on race would change and that discrimination against minorities, including African-Americans, would be against the law and further, that a stigma would be attached to the name "Confederacy" because of its relationship to the institution of slavery.

C.

In the 1960's, Vanderbilt integrated its student body and now it has approximately 371 minority students. Vanderbilt seeks to achieve diversity in its faculty and student body. The name "Confederate" on its building with the stigma of the institution of slavery, is in contradiction of its policy of diversity and makes it extremely difficult to recruit minority faculty members and minority students. It is impractical and unduly

burdensome for Vanderbilt to continue to perform that part of the contract pertaining to the maintenance of the name "Confederate" on the building, and at the same time pursue its academic purpose of obtaining a racially diverse faculty and student body.

D.

UDC argues that Vanderbilt's Chancellor Gee lacked authority from Vanderbilt officials to remove the name "Confederate" from the building. However, the Court finds this argument without merit.

V.

The Court finds that Vanderbilt carried its burden of proof for modification of the contracts. Therefore, the Court makes the follow declaration:

(a) Vanderbilt sufficiently complied with its obligations to UDC under the contracts of the years 1913 and 1927 by the installation and maintenance of the plaque on the Peabody building which explains the history of the construction of the building.

(b) Vanderbilt may remove the name "Confederate" from the building without any further obligations to UDC, other than to maintain the said plaque on the building.

VI.

In conclusion, the Court finds that Vanderbilt's motion for summary judgment shall be granted.

UDC's request for partial summary judgment is denied.

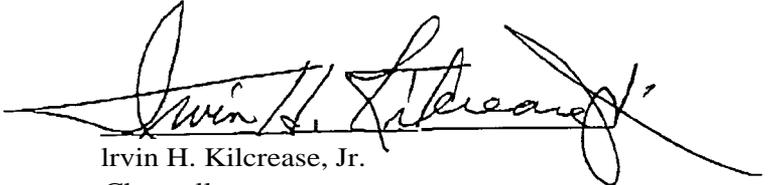
In view of the foregoing, the Court finds it unnecessary to consider other issues raised by the parties.

UDC's complaint is dismissed.

The costs are taxed one-half (1/2) to UDC and one-half (1/2) to Vanderbilt.

The attorneys for Vanderbilt shall prepare an order consistent with this

Memorandum.



Irvin H. Kilcrease, Jr.
Chancellor

September 29, 2003

cc: Douglas E. Jones, Esq.
Robert J. Notestine, Esq.
Bill Ozier, Esq.
Leona Marx Esq.

RULE 58 CER

A Copy of this order has been served by U. S. Mail
upon all parties or their counsel named above.

Deputy Clerk and Master
Chancery Court

Date