

VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

JOHN H. BIRDSALL et al.,

Plaintiffs,

v.

Case No. CL17000001-00

FOXFIELD RACING ASSOCIATION, INC., et al.,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON COUNT I

“Now there arose a new king over Egypt, who did not know Joseph.”

Exodus 1:8 (ESV).

In the Old Testament, this verse signals an unfortunate turning point in the history of the Jewish people, who had journeyed to Egypt many years before to find sanctuary from famine. When they first entered Egypt, the people of Israel were welcomed with open arms because of Joseph’s favored position at the pharaoh’s right hand. But generations after Joseph died, a new pharaoh came to power “who did not know Joseph.” With the Jewish people’s benefactor no longer living, the new pharaoh determined to exploit them for his own benefit.

The law of trusts is intended to prevent the sort of situation in which the people of Israel found themselves in Egypt – albeit not on a Biblical scale. While Marianne S. de Tejada (“Mrs. Tejada”) may have trusted Benjamin Dick, whom she mentioned in her will (the “Will”), to carry out her wishes and operate the Foxfield Races for the benefit of the beneficiaries named in the Will, she did not know who eventually would succeed him. For that reason, she clearly and unambiguously explained that she “wish[ed] to dedicate whatever estate I may leave at my death *for the continued perpetuation of the Foxfield Races* and all of the related activities on its

property.” Tom Dick, who, by his own admission, did not know Mrs. Tejada, would like to ignore her wishes and use Mrs. Tejada’s estate for his own benefit and enrichment. But because Mrs. Tejada left the Foxfield Racing property in trust, the beneficiaries of that trust are not at the mercy of the new head of Foxfield Racing Association, Inc. (“Foxfield Racing”). Instead, the Court is empowered to protect the trust and its beneficiaries from Tom Dick’s exploitation.

**QUESTION PRESENTED BY PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT ON COUNT I**

Plaintiffs ask the Court to grant them summary judgment on Count I of their Second Amended Complaint. That is to say, they seek a declaratory judgment pursuant to Virginia Code § 8.01-184, that: (a) the Foxfield Property and all proceeds derived from the use thereof are held in trust by Foxfield Racing, and (b) Foxfield Racing may not lawfully sell or use the Foxfield Property or any portion thereof, or any proceeds derived from the use thereof in a manner inconsistent with the purposes established in the Will, namely the continued perpetuation of the Foxfield Races and all of the related activities on its property. 2d. Am. Compl. (“SAC”) ¶ 85.

UNDISPUTED FACTS

1. Mrs. Tejada lived in Albemarle County for many years. SAC ¶ 16; Defs.’ Am. Ans. (“Ans.”) ¶ 16. She purchased the Foxfield Property in 1973 from the estate of Grover Vandevender, a well-known Virginia horseman, huntsman and riding instructor who had owned a private horse farm on the property, which he used to teach students to ride. SAC ¶ 17; Ans. ¶ 17.

2. Mrs. Tejada founded Foxfield Racing in 1977 and served as its first president. Under her leadership, the organization established races on the Foxfield Property to promote the sport of steeplechasing and equestrian activities in Albemarle County. SAC ¶ 19; Ans. ¶ 19.

3. Mrs. Tejada, in collaboration with Raymond G. Wolfe, who authored a famous book about the racehorse, Secretariat, designed and constructed the steeplechase courses on the Foxfield Property. SAC ¶ 20; Ans. ¶ 20. Races at the Foxfield Property were first held in 1978 and have continued through the present, with races taking place there twice per year. SAC ¶ 20; Ans. ¶ 20.

4. Mrs. Tejada was President of Foxfield Racing and one of its three directors until she passed away on December 26, 1983. SAC ¶¶ 22, 28-29; Ans. ¶¶ 22, 28-29. Her co-directors at the time were Benjamin Dick, Vice President of Foxfield Racing; and John H. Nelson, Secretary-Treasurer of Foxfield Racing.

5. On May 23, 1983, Mrs. Tejada had executed a will that provided for the disposition of the Foxfield Property. SAC ¶¶ 24, 26; Ex. B to SAC; Ans. ¶¶ 24, 26. Beneath the heading "Statement of General Intent; First Bequest," the Will stated,

I have but one wish for the remainder of my lifetime and after my death, and that is to apply all my time, energies and financial resources to the perpetuation of the Foxfield Races in Albemarle County for the recreation, education and enjoyment of the people of Albemarle County and their friends and visitors and of Virginia who appreciate the equestrian sports, competition, and related activities. . . . It is for the perpetuation of the Foxfield Races in Albemarle County that I wish to dedicate whatever estate I may leave at my death for the continued perpetuation of the Foxfield Races and all of the related activities on its property.

SAC ¶ 24; Ans. ¶ 24.

6. In addition, the Will provides directions for Mrs. Tejada's funeral arrangements and states,

I direct my Executors to have me interned [sic] on the lands of Foxfield at a place I designate before death and to erect at their discretion a simple memorial bearing my name, that I was a Virginian and the owner and promoter of Foxfield, and also bearing my date of birth.

SAC ¶ 24; Ans. ¶ 24.

7. To carry out her testamentary gift, Mrs. Tejada left to Foxfield Racing the Foxfield Property, as well as vehicles, equipment, tools, supplies, and the sum of \$200,000.00 to provide for the Property's maintenance and upkeep. SAC ¶ 25; Ans. ¶ 25.

8. The Will also named Benjamin Dick and John Nelson as co-executors of Mrs. Tejada's estate. SAC ¶ 28; Ans. ¶ 28.

9. On May 7, 1987, the co-executors conveyed the Foxfield Property to Foxfield Racing, and they recorded the deed of conveyance in the Albemarle County Clerk's Office. SAC ¶¶ 30-31; Ans. ¶¶ 30-31.

10. The co-executors repeatedly signaled their understanding of why Mrs. Tejada disposed of the Foxfield Property as she did. In a letter to Plaintiff John H. Birdsall on March 28, 1991, Benjamin Dick admitted, "[W]e fully know our obligations, we shall proceed as we always have in good faith, with diligence, and with the greatest intent to maintain Foxfield as the community asset Mrs. Tejada solely envisioned." Ex. F to ¶ 36; Ans. ¶ 36 (admitting that "the referenced exhibits speak for themselves" and only "deny[ing] any allegations inconsistent with their terms").

11. Again, on April 8, 1991, Benjamin Dick wrote, "The Board of Directors as a Board is working on long term plans for Foxfield *so it shall be preserved for posterity and so to remain as a local asset so envisioned by Mariann Tejada.*" Ex. G to SAC (emphasis added); Ans. ¶ 36 (admitting that "the referenced exhibits speak for themselves" and only "deny[ing] any allegations inconsistent with their terms").

12. "Since [Mrs. Tejada's] death, Foxfield Racing Association has managed the races. They have increased in popularity and become . . . a substantial portion of . . . this community's culture." June 2, 2017 Hrg. Tr. at 7 & 13 (statement by counsel for Defendants).

13. By January 2015, Benjamin Dick had become the sole director and officer of Foxfield Racing. SAC ¶ 37; Ans. 37. At that point he appointed his brother, Defendant Tom Dick, to serve as Vice President and co-director of Foxfield Racing. SAC ¶ 37; Ans. ¶ 37. When Benjamin Dick died in August 2015, Tom Dick was left as the sole director of Foxfield Racing and took the liberty of appointing himself as President and CEO of Foxfield Racing; he did not replace Benjamin Dick with another co-director, and has been the sole director since his brother's death. SAC ¶ 40; Ans. ¶ 38.

14. Tom Dick was not involved in Foxfield Races before Mrs. Tejada's death. Indeed, Tom Dick only met Mrs. Tejada "a single time", in either 1982 or 1983, during a spring race, did not have any other oral communications with Mrs. Tejada at any time, and did not have any written communications with Mrs. Tejada at any time. SAC ¶ 40; Dick's Resps. to Pls.' 1st RFA Nos. 7-9 (**Exhibit A**); Foxfield Racing's Resps. to 1st RFA Nos. 6-7 (**Exhibit B**).

STANDARD OF REVIEW

A party is entitled to "summary judgment upon all or any part of a claim . . . when no genuine issue of material fact remains in dispute, and the moving party is entitled to judgment as a matter of law." *Andrews v. Ring*, 266 Va. 311, 318 (2003) (citing Va. S. Ct. R. 3:18 and *Renner v. Stafford*, 245 Va. 351, 353 (1993)). A moving party can establish that no genuine issue of material fact exists through the use of pleadings, admissions in pleadings, and admissions made in answers to requests for admissions. *Id.* Although the Court should "consider inferences from the facts in the light most favorable to the non-moving party," it must not do so if those "inferences are strained, forced or contrary to reason." *Id.* (citing *Carson v. LeBlanc*, 245 Va. 135, 139-40 (1993)).

ARGUMENT

Plaintiffs Are Entitled to Summary Judgment Because Mrs. Tejeda's Will Facially Establishes Each of the Elements of a Trust As Required by the UTC.

Mrs. Tejeda's Will plainly creates a charitable trust that places the legal title in possession of Foxfield Racing, as trustee, for the benefit of the community. Under the Virginia Uniform Trust Code ("UTC"), a charitable trust is created where the settlor (1) has capacity to create a trust; (2) intends to create a trust; (3) describes a "charitable purpose," which includes "purposes the achievement of which is beneficial to the community"; (4) provides duties for the trustee to perform; and (5) does not name the same person as both the only trustee and the only beneficiary. Va. Code § 64.2-701, 720(A), 723. These five elements are satisfied in this case.

1. Mrs. Tejeda had Testamentary Capacity.

First, in the Will, Mrs. Tejeda recites that she is "of sound and disposing mind and memory." Ex. B to SAC at 1. Defendants do not deny that Mrs. Tejeda had testamentary capacity or the capacity to make the Will when executed on May 23, 1983. *See* Foxfield Racing's Resps. to RFA Nos. 44 & 45; Dick's Resp. to RFA Nos. 44 & 45 (both admitting they have no information or knowledge to dispute Mrs. Tejeda's testamentary capacity). Nor should Defendants be heard to dispute Mrs. Tejeda's capacity, as such a position would mean that they could not properly have taken possession of the Foxfield Property and operated the races since the date of Mrs. Tejeda's death. Thus, the first element necessary to establish a charitable trust is satisfied.

2. The Will Reflects and Establishes Mrs. Tejeda's Intent to Create a Trust.

Second, Mrs. Tejeda's own words in her Will evince that she intended her devise of property to create a trust. "The intention of the testator, if it may be ascertained from a reading of his will as a whole, controls, and it is our duty to uphold the will if it can be done without

violating any fixed rule of law.” *Owens v. Bank of Glade Spring*, 195 Va. 1138, 1148 (1954) (citing *Roller v. Shaver*, 178 Va. 467 (1941) and *Triplett v. Trotter*, 169 Va. 440 (1937)). The Supreme Court has advised:

“[The] question in all cases is whether a trust was or was not intended to be created; i.e., looking at the entire context of the will and the facts and circumstances properly admitted into evidence, did the testator intend [1] to impose a binding obligation on the devisee to carry out his wishes, or [2] did he mean to leave it to the devisee to act or not at his own discretion.”

Spicer v. Wright, 215 Va. 520, 523 (1975) (quoting *Smith v. Baptist Orphanage*, 194 Va. 901, 905, 75 S.E.2d 491, 494 (1953)). “A will may be construed to create a trust without the use of the word[] trust” *Burton v. Irwin*, 212 Va. 104, 105 (1971). Indeed, “[t]rusts are . . . frequently created without the use of technical words.” *Broaddus v. Gresham*, 181 Va. 725, 731 (1943) (internal quotation marks and citation omitted). Here, in a paragraph beneath a header stating, “***Statement of General Intent; First Bequest***,” Mrs. Tejada stated,

I have but one wish . . . after my death, and that is to apply all my . . . financial resources to the perpetuation of the Foxfield Races in Albemarle County for the ***recreation, education and enjoyment*** of the people of Albemarle County and their friends and visitors and of Virginia who appreciate the equestrian sports, competition, and related activities. . . . It is for the perpetuation of the Foxfield Races in Albemarle County that ***I wish to dedicate whatever estate I may leave at my death for the continued perpetuation of the Foxfield Races and all of the related activities on its property.***

Will at 1 (emphases added). The Court need not venture outside the four corners of the Will to ascertain Mrs. Tejada’s intent to create a trust. See *Baliles v. Miller*, 231 Va. 48, 57 (1986). As this language makes clear, ***the purpose*** of the bequest is “the continued perpetuation of the Foxfield Races and all of the related activities on its property.” And, ***the beneficiaries*** of the bequest are “the people of Albemarle County and their friends and visitors and [people] of Virginia who appreciate the equestrian sports, competition, and related activities.” *Id.*

3. The Will Reflects and Establishes a Charitable Purpose.

Third, this same passage leaves no doubt that Mrs. Tejada has prescribed “a charitable purpose” for the use of her bequeathed property – the third element required to create a trust under the UTC. *See* Va. Code §§ 64.2-720(A)(3)(a), 723(A). As the Supreme Court of Virginia has explained: “Charitable gifts are viewed with peculiar favor by the courts, and every presumption consistent with the language contained in the instruments of gift will be employed in order to sustain them. *All doubts will be resolved in their favor.*” *Thomas v. Bryant*, 185 Va. 845, 852 (1946) (internal quotation marks and citation omitted, emphasis added). *See also United States on behalf of U.S. Coast Guard v. Cerio*, 831 F. Supp. 530, 537 (E.D. Va. 1993) (“[C]ourts, in construing the nature of a charitable gift, properly endeavor to find, a general charitable intent whenever possible.”).¹

That intent was to benefit the Albemarle County community. The Will names community “education” as one of the purposes that Mrs. Tejada intended for her devise of property to achieve. And, of course, education is a well-recognized purpose for which a charitable trust may be established. *See* Va. Code § 64.2-723(A) (“A charitable trust may be created for . . . *the advancement of education* . . .” (emphasis added)); *Owens*, 195 Va. at 1145-46 (holding that a devise to an organization that promoted education, health, social relations, and the betterment of mankind created a charitable trust).

Mrs. Tejada’s Will also refers to “recreation” as another objective she intended through her devise. Recreation likewise is an acceptable purpose of a charitable trust. *See* Restatement (3d) of Trusts, § 28 cmt. f; *see also Golden Gate Yacht Club v. Societe Nautique De Geneve*, 12

¹ Mrs. Tejada’s charitable intent is further shown by the directions she gave in the event the Foxfield Races were no longer viable, asking the courts, in effect, to *cy pres* the matter consistent with “*my general charitable intent* . . .” *See* 2AC, Ex. B, at 1.

N.Y.3d 248 (N.Y. 2009) (noting that a deed of gift created a charitable trust that established the yacht races known as the America's Cup); George G. Bogert et al., *The Law of Trusts & Trustees* § 379 (stating that in "the United States there would seem to be no doubt that trusts to provide recreation and entertainment to a large class of a community are regarded as charitable."), § 379 n.42 (collecting cases across United States holding devises for "recreation" to be charitable trusts). Accordingly, Mrs. Tejeda's testamentary intent was manifestly charitable.²

4. The Will Identifies Separate Trustees and Beneficiaries.

Fourth, the Will also identifies separate trustees and beneficiaries. A will can create a trust even without the word "trustee" appearing in it, because no specialized or technical words are mandated. *Burton*, 212 Va. at 105; *Broaddus*, 181 Va. at 731. Instead, "[a]ny words which unequivocally show an intention that [1] the legal estate was vested in one person, [2] to be held in some manner or for some purpose [3] on behalf of another, if certain as to all other requisites, are sufficient to create a trust." *Broaddus*, 181 Va. at 731.

Mrs. Tejeda's Will states, "I devise and bequeath fee simple title to such lands, improvements, equipment, tools and supplies to the Foxfield Racing Association, a Virginia nonstock corporation together with the cash sum of \$200,000.00 to provide working capital" See 2AC, Ex. B, at 3. But, the devise of "fee simple title" in the lands, improvements, equipment, tools, and supplies to Foxfield Racing Association simply transferred the legal title to

² Educational and recreational purposes are charitable. See Restatement of Trusts 3d (2001), 28, Vol 2, pp. 17. A purpose of "contribut[ing] to the general happiness or the quality of life within the community" qualifies as charitable. See *id.* at 22-23; see also *Maymont Found. v. City of Richmond*, 11 Va. Cir. 375 (City of Richmond 1972) (holding that language in a will devising certain property "to be used as a public park, for the use and pleasure of the people of the City of Richmond," created a "trust for charitable purposes" and if these "restrictions are violated, the people of the City may enforce this trust. . . ."); *Estate of Heil*, 210 Cal App. 3d 1503 (6th Dist. Cal. App. 1989) (holding that a testator's gift to preserve the "wild horses" in Nevada was a charitable trust); *Staman v. Bd. of Assessors*, 351 Mass. 479, 483-85(1966) (gifts of land for recreation for segments of the community are considered charitable).

these items. Nothing, however, transfers the *equitable* title to the property to Foxfield Racing Association. Instead, the Will identifies “the people of Albemarle County and their friends and visitors and of Virginia who appreciate the equestrian sports, competition, and related activities” as the class of individuals to enjoy the equitable benefits of that property. Will at 1. In these circumstances, Mrs. Tejada clearly vested the legal title in one party and the equitable benefit in another, which is the very essence of a trust. *See Ballard v. McCoy*, 247 Va. 513, 517 (1994). As the Supreme Court of Virginia has noted, “It is definitely settled as a rule of law that where there is [1] a particular and [2] a general or paramount intent, the latter shall prevail, and the courts are bound to give effect to the paramount intent.” *Whitehead v. Whitehead*, 174 Va. 379, 386 (1940) (internal quotation marks and citations omitted).

Mrs. Tejada planned not just for a span of years, but in perpetuity – a conclusion compelled not only by the words she used in discussing the Foxfield Races, but also by her selection of the Foxfield Property as her final resting place, there to be forever linked to the races that she loved. Consistent with her planning in perpetuity, she left the Foxfield Property to a non-stock, non-membership corporation, an entity that could also last in perpetuity.

Mrs. Tejada realized, of course, that any such entity would one-day pass into the hands of people whose identities she could not foresee. It is irrational to imagine that she wanted to empower generations of strangers to use the property for their own purposes (as Tom Dick now claims he may do) and only *hope* they would follow her wishes, rather than *impose a binding obligation* that they do so. *See Wellford v. Powell*, 197 Va. 685, 689 (1956) (stating that “[s]urely the testator could not have intended to place his confidence in a board of directors the personnel of which he could not envision,” and holding that testator’s gift to a non-profit, non-

stock Virginia corporation with mainly educational purposes was gift to the recipient as a trustee and not gift to recipient in its own right).

5. The Will Assigned Duties to the Trustee.

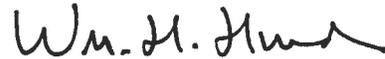
Finally, the Will assigned duties to Foxfield Racing Association as holder of the legal title to Mrs. Tejada's estate. The Will states that Foxfield Racing Association would hold the land, its improvements, vehicles, equipment, tools, supplies, and the \$200,000 as "working capital and for the maintenance and upkeep of such property during the administration of my estate." *See* 2AC, Ex. B, at 3. The term "administration of my estate" was defined earlier in the Statement of General Intent, in which Mrs. Tejada explained that her sole "wish" was for those administering her estate to use it "for the perpetuation of the Foxfield Races in Albemarle County" and that "whatever estate [she] may leave at [her] death [be used] for the continued perpetuation of the Foxfield Races and all of the related activities on the property." *See id.* at 1. Construed as a whole, the Will thus imposed at least three duties on Foxfield Racing Association to administer Mrs. Tejada's estate: (1) to perpetuate the Foxfield Races on the property; (2) to perpetuate related activities on the Foxfield Property; and (3) to maintain and keep up the Foxfield Property. *See id.* at 1, 3. Thus, the Will established the final "duties" element required under the UTC.

CONCLUSION

Plaintiffs request that the Court grant their Motion for Partial Summary Judgment, by granting a declaratory judgment that the Will established a charitable trust in the assets bequeathed to Foxfield Racing and, more specifically, that: (a) the Foxfield Property and all proceeds derived from the use thereof are held in trust by Foxfield Racing, and (b) Foxfield Racing may not lawfully sell or use the Foxfield Property or any portion thereof, or any proceeds

derived from the use thereof in a manner inconsistent with the purposes established in the Will, namely the continued perpetuation of the Foxfield Races and all of the related activities on its property.

JOHN H. BIRDSALL, et al.



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by first class mail and by e-mail to the following:

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this 25th day of July, 2018.



Exhibit A

VIRGINIA:

IN THE ALBEMARLE COUNTY CIRCUIT COURT

JOHN H. BIRDSALL, *et al.*,

Plaintiffs,

v.

Case No: CL17-01

**FOXFIELD RACING
ASSOCIATION, INC., *et al.*,**

Defendant.

**DEFENDANT THOMAS J. DICK'S ANSWERS TO THE
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

COMES NOW, the Defendant, THOMAS J. DICK, by counsel, and pursuant to the Rule 4:11 of the Supreme Court of Virginia, files the following responses to the previously propounded First Set of Requests for Admission, and states as follows;

General Objections

1. The Defendant objects to the number of request for admissions propounded by the Plaintiffs as exceeding the number of permissible requests pursuant to Rule 4:11. The Defendant further objects to the Plaintiffs instructions to the extent they impose additional obligations inconsistent with Rule 4:0 *et seq.*

REQUEST NO. 5

Admit that You have been the sole member of the Board of Directors since August 2015.

RESPONSE: Admitted.

REQUEST NO. 6

Admit that other individuals in the community since 2015 have requested that You expand the Board of Directors of Foxfield Racing Association.

RESPONSE: Denied, however admitted to the extent that counsel for the Plaintiffs asked for an expanded board via letter dated December 15, 2016 immediately preceding litigation.

REQUEST NO. 7

Admit that You had only met Mariann Tejada once in your life in either 1982 or 1983.

RESPONSE: Admitted.

REQUEST NO. 8

Admit that You had no oral or written communication with Mariann Tejada prior to her death, other than the single meeting in either 1982 or 1983 referenced in Request No. 7.

RESPONSE: Admitted.

REQUEST NO. 9

Admit that You were not involved with Foxfield races before Mariann Tejada died.

RESPONSE: Admitted.

REQUEST NO. 10

Admit that the internal Foxfield Racing Association bylaws, policies, and procedures do not define the dates, times, or places for meetings of the Board of Directors.

RESPONSE: Denied.

REQUEST NO. 11

Admit that the Board of Directors has not held regularly scheduled meetings for the period of January 2011 through present.

RESPONSE: Denied.

REQUEST NO. 12

Admit that the Board of Trustees has not held any formal special meetings for the period of January 2011 through present.

RESPONSE: Denied.

REQUEST NO. 45

Admit that, on May 23, 1983, at the time that she executed her Will, Mariann Tejada had testamentary capacity to execute that Will.

RESPONSE: After a reasonable inquiry made by the Defendant Thomas J. Dick, information known or readily obtainable is insufficient to enable him to admit this request.

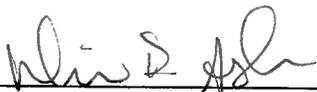
REQUEST NO. 46

Admit that the documents Defendants produced bearing Bates numbers 18-22, 24-25, 27- 91, 93-94, 96, 98-102, 104-111, 113-453, 545-553, 555, 557-558, 560, 562-66, 568-2206, 2207-2210, 2212-2216,2219-2501,2503-2552, 2554-2561,2563-2570, 2572-2585,2587-2593,2595-2600, 2602-2859, 2860-2929, and 2941-2950 are correct and authentic copies of the genuine originals, kept and maintained by Foxfield Racing in the ordinary course of business.

RESPONSE: Admitted.

Respectfully submitted,

THOMAS J. DICK
By counsel

By:  _____

William D. Ashwell, Esq.

VSBS# 83131

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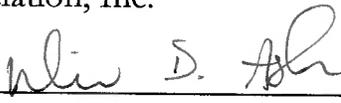
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 12th day of March, 2018, that a true and accurate copy of the foregoing was mailed first class postage prepaid and via electronic mail to the following:

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VIRGINIA:

IN THE ALBEMARLE COUNTY CIRCUIT COURT

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**FOXFIELD RACING
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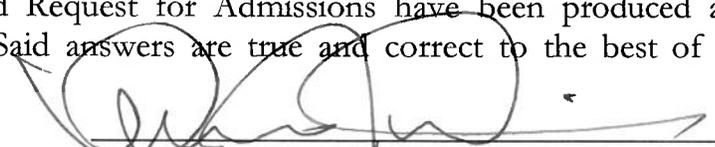
Defendant.

OATH TO ANSWERS TO REQUEST FOR ADMISSIONS

I, **THOMAS J. DICK**, hereby state under oath as follows:

1. I am the same **THOMAS J. DICK** who answered the Request for Admissions attached hereto titled Plaintiffs' Requests for Admission to Defendant Thomas J. Dick.

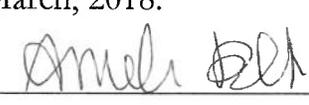
2. The answers to said Request for Admissions have been produced and forwarded in a timely manner. Said answers are true and correct to the best of my knowledge and belief.


THOMAS J. DICK, an individual

COMMONWEALTH OF VIRGINIA
COUNTY OF FAUQUIER, to-wit:

This day **THOMAS J. DICK** personally appeared before me, and after having been duly sworn, gave oath that the facts contained in the foregoing are true and accurate according to the best of his knowledge and belief.

GIVEN under my hand this 9th day of March, 2018.


Notary Public

My Commission Expires: 02/28/2022
Notary registration #: 7760291

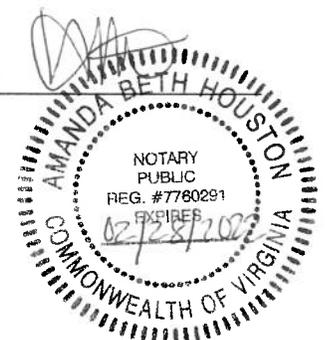


Exhibit B

VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

JOHN H. BIRDSALL et al.,

Plaintiffs,

v.

Case No. CL17-01

**FOXFIELD RACING ASSOCIATION, INC.,
et al.,**

Defendants.

**DEFENDANT'S RESPONSE TO PLAINTIFFS'
REQUESTS FOR ADMISSION TO DEFENDANT FOXFIELD RACING ASSOCIATION**

Defendant Foxfield Racing Association, Inc. ("Foxfield"), by counsel, pursuant to Rule 4:11 of the Supreme Court of Virginia, responds to Plaintiffs' Requests for Admission as follows:

GENERAL OBJECTIONS

Foxfield objects to the introductory paragraph and the Instructions and Definitions to the extent that they purport to impose obligations greater than those provided for in the Rules of the Supreme Court of Virginia. Foxfield also objects to the number of Plaintiffs' Requests, which exceed the limit of 30, including subparts (except Requests as to the genuineness of documents) in Rule 4:11. Without waiving these objections, Foxfield has responded to all of Plaintiffs' Requests, but preserves its objections as to any potential future Requests.

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that, as of January 1, 2015, Benjamin Dick was the sole director and officer of Foxfield Racing Association.

RESPONSE: Denied, although it is admitted that Thomas J. Dick became an officer and director as of December 31, 2014.

REQUEST NO. 2: Admit that, in January 2015, Benjamin Dick appointed Thomas Dick, Benjamin Dick's brother, to serve as Vice President and a director of Foxfield Racing Association.

RESPONSE: Denied, although it is admitted that Thomas J. Dick became an officer and director as of December 31, 2014.

REQUEST NO. 3: Admit that, when Benjamin Dick died in August 2015, Thomas Dick appointed himself as President and Chief Executive Officer of Foxfield Racing Association.

RESPONSE: Admitted.

REQUEST NO. 4: Admit that, since Benjamin Dick's death in August 2015, Thomas Dick has been the sole officer and director of Foxfield Racing Association.

RESPONSE: Admitted.

REQUEST NO. 5: Admit that, from time to time since 2015, Foxfield Racing Association has received requests from individuals in the community to expand the Board of Directors.

RESPONSE: Denied, although it is admitted that counsel for the Plaintiffs asked for an expanded Board of Directors by letter dated December 15, 2016.

REQUEST NO. 6: Admit that Thomas Dick only met Mariann Tejada once, which occurred in either 1982 or 1983.

RESPONSE: Admitted.

REQUEST NO. 7: Admit that Thomas Dick, at no time, had any oral or written communication with Mariann Tejada prior to her death, other than a single meeting in either 1982 or 1983.

RESPONSE: Admitted.

REQUEST NO. 8: Admit that, before Mariann Tejada's death, Thomas Dick was not involved with the planning, organization or conduct of the Foxfield races.

RESPONSE: Admitted.

FOXFIELD RACING ASSOCIATION, INC.
By Counsel



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CERTIFICATE OF SERVICE

I hereby certify that I sent by email and first class mail postage prepaid a true copy of the foregoing this 12th day of March, 2018 to:

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