
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 BRIEF (Corrected)**

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

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STATEMENT OF ISSUES

- I. Whether the Trial Court erred in granting Summary Judgment to Defendant on the Breach of Contract Claim.
- II. Whether the Trial Court erred in granting Summary Judgment to Defendant on the Breach of Good Faith and Fair Dealing Claim.
- III. Whether the Trial Court erred in granting Summary Judgment to Defendant on the Promissory Estoppel Claim.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

The Parties

John Abner Mead (1841–1920) was a physician, businessman, politician, and philanthropist who served as Vermont's Lieutenant Governor from 1908 to 1910 and as Vermont's Governor from 1910 to 1912. After interrupting his studies to serve in the Union Army during the Civil War, he returned to and graduated with the Class of 1864 from Middlebury College, which was chartered in 1800, and served as College Trustee for 27 years from 1893 until his death in 1920.

In 1914, Mead offered to erect a chapel for Middlebury College, which would bear the name “Mead Memorial Chapel.” Accordingly, on May 11, 1914, he sent a letter to Middlebury’s President, Rev. Dr. John M. Thomas (“Offer Letter”). [PC-Vol.IV-10].

Mead’s Offer

Mead offered was not to donate money, but to erect a chapel on campus in honor of his 50th class reunion, his Christian faith, and to memorialize his family’s legacy. Mead’s offer contained the following terms:

1. The chapel would bear the name **“Mead Memorial Chapel.”**
2. The chapel would be located at the highest point of the campus.
3. Architectural plans required Mead’s personal approval.
4. Construction would be overseen by a building committee of which Mead was a member.

[PC-Vol.IV-10].

Mead explicitly linked the chapel’s name to his ancestors’ religious legacy and the Mead family’s historical role in settling Vermont, who embodied and symbolized Vermont’s values of simplicity and strength. He estimated the cost between \$50,000 and \$60,000 and offered to bind his heirs to ensure completion of construction of the chapel. [PC-Vol.IV-10].

The full text of Mead’s Offer Letter is set out below:

Rev, Dr. John M. Thomas, LL.D.,
President of Middlebury College.

My Dear President Thomas:-

In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, ***the same to be known as the “Mead Memorial Chapel.”*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

It was my great-great-grandfather, the first white settler of this valley, who brought the first copy of the Holy Bible into this unbroken wilderness and it was his wife, my great-great-grandmother, who gathered her large family about her in an indian wigwam for the first christian service of the Vermont pioneers of this immediate region.

With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and ***that it might rise from the highest point on its campus*** as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.

I have in mind the furnishing of from \$50,000 to \$60,000 for the erection of such a structure, and ***I hereby suggest that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval, and that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee.”***

[PC-Vol.IV-10].

Middlebury College's Acceptance

President Thomas sent a copy of Mead's Offer Letter to the Trustees of Middlebury College requesting replies "as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests." [PC-Vol.IV-12].

The Trustees responded enthusiastically with approval. Their letters contain language that demonstrates the expectation that they understood this was a memorial forever and a building that would do great good:

- "as long at time lasts"
- "shows respect and reverence for your forebears"
- "**a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be greater value to the College in all the years to come**"
- "will be *everlastingly* grateful to him"
- "I wish to concur in the acceptance of the "**Mead Memorial Chapel.**"."
- "**a beautiful memorial.** . . His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone."
- "it ought to be **the most attractive memorial erected on the College Campus.**"

[PC-Vol.IV-13-33].

On June 22, 1914, the Trustees officially accepted Mead's Offer by Resolution at a Trustees Meeting, the Minutes of which recorded the entire Offer Letter verbatim, including the "Mead Memorial Chapel" name in quotations. [PC-Vol.IV-34].

Ground Breaking Ceremony and Cornerstone Presentation

A Groundbreaking Ceremony was held on June 23, 1914 [PC-Vol.IV-126,150] at which Mead's 3-year-old grandson placed his Bible and a Mead family tree into the Cornerstone, which remains there today. Sod from the Groundbreaking was transplanted into the Mead family plot in the Rutland Cemetery where Mead had reinterred his ancestors. Scripture was read from the original Mead family Bible first brought to the Vermont wilderness by Mead's

ancestors, the original settlers of the Otter Creek Valley. [PC-Vol.IV-127-131]. The Cornerstone Presentation speeches affirmed that the chapel was intended as a lasting memorial. [PC-Vol.IV-147].

First, Governor Mead gave his Presentation speech in which he stated:

On this date, I wish to break the ground and place the corner stone **for this Memorial Chapel**, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected, **an instrument of great good to those of this generation and to those who may follow after.**

[PC-Vol.IV-132].

Then the Rev. James Barton delivered the Acceptance in Behalf of the Trustees, emphasizing that the chapel would bear Mead's name for generations to come:

I am honored in being permitted, upon behalf of the trustees of Middlebury College, to accept from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site **to embody and represent and perpetuate the religious life of this College.**

It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.

... Today we see **the religious ideals of our forefathers emancipated and exalted to this loftier position and embodied in a structure worthy of the College and its resplendent history.** Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a

safe, sane and just society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul. . . .

This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God. . . .

We then, the Trustees of this College, on behalf of ourselves and our successors, ***in the name of the generations of students it will serve,*** in full recognition of the supreme importance of such a religious center to the life of the institution, ***and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.***

[PC-Vol.IV-140].

Professor Charles Wright gave an Address in Behalf of the Faculty, which included:

The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation—and not the least of our pleasure is the thought that ***through all the days to be it will bear your honored name.***

[PC-Vol.IV-147].

First Modification of Contract

By December 1914, the ensuing planning had made clear that the expense of construction would exceed \$60,000, the high end of the originally contemplated range. The parties renegotiated the terms of the Contract and Middlebury agreed to complete construction of the grounds and furnishings if

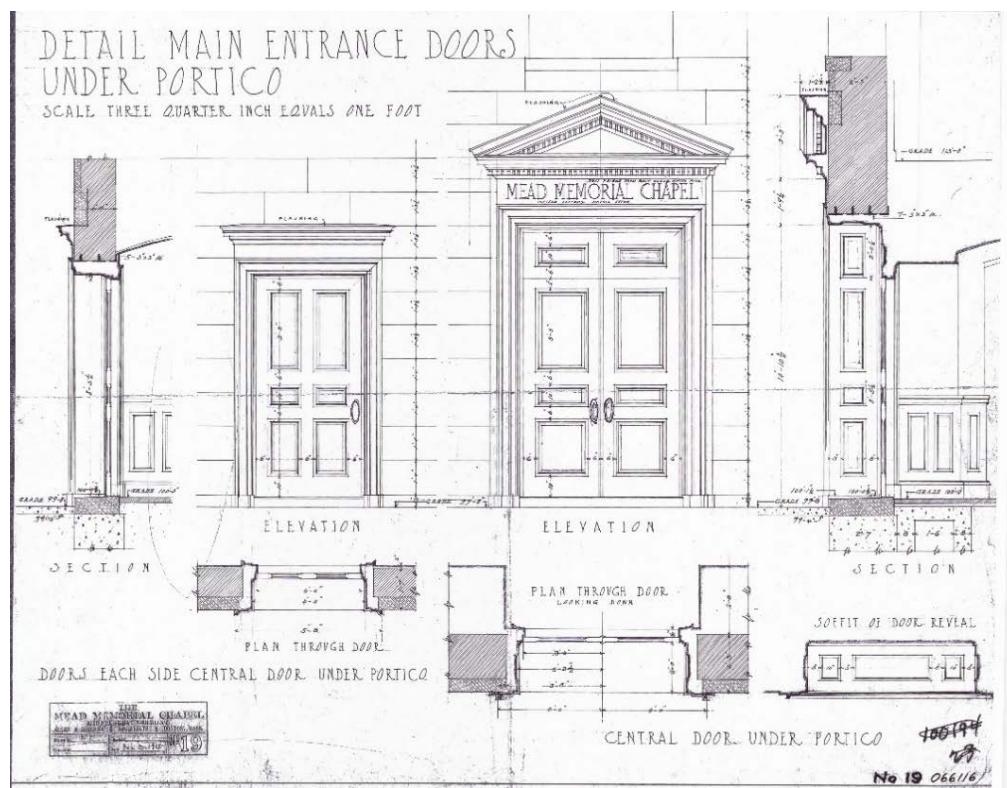
Mead would contribute the full \$60,000. Mead agreed in January 1915. [PC-Vol.IV-41,43].

Second Modification of Contract

By April 1915, the parties again renegotiated the Contract terms, which now required Mead to commit another \$1,031 for certain windows and pilasters, while Middlebury agreed to contribute another \$5,000 for a pipe organ. [PC-Vol.IV-46,49].

Architectural Plans approved by Mead

Pursuant to the parties' agreement, Mead approved the final architectural plans, which consistently identified the building as "**Mead Memorial Chapel.**" This designation appeared on the architectural drawings and construction specifications, including detailed specifications for the entrance sign's size, location, name, lettering, and even the wood species for the sign. [PC-Vol.IV-52,53,54,78]. By incorporating Mead's approval of the building plans into the contract, the approved plans were part of the agreement and the Chapel was built according to the plans and could not be deviated from, including the specifications of the Mead Memorial Chapel sign over the main entrance door under the Portico:



[PC-Vol.IV-52,53(enlarged-view)].

The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Mead attended meetings of the Building Committee in Middlebury, met with architects in Boston, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. [PC-Vol.IV-178].

In June 1915, Mead offered to contribute an additional \$6,960 for a “chime of bells” weighing nearly 15,000 pounds, which the Trustees gratefully accepted for installation in the Chapel tower. There were eleven bells, each bearing the inscription “Presented to Middlebury College by John Abner and Mary Sherman Mead” along with a Bible verse. [PC-Vol.IV-18,105,106,108,110,112,113-118].

1916 Dedication Ceremony & Presentation of the Keys

The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech stating:

With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since “in removing the soil” for the “setting of the corner stone”, and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - ***that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.***

[PC-Vol.IV-140].

His speech was followed by Mead’s now-5-year-old grandson, presenting the Mead Memorial Chapel keys to the College Trustees. [PC-Vol.IV-155,158,166]. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees stating in part:

Doctor Mead:-

I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. ***And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.***

During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. ***But the noblest deed of all--the one for which future generations will hold you most in grateful remembrance--is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.***

With grateful hearts, dear brother, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---***Here for generations yet to come the melodious bells of this Chapel shall sound out over the***

Campus and the Town the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living. . .

The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

[PC-Vol.IV-140].

The 1916 Kaleidoscope (Middlebury's Annual), was dedicated to Mead and featured the Chapel and Chime of Bells. [PC-Vol.IV-169]. In September 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.IV-247].

In December 1916, Mead agreed to pay additional amounts over and beyond the final agreement with the Trustees for Hymn Boards to be installed on the back of the Pews in the Mead Memorial Chapel at cost of \$1,559.39. [PC-Vol.IV-252].

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. [PC-Vol.IV-257].

Governor Mead's death

John Abner Mead died in 1920 at 78 years old after serving on the Board of Trustees for his alma mater for 27 years. President Thomas gave the Eulogy at his funeral. He described Mead's gift of the Mead Memorial Chapel, reading the full text of Mead's Offer Letter and offered heartfelt comments:

"This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***

So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***

PC Vol. II - p. 256-257.

The Middlebury College's Board of Trustees paid tribute to Mead in their 1920 meeting minutes:

"In the death of Ex-Governor John Abner Mead of the Class of 1864 *Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors.* Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. ***In the gift of the Mead Memorial Chapel he endowed the 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.***"

PC-Vol.IV-259.

Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, whom Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. [PC-Vol.II-230].

Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many public offices including Governor. His headstone contains the final engraving: 'A CHRISTIAN AND PHILANTHROPIST'. [PC-Vol.II-230].

Historic Alterations to Mead Memorial Chapel

Middlebury College historically **sought approval** before making significant changes to buildings named after “donors” including for the Mead Memorial Chapel. For example:

- **1920:** President Thomas wrote to Mead’s son-in-law, to propose construction upgrades as measures “to insure that the Chapel will be preserved as a memorial to Dr. Mead.”. [PC-Vol.IV-260].
- **1931:** Mead’s daughter opposed removal of the spire; the college ultimately agreed to repair it, showing deference to the family’s wishes. [PC-Vol.IV-261,262].
- **1937:** President Moody explicitly sought consent from Mead’s daughter before adding balcony seating. He cited a precedent of obtaining similar approvals from donors of other named buildings like **Starr Library** and **Hepburn Hall**. [PC-Vol.IV-263].
- **1985:** When updating the chapel’s bell system, **7 original bells were recast** and reinscribed with the original **Mead family dedication and Bible verse**, preserving the chapel’s memorial intent. [PC-Vol.IV-264,115-119].

Middlebury College’s 2021 Removal of the Mead Name

In September 2021, Middlebury College unilaterally removed the “Mead Memorial Chapel” name. [PC-Vol.II-199]. It did so without notice to the Mead family, without consultation or public process, and contrary to its longstanding practice of engaging donor families on major building alterations.

To justify this decision, the College falsely claimed the chapel had been named for Mead personally, then publicly disavowed him based on a single farewell speech upon leaving the governor’s office in 1912. [PC-Vol.II-193]. In that address, Mead—speaking as a physician—cautiously referenced vasectomy as a safer alternative to other sterilization practices, motivated by medical concern for women’s health rather than ideological adherence to eugenics. [PC-Vol.V-412]. Nevertheless, the College mischaracterized his remarks, as a reason to erase his name.

This conduct was not an isolated error but part of a calculated public relations campaign. Middlebury sought to distance itself from Vermont’s eugenics history by scapegoating Mead while concealing its own extensive role. For more

than fifty years, the College had promoted eugenics through teaching, scholarship, and advocacy—even after the Holocaust revealed the catastrophic consequences of eugenic theory. [PC-Vol.V-68,101,160,243,260-262,300,301,341,350,352]. By contrast, Mead's involvement was minimal and contextual. Yet, the College advanced a false narrative, erasing Mead's name as if to make amends, while avoiding responsibility for its own institutional complicity.

Eugenics at Middlebury

Middlebury College had a significant and long-standing connection to the Eugenics movement, with its curriculum reflecting eugenic principles from the late 19th century through the mid-20th century. The college's early course offerings included subjects like sociology, biology, and zoology, which emphasized race, heredity, and biological problems. [PC-Vol.V-68]. By 1908, courses included terms such as "defectives and degenerates," [PC-Vol.V-101] and by 1913, the curriculum expanded to discuss topics like heredity and the treatment of abnormal classes. [PC-Vol.V-160].

During Summer Session of 1913 and 1914, Middlebury hosted "Rural Life Conferences," which focused on promoting eugenics and rural sociology. [PC-Vol.V-217,243]. The college was also listed in the 1914 *Journal Heredity* as one of 44 institutions teaching eugenics. [PC-Vol.V-260]. By 1925, the mandatory freshman course of study included lectures on eugenics, including concepts from Francis Galton, the founder of the movement. [PC-Vol.V-301]. The college continued teaching eugenics until at least 1946, well after the global awareness of Nazi atrocities. [PC-Vol.V-262,352].

Middlebury College's eugenics curriculum reflected national trends, with many Middlebury College professors, trustees, and administrators being active participants in or supporters of eugenics. [PC-Vol.V-260,341]. Notable figures included A.E. Lambert, a professor who lectured on eugenics, and Owen Wesley Mills, a biology professor involved in the eugenics movement. [PC-Vol.V-261,300]. Vermont Governor John E. Weeks, a trustee, hosted a eugenics conference at the Statehouse, and President Paul Dwight Moody was deeply involved in promoting eugenics, even chairing a committee for the Eugenics Survey of Vermont in 1931. [PC-Vol.V-243].

B. PROCEDURAL HISTORY

Plaintiff's original March 24, 2023 Complaint pled 4 claims: Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and alternate claims of Breach of Conditional Gift and Unjust Enrichment.

Defendant's Motion to Dismiss filed on April 28, 2023, which was denied by the Court on August 4, 2023, is the subject of Appellee's cross-appeal. [PC-Vol.I-7].

Defendant's first Summary Judgment and Renewed Motion to Dismiss was decided on October 3, 2024, with the Court rejecting the Gift claim for lack of any reversionary right in the agreement. The Contract claim was dismissed due to the Court's conclusion that there was no naming term with perpetual duration unequivocally expressed in the contract. Thus, the Court imposed its interpretation of a "reasonable time," for the name to remain on the Chapel – which it decreed was 100 years. Consequently, the Mead naming-obligation had already elapsed in 2017. The Court also dismissed the Unjust Enrichment claim and requested further briefing on Damages for the Good Faith and Fair Dealing Claim.

Plaintiff then Amended the Complaint to add a Claim for Promissory and Equitable Estoppel, which was granted. Defendant then filed a Second Motion for Summary Judgment on the Good Faith and Fair Dealing, Promissory and Equitable Estoppel claims, which the Court granted, dismissing all of the claims.

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.

STANDARD OF REVIEW

The standard on appeal for reviewing a summary judgment is the same as that used by the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, after giving the benefit of all reasonable doubts and inferences to the nonmoving party. *Select Design, Ltd. v. Union Mutual Fire Insurance Co.*, 165 Vt. 69 (1996).

ARGUMENT

I. The Trial Court erred in granting Summary Judgment to Defendant on the Breach of Contract Claim.

A. Trial Court Ruling and Plaintiff's Claim of Error

Plaintiff pled a Breach of Contract claim, alleging that Middlebury breached its obligation that the chapel would be known as the "Mead Memorial Chapel" permanently when it removed the name in 2021. In ruling on MSJ#1, the trial court held:

"By contrast, the use of the chapel in this case is not at issue, only its name, and ***the chapel retained its original name for well over 100 years***, and approximately 100 years after Governor Mead's own death. Governor Mead contributed most of the funds supporting the initial construction of the chapel, but he did not provide funds for its indefinite maintenance, ***and Middlebury has determined that the time has come to change the name. In these circumstances, the court concludes that the reasonable duration of any contractual term as to the name of the chapel has been satisfied as a matter of law.***"

[PC-Vol.1-25].

Plaintiff respectfully disagrees with the trial court and believes that the language in the Offer Letter, "the same to be known as the 'Mead Memorial Chapel'" written in Mead's own hand, sets the duration of the name forever as a memorial to the Mead ancestors. In addition, the responses from the Trustees evidenced permanency and the Trustees' Meeting Minutes repeated verbatim, the Mead Offer letter, including the name "Mead Memorial Chapel" in quotation marks.

Most importantly, Mead reserved approval of the building plans in his Offer Letter, which was an essential term of the contract and which is incorporated into the four corners of the document. Those plans, as approved by Mead, specified the "Mead Memorial Chapel" signage to be placed above the main entrance under the portico and even indicated incised lettering and what species of wood the sign would be made from. The building plans were thus, part of the terms of the contract and any deviation from those plans is a breach of the terms of the contract and not authorized without Mead or the Mead Estate's approval, which authorization they do not grant, as they have done in the past for the repair of the

chapel spire or the addition of the balcony seating. Therefore, Plaintiff submits that within the four corners of the document, it is unambiguous and without question, that the name was to be the name, for as long as the chapel existed.

The 2021 removal of Mead family name from the Mead Memorial Chapel was a breach of the contract's most essential term, the reasonable expectation of the bargained-for-exchange, that the chapel Mead would erect for the college would be a memorial to his ancestors, bearing his family name forever. Given the evidentiary record assembled, a reasonable person could conclude that the Trustees agreed to name the chapel the "Mead Memorial Chapel" for as long as the chapel exists, which is what Mead expected, and which was the consideration for the contract (though there was additional consideration negotiated with the two later modifications of the contract).

With regard to the trial court's comment that there were no funds provided for maintenance of the chapel by Mead. That is completely irrelevant because the terms of the agreement were negotiated and renegotiated – three times. If the College required a maintenance fund for the chapel, that could have been negotiated. But that was not the deal struck. Instead, the iconic turn-key "Mead Memorial Chapel" was built by Mead, way beyond his original estimate of cost, and presented to the College, who would then maintain the structure just like they had for the dozens of other buildings on their campus. There is no record evidence to suggest that in any building-name negotiation with "donors" that Middlebury ever required or agreed to such a contract term. Nor is there evidence that the College has removed the names of other "donors" who did not provide a maintenance fund.

B. Vermont Contract Law applied to this Case

The Supreme Court explained in *Town of Rutland v. City of Rutland*, 170 Vt. 87, 90, 743 A.2d 585, 587-88 (1999) that the existence of contract "depends on facts as well as the reasonable inferences to be drawn from them, and is also influenced by the situation of the parties and the subject matter".

In the recent case of *Sutton v. Vermont Reg'l Ctr.*, the Vermont Supreme Court clearly articulated:

The essential requirements for a contract as "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Restatement (Second) of Contracts § 17(1) (1981).

Consideration sufficient for contract formation can include a broad range of benefits: The “**definition of a benefit is extremely broad, and requires simply that [promisors] receive something desired for [their] own advantage.**” *Kneebinding, Inc. v. Howell*, 2014 VT 51, ¶ 17, 196 Vt. 477, 99 A.3d 612 (quotation omitted).

Sutton v. Vermont Reg'l Ctr., 212 Vt. 612 (2020).

Turning to the case at bar, the undisputed facts establish a contract by mutual consent to the contract term that the chapel would bear the name “Mead Memorial Chapel” which was supported by valid consideration: a benefit to Mead to have a Memorial to his ancestors and his family name forever remembered. In addition to the naming of the chapel being a benefit to Mead and a detriment to Middlebury College, who had no obligation or duty to name the chapel after the Mead ancestors, there was other valid consideration, i.e., Mead’s design control and complete approval of the plans, and his requirement of a building committee with certain members.

However, most importantly, the College engaged in further negotiations with Mead to modify the agreement, twice. This is additional bargained-for consideration. The first modification of the agreement was that Mead agree to pay a full \$60,000 if the College would agree to complete the chapel with all the furnishings, etc., which they did.

The second modification of the agreement that was further bargained for was when Mead agreed to pay an additional \$1,031 over his \$60,000 commitment, for the pilasters and windows, in exchange for the College agreeing to complete the chapel AND buy a \$5,000 organ for the chapel.

These bargained for exchanges were a detriment to the College and a benefit to Mead. He negotiated with the College to complete the chapel and buy an organ so that his Mead Memorial Chapel would be completed, even though the cost was more than he was initially willing to spend. Therefore, because there is sufficient evidence of a bargained for exchange, the Court should deny the Defendant’s Motion for Summary Judgment on the Breach of Contract claim.

Furthermore, if the court finds that there was no consideration or mutual consent, a unilateral contract still existed and was consummated when Middlebury College performed by affixing the name to the Chapel. Either way, a

contract was formed, performed and thereby consummated during the lifetime of Governor Mead.

The Vermont Federal District Court has explained that in interpreting any contract:

. . . courts should “presume” that the parties’ intent **“is reflected in the contract’s language when [it] is clear.”** (“[I]f the terms of the contract are plain and unambiguous, ‘they will be given effect and enforced in accordance with their language.’”) (alterations and internal quotation marks omitted). Courts must also “give effect to every part of the instrument and form a harmonious whole from the parts[,]” and **“assume that the parties included contract terms for a reason and [should] not embrace a construction that would render a provision meaningless.”**

Where **“the scope of the release cannot be determined from the language alone, it must be ‘resolved in the light of the surrounding facts and circumstances under which the parties acted.’”** As a result, **“when the language of the document is ambiguous and must be clarified by reference to external evidence, construction becomes a question of fact.”**

Dakers v. Bartow, No. 2:16-CV-00246, 2018 WL 8415310, at *4–5 (D. Vt. Sept. 10, 2018) (citations omitted).

In the instant case, if the court determines that the contract is ambiguous with regard to whether the name was agreed to forever as an essential term of the contract, or what the timeframe that the name was to adorn the building, then such an ambiguity is easily resolved by the hefty extrinsic evidence that portrays the surrounding facts and circumstances under which the parties acted. Such evidence is overwhelming: there was an agreement to name the chapel “Mead Memorial Chapel” – as a memorial for as long as the memorial chapel existed.

And while “[a] contract will not be construed as imposing a perpetual obligation when to do so would be adverse to public interests.” 17B C.J.S. Contracts § 608 (footnotes omitted), there is no adverse public interest implicated. First the College is a private institution and in fact, while not a state actor, it would not be in the public interest to enable the breach of a clear, unequivocal obligation that was willingly and enthusiastically accepted by the Trustees.

Mead's offer to build the "Mead Memorial Chapel" was explicitly designed as a **memorial to his family legacy**, closely tied to his faith and his deep ties and love for Middlebury College. The chapel was **fully funded by Mead**, accepted with the understanding that the chapel would **permanently bear his name**, and publicly dedicated with that purpose in mind. The removal of Mead's name from the Chapel is a breach of that original understanding, which—while not containing the explicit term "in perpetuity"—was **universally understood** to be the name **forever**, as long as the Chapel stood.

C. The Naming Obligation Was a Perpetual Contract Term, ~~Supported by Vermont Law.~~

~~Vermont~~The law disfavors construing contracts as perpetual unless the parties' intent is unequivocally clear. *See City of Billings v. Pub. Serv. Comm'n of Montana, 631 P.2d 1295, 1306 (Mont. 1981)*(*"Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored."*)*Heneghan v. City of Montpelier, 161 Vt. 592, 596 (1994)*. But where the terms express permanence in unmistakable language, ~~Vermont~~ courts will enforce them. See *Thompson v. Miller, 100 N.W.2d 410, 412 (Iowa 1960)* (*"A contract for life will be upheld only where the intention, that the contract's duration is for life, is clearly expressed in unequivocal terms."*)*Smith, 119 Vt. 488, 496 (1957)* (contract language establishing lifetime obligation upheld when "clear, definite, and unequivocal").

Here, Mead's 1914 offer letter explicitly specified that the chapel be known as the "Mead Memorial Chapel" and contemporaneous documents and trustee statements leave no doubt that permanence was intended. At the groundbreaking and dedication ceremonies, trustees publicly declared that the name would endure "**as long as time lasts.**" The cornerstone contains a Mead family Bible and the Mead family tree to symbolize that permanence as do the inscriptions on the Chime of Bells. The Chapel Sod was transplanted from the Groundbreaking Ceremony to the Mead family plot in Rutland. The Chime of Bells were inscribed with the Mead's name. The final architectural plans, dated March 31, 1915, consistently identified the building as "Mead Memorial Chapel" and contain the exact specifications for the Mead Memorial Chapel sign on the front entrance of the Chapel above the portico, including what species of wood the sign would be made from.

This is not a case where duration was silent or ambiguous. The name was integral to the contract, explicitly specified in the approved building plans referenced in the Offer Letter and made a part of the contract, embedded in the very identity of the structure, and repeatedly affirmed as permanent. Plaintiff submits that under Vermont law, these facts are sufficient to establish an enforceable perpetual obligation despite the absence of strict “perpetuity” language in the contract. Thus, Defendant is not entitled to judgment as a matter of law.

II. The Trial Court erred in granting Summary Judgment to Defendant on the Breach of Good Faith and Fair Dealing Claim.

A. The Trial Court Ruling and Plaintiff’s Claim of Error

Plaintiff pled a Breach of the Covenant of Good Faith and Fair Dealing, alleging that Middlebury breached its covenant obligation through bad faith conduct when it erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead and then engaged in its hypocritical public relations smear campaign to scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was literally, a Eugenicist Factory, for over 50 years, “espous[ing] inhumane policies that are uniformly condemned today,” and teaching Eugenics principles until years after the atrocities of the Holocaust were fully known.

In ruling on MSJ#2, the trial court held:

Assuming that this could be a viable claim, Gov. Douglas has failed to demonstrate that he could be entitled to any remedy for it. . .

Other than disparagement—i.e., reputational harm—the only evident harm would appear to be the removal of the Mead name itself. ***It is entirely unclear how the removal of the name, at a point in time when the contract, if there was one, no longer required Middlebury to maintain it,*** could possibly lead to an award of litigation costs or other compensatory damages to “right the wrong.”

[PC-Vol.I-40].

Plaintiff respectfully disagrees with the trial court and believes that the additional conduct that amounts to a breach of Good Faith and Fair Dealing is

when Middlebury College sacrificed Governor Mead on the altar of public relations and used him as a pawn to divert attention away from the College's abhorrent history and to absolve it of 50 years of Eugenic Sin by claiming to sever its only apparent "connection" to Eugenics by throwing its "fall guy," Governor John Abner Mead "under the bus."

The remedy arises from the bad faith exception to the American Rule for attorneys fees.

B. Vermont Law on Good Faith and Fair Dealing applied to this Case

Under Vermont law, "every contract carries an implied covenant of good faith and fair dealing." *Carmichael v. Adirondack Bottled Gas Corp. of Vt.*, 161 Vt. 200, 208 (1993). It is an underlying principle implied in every contract that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Id.* (citation omitted). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistently with the justified expectations of the other party. *Id.* (citation omitted).

A party asserting this claim does not need to demonstrate a breach of the underlying contract to succeed on their claim for breach of the implied covenant of good faith and fair dealing. *Id.* at 1216 (affirming jury award for breach of the implied contract of good faith and fair dealing even though no breach of express term in the underlying contract was alleged). However, the party must identify conduct separate from that which breached the underlying contract to form the basis for the breach of the implied covenant. See *Langlois v. Town of Proctor*, 2014 VT 130, ¶ 59; see also *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 54 n.5.

By removing the Mead name in 2021, Middlebury frustrated the central purpose of the contract and deprived the Mead Estate of its reasonable expectations. However, the College's also engaged in bad faith conduct that was not neutral administration or a good-faith exercise of discretion, but a deliberate campaign to scapegoat Mead in order to deflect attention from its own institutional role in promoting eugenics for half a century. Such actions exemplify bad faith: Middlebury misrepresented the purpose and intent of the original agreement, cast Mead in a false light, portraying itself as an innocent bystander which naively accepted money from a bad guy who had fallen from grace, and

frustrated Mead's essential purpose in constructing the chapel as a memorial to honor the Mead family. All of which was driven by self-interest, designed to shield the College from scrutiny at the expense of an honorable man who, no matter his limitations and context, spent his life caring for and serving his patients, neighbors, church, city, college, state and nation.

This is the very type of opportunistic, self-interested conduct the implied covenant forbids. See *Monahan v. GMAC Mortg. Corp.*, 179 Vt. 167, 184 (2005) (bad faith includes "evasion of the spirit of the bargain" and "abuse of power to specify terms"). Middlebury accepted the benefits of the Mead Memorial Chapel and the prestige of the Mead name, only to erase it when politically expedient. Middlebury's conduct in scapegoating Mead to hid their sins, constitutes a breach of the covenant of good faith and fair dealing.

C. Damages Sought

Plaintiff claims Compensatory Damages including lost time and opportunities engaging in litigation to "right the wrong", litigation costs and expenses, and attorneys' fees under the "bad faith" exception to the American Rule. See *In re Appeal of Gadue*, 149 Vt. 322, 327 (Vt. 1987).

In addition, Plaintiff claims Punitive Damages for Defendant's bad faith conduct in scapegoating Governor Mead for their own ulterior bad motives, obfuscating the College's shameful past, by blaming a "fall guy". Such extraordinary circumstances, warrant an award of attorneys fees as well as punitive damages to punish Defendant's bad faith conduct and deter such actions in the future by Middlebury College or by other bad actors.

In 2017, the Vermont Federal District Court in Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876 (D. Vt. May 31, 2017) had occasion to consider a claim for attorneys fees under the "bad faith" exception to the American Rule when the parties were in privity. The Court identified two "variants" of the bad-faith exception:

In *In re Gadhue*, 149 Vt. 322, 544 A.2d 1151 (1987), the Vermont Supreme Court expanded the exception articulated in *Albright* to include "situations where the bad faith action of one person caused another person to incur litigation expenses in unnecessary judicial proceedings with the wrongful actor."

Under both *Albright* and *Gadhue*, “the exception is triggered only by conduct that could be described as in bad faith, vexatious, wanton, oppressive, or unreasonably obstinate.” *Id.* ¶ 30. “[T]he equitable power to award attorney’s fees as an exception to the American Rule ‘must be exercised with cautious restraint ... only in those exceptional cases where justice demands an award of attorney’s fees.’” *Id.* ¶ 31 (citation omitted)

| Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876, at *4–5 (D. Vt. May 31, 2017)

Then in 2018, the Vermont Supreme Court in *Tanzer*, further addressed the parties ability to pursue a damages claim for breach of the covenant, stating the following regarding punitive damages and the recovery of litigation expenses, including attorneys fees, which are recoverable upon a showing the wrongful act of one person has involved another in litigation ... or has made it necessary for that other person to incur expenses to protect his interests. Tanzer v. MyWebGrocer, Inc., 209 Vt. 244, 262–263 (2018).

III. The Trial Court erred in granting Summary Judgment to Defendant on the Promissory Estoppel Claim

A. The Trial Court Ruling and Plaintiff’s Claim of Error

Plaintiff pled Promissory Estoppel as an alternative to his contract claim, alleging that if there was no contract, Middlebury made a promise to keep the Mead name on the chapel as a memorial, forever or as long as the chapel existed, and Mead reasonably relied on that promise to his detriment. As the trial court explained:

“Establishment of promissory estoppel requires (1) a promise on which the promisor reasonably expects the promisee to take action or forbearance of a substantial character; (2) the promise induced a definite and substantial action or forbearance; and (3) injustice can be avoided only through the enforcement of the promise.” *Green Mountain Inv. Corp. v. Flaim*, 174 Vt. 495, 497 (2002); see also *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 10 (2002) (noting that the claim requires “a promise of a specific and definite nature.”); accord *State Bank of Standish v. Curry*, 500 N.W.2d 104, 108 (Mich. 1993) (“[T]he sine qua non of the theory of promissory estoppel is that the promise be clear and definite.”). “The doctrine of promissory estoppel applies ‘where there is no contract, where the promise is

gratuitous, and there is unbargained-for reliance.” *Hayes v. Town of Manchester Water & Sewer Boards*, 2014 VT 126, ¶ 37, 198 Vt. 92 (2014).

[PC-Vol.I-39].

The trial court then went on to state:

“The court already has ruled that if there was a promise binding Middlebury, it was for an unspecified duration, not forever or as long as the building exists, and that period expired prior to 2021. Gov. Douglas offers no cogent reason why reframing that claim under the rubric of promissory estoppel could lead to any different conclusion. The lack of any evidence of such a promise is determinative. This claim lacks merit.”

[PC-Vol.I-40].

Plaintiff respectfully disagrees with the trial court and believes that it erred by conflating the contract claim and the promissory estoppel claim into one analysis, such that it failed to separately and accurately apply the law of promissory estoppel. The reason why reframing the claim under the rubric of promissory estoppel could lead to a different conclusion is that there is a tremendous difference between the provable intentions of the parties to a contract claim, and a promise reasonably interpreted and detrimentally relied upon, which would be unjust not to enforce.

While there may not have been explicit perpetual language within the four corners of the document, the extrinsic evidence truly paints the picture of all of the facts and circumstances that should be considered in determining whether to enforce a promise that the Mead Memorial Chapel name was to adorn the chapel as a memorial for as long as the memorial chapel existed.

Thus, Plaintiff asserts that the court erred by imposing the contractual 100-year time limitation to defeat the promissory estoppel claim before there was an analysis of all the facts and circumstances. The court’s decision to limit the contract claim to 100-years, due to the lack of explicit perpetuity language does not in itself, defeat a claim for promissory estoppel, which takes all the facts and circumstances into account to determine whether Mead reasonably relied on a promise that a memorial is a memorial – for as long as the memorial exists.

Therefore, the equitable claim should not be prejudged based upon a court-imposed contract term.

B. Vermont Law on Promissory Estoppel applied to this Case

The three elements of a promissory estoppel reflect its flexibility: “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” Restatement (Second) of Contracts § 90(1) (Am. Law Inst. 1981). At its core, “promissory estoppel provides an additional tool for courts to reach what they consider to be equitable decisions.” Id. The reliance element frequently depends on the promisee showing a “definite and substantial change of position which would not have occurred if the promise had not been made.” Id. at § 90, cmt. f.

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 promise to name the Chapel the “Mead Memorial Chapel” and that promise was reasonably interpreted as 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 expected by Mead and Middlebury College Trustees at the time, to be for 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, future generations will be made aware of history. It is the symbolism of history and the strength and simplicity of the character of the original settlers that was being embodied in the design of the Chapel and most importantly, its name. Mead was induced to act and erected the Chapel to his significant financial detriment, because he reasonably expected that a name was a name, and that it would remain on the building for as long as the building lasts.

Finally, injustice can only be avoided by enforcement of the promise – requiring the name to be restored. As argued below, the College did not remove the name because 100 years expired. They did so for a bad motive. They used Mead, a dead man who cannot defend himself, to throw under the bus. It is not right, fair or equitable. And if the law does not provide a remedy, equity should.

The facts and circumstances which bear on the promise made by Defendant are many and demonstrate that there was no one who would have reasonably interpreted Middlebury College's words, acts and deeds to have conveyed a promise to Mead that the chapel would be known as "Mead Memorial Chapel" for only a temporary time period, not Mead, not the Trustees, not the President, not the faculty, not the public. They all expected that a name is a name as long as the building existed. That promise is clearly reflected in Middlebury College's words, acts and deeds including:

- The Building Plans specifying the specifications for the signage "Mead Memorial Chapel" which were required to meet with Mead's approval
- Letters from Trustees in response to Mead's Offer Letter
- Placing the Mead Bible and Family Tree into the Cornerstone of the Chapel
- Providing Gov. Mead with turf to transplant to the Mead family cemetery plot where he had reinterred his ancestors to whom the Chapel was named for to memorialize
- Speeches made on behalf of the College at the 1914 Groundbreaking Ceremony
- Speech made on behalf of the College at the 1916 Presentation of Keys Ceremony
- Speeches made on behalf of the College at Mead's funeral
- Correspondence to the Mead family seeking permissions for changes or repairs to the Chapel after Mead's death
- Correspondence to other donors establishing a pattern and practice of promising to name buildings in exchange for donations
- Correspondence to another donor encouraging a donation in exchange for a "memorial" naming of a building and using Mead's name as an example of how to memorialize her husband.

CONCLUSION

The case at bar involves robust record evidence, of repeated language used and actions taken by the College that can be interpreted in no way other than Middlebury College was promising that **the name "Mead Memorial Chapel" would adorn the chapel as a Memorial for as long as the memorial chapel existed, because that is what a memorial is.** Under the contract

theory, that was the intent of the parties. Under promissory estoppel, that was the promise that Mead reasonably interpreted and relied upon to his significant financial detriment, and it would be an injustice that can only be remedied by the Court's equitable powers. Thus, because the elements of promissory estoppel are present, if the contract claim should fail, Plaintiff requests alternate equitable relief from the Court under the doctrine of promissory estoppel.

DATED at Randolph, County of Orange and State of Vermont, this 22nd day of January~~September~~ 20256.

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

By: /s/ L. Brooke Dingledine

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