

NORTH CAROLINA

CHATHAM COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2019 OCT 23 A 8:35

19 CVS 809

BARBARA CLARK PUGH; GENE)
TERRELL BROOKS; THOMAS HENRY)
CLEGG; THE WINNIE DAVIS CHAPTER)
259 OF THE UNITED DAUGHTERS OF)
THE CONFEDERACY,)

Plaintiff,)

vs.)

KAREN HOWARD; MIKE DASHER;)
DIANNA HALES; JIM CRAWFORD; and)
ANDY WILKIE, in their official capacities)
as members of the Board of County)
Commissioners of Chatham County, North)
Carolina,)

Defendants.)

COMPLAINT

PLAINTIFFS, complaining of Defendants, alleges and says that:

STATEMENT OF JURISDICTION
AND
IDENTIFICATION OF PARTIES

1. Plaintiff Barbara Clark Pugh (hereinafter referred to as "Plaintiff Pugh") has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Pugh has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Pugh has paid such property taxes as the same have come due from time to time. Plaintiff Pugh is a direct ancestor of a member of the armed forces of the Confederate States of America during the

Civil War.

2. Plaintiff Gene Terrell Brooks (hereinafter referred to as "Plaintiff Brooks") has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Brooks has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Brooks has paid such property taxes as the same have come due from time to time. Plaintiff Brooks is a direct ancestor of a member of the armed forces of the Confederate States of America during the Civil War.
3. Plaintiff Thomas Henry Clegg (hereinafter referred to as "Plaintiff Clegg") has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Clegg has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Clegg has paid such property taxes as the same have come due from time to time. Plaintiff Clegg is a direct ancestor of a member of the armed forces of the Confederate States of America during the Civil War.

4. Plaintiff Winnie Davis Chapter 259 of the United Daughters of the Confederacy (hereinafter referred to as "Plaintiff Chapter") is a nonprofit association, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose, which is organized and existing under the provisions of Chapter 59B of the North Carolina General Statutes. Pursuant to the provisions of G.S. § 59B-8, Plaintiff Chapter may assert a claim in its name on behalf of its members or persons referred to as "members" by it if one or more of them have standing to assert a claim in their own right, the interests it seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by it. At all times pertinent to the allegations contained herein, Plaintiff Chapter was a nonprofit association organized and existing under the laws of the State of North Carolina which was operating and existing in Chatham County, North Carolina where it regularly held meetings and engaged in activities germane to its purpose as a Confederate heritage group.
5. Pursuant to the provisions of G.S. § 66-71.5, Plaintiff Chapter has duly filed an assumed business named certificate, recorded on May 8, 2019 in Book 2043, page 959 in the Office of the Register of Deeds of Chatham County, North Carolina.
6. Chatham County is a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes. As such, Chatham County has only such power and authority as might be delegated to it consistent with the provisions of the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina

General Statutes.

7. Defendants are the duly elected or appointed county commissioners for Chatham County, North Carolina. At all times pertinent to the allegations contained herein, Defendants were acting in their official capacities as members of the Chatham County Board of Commissioners.
8. The Superior Court of Chatham County has jurisdiction over the subject matter of this action and the parties hereto pursuant to the provisions of G.S. §1-75.1 et seq., and venue is proper in Chatham County pursuant to G.S. §1-76 et seq. 1.

STATEMENT OF FACTS

9. Plaintiff Chapter began organizing a fund raising campaign after the turn of the Twentieth Century for the purpose of raising funds necessary to designing, procuring, and installing a monument in Chatham County, North Carolina which would honor those individuals who had served in the armed forces of the Confederate States of America during the Civil War.
10. On August 23, 1907, a monument honoring the individuals who had served in the armed forces of the Confederate States of America during the Civil War was dedicated in a public ceremony conducted at the Chatham County Courthouse in Pittsboro, North Carolina.
11. The monument is made of Mt. Airy granite and copper, and it cost \$1,700.00 to design, manufacture, and install. The monument depicts a Confederate soldier made of sheet copper standing erect atop a multi-block granite pedestal; the soldier is clad in a Confederate uniform, complete with slouch hat, and holds his rifle in front of him, its butt rusting on the ground. The monument stands 27 feet tall.

12. The monument is located in front of the Chatham County Courthouse in Pittsboro, North Carolina.
13. The front of the monument bears the following inscription: "TO THE CONFEDERATE SOLDIERS OF CHATHAM COUNTY / OUR CONFEDERATE HEROES."
14. The side of the monument bears the following inscription: "THIS MONUMENT IS THE GIFT OF THOSE WHO / RESERVE THE MEMORY OF THE CONFEDERATE / SOLDIER. ERECTED UNDER THE AUSPICES OF THE WINNIE / DAVIS CHAPTER OF THE DAUGHTERS OF THE / CONFEDERACY. MRS. H.A. LONDON / PRESIDENT / AUG. 23 1907."
15. The back of the monument bears the following inscription: "CHATHAM FURNISHED 1900 / SOLDIERS TO THE CONFEDERACY / ABOUT 14-50 ENLISTED IN THE FOLL- / OWING COMPANIES ORGANIZED IN THIS / COUNTY / CO. I-32 REGIMENT / E 26 / G 26 / D 35 / E 44 / G 48 / D 61 / E 63 / G 63 / H 70 D 49 / ABOUT 450 SONS OF THE CHATHAM ENLISTED IN COMPANIES / ORGANIZED IN OTHER COUNTIES."
16. At the dedication ceremony, North Carolina Supreme Court Chief Justice Walter Clark was the orator and was introduced by Mr. Henry London. The statue was presented by Mrs. H. A. London on behalf of Plaintiff Chapter and received by Lieutenant O. A. Hanner. Colonel John R. Lane served as Chief Marshall for the occasion.
17. Upon information and belief, Plaintiffs allege and say that the monument was accepted as a gift and that its placement at the Chatham County Courthouse was

specifically authorized and directed by the Chatham County Board of County Commissioners on behalf of the citizens of Chatham County, North Carolina. By such actions, the monument became the property of Chatham County, North Carolina.

18. Upon information and belief, Plaintiffs allege and say that the monument is owned by Chatham County; that Chatham County has maintained the monument at public expense since it was dedicated and given to Chatham County by Plaintiff Chapter and accepted by Chatham County Board of Commissioners; and that, as recently as 1985, the Chatham County budget included funds for the dismantling, restoration, and reinstallation of the monument at public expense. At all times pertinent to the allegations of this complaint, Chatham County has exercised dominion and control of the monument as being owned by the County. The County of Chatham by and through its Board of County Commissioners' course of conduct manifested ownership of the monument.
19. On August 19, 2019, the Chatham County Board of County Commissioners voted 4 to 1 to require Plaintiff Chapter to remove and relocate the monument from its present location on or before November 1, 2019. The Chatham County Board of Commissioners is on record as stating that Chatham County will remove the monument in the event that Plaintiff Chapter fails to remove and relocate the monument by said date. By such action, Defendants have asserted that Plaintiff Chapter owns the monument, which Plaintiffs specifically deny.
20. The County Commissioners further resolved, in the event the Plaintiff Chapter refuses, fails or neglects to remove the monument, the Plaintiff Chapter would be

charged with criminal trespass.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

21. The allegations of paragraphs 1 through 20 are incorporated by reference herein as if fully set forth.
22. The conduct of Defendants directly and substantially affects the legitimate interests of Plaintiffs in the monument, its display, and its placement in front of the Chatham County Courthouse.
23. Plaintiffs allege and say that Chatham County is the owner of the monument. Plaintiffs further allege and say that the monument is situated on public property belonging to Chatham County.
24. Plaintiffs allege and say that they have legitimate and cognizable interests in the monument, as well as in the location where it is placed. Plaintiffs further allege and say that they have legitimate and cognizable interests in insuring that Chatham County is governed and that its affairs are conducted in a manner which is within its lawful authority as a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes. Plaintiffs further allege and say that they have legitimate and cognizable interests in insuring that Chatham County does not engage in activities or enact local legislation such as ordinances or resolutions which are unlawful and which are not within its lawful authority as a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes.

25. The declared proscriptive action of Defendants of August 19, 2019 is an ordinance or resolution which is unlawful and not within Chatham County's lawful authority as a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes. In particular, the declared proscriptive action of Defendants of August 19, 2019 violates the provisions of the Protection of Monuments, Memorial and Works of Art Act which is codified as G.S. § 100-2.1, *et. seq.* Plaintiffs specifically allege and say that, pursuant to the Act, the monument is an "object of remembrance" in that it is a display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history.
26. As an object of remembrance which is located on public property, the monument may not be permanently removed and may only be relocated, whether temporarily or permanently, pursuant to the provisions of G.S. § 100-2.1, *et. seq.*
27. A county or other municipal corporation commits an ultra vires act when it acts in a manner in contravention of its constitutional or statutory authority.
28. Chatham County lacks any authority to take any action, whether by ordinance or by resolution of its governing board, with respect to the monument except as might be authorized pursuant to the provisions of G.S. § 100-2.1, *et. seq.*
29. The action undertaken by the Chatham County Board of Commissioners on August 19, 2019 is unlawful under the provisions of G.S. § 100-2.1, *et. seq.*
30. This claim for relief seeks a declaratory judgment pursuant to G.S. § 1-253 *et. seq.* for the purpose of determining a question of actual controversy between Plaintiffs and Defendants with regard to the status of the monument, its location, and the decision

of Defendants to remove the monument from its present location, as well as the applicability of Article 1 of Chapter 100 of the North Carolina General Statutes.

SECOND CLAIM FOR RELIEF
*(Temporary Restraining Order; and
Preliminary Injunction)*

31. The allegations of paragraphs 1 through 30 are incorporated by reference herein as fully set forth.
32. Defendants have taken official action manifesting an actual intent to remove the monument from its present location in front of the Chatham County Courthouse in the event that Plaintiff Chapter fails or refuses to relocate the monument itself.
33. There is an actual and substantial controversy over the question of the ownership of the monument.
34. There is an actual and substantial controversy over the applicability of Article 1 of Chapter 100 of the North Carolina General Statutes.
35. Plaintiffs will be irreparably harmed if Defendants take affirmative action to remove, alter, destroy, relocate, or attempt to do any of the foregoing acts concerning the monument prior to a full adjudication of the respective rights and obligations of the Parties. Plaintiffs respectfully contend that such irreparable harm includes, but is not limited to the following:
 - A. There is an actual and substantial controversy concerning the ownership of the Confederate Monument among the Parties which must be resolved without any Party undertaking unilateral action prior to adjudication of such ownership dispute.
 - B. While Defendants invoke one or more ordinances, resolutions, and statutes to

justify the immediate removal and relocation of the monument, such ordinances, resolutions, and statutes require that there be an imminent threat to public health and safety. There have been no acts of vandalism or violence directed against the monument.

C. Rather than permit an ill-considered rush to judgment without a full adjudication of the facts and the respective interests of the Parties, maintenance of the status quo pending a full and fair adjudication of this dispute will not prejudice the interests of any Party to this litigation and will serve the interests of justice.

36. Plaintiffs' remedy at law is inadequate because only an equitable remedy will preserve the status quo pending adjudication of this controversy.
37. Plaintiffs are entitled to a Temporary Restraining Order, upon such conditions as the Court might deem appropriate, restraining and enjoining Defendants from taking affirmative action to remove or relocate the monument prior to a full adjudication of the respective rights and obligations of the Parties.
38. Plaintiffs are entitled to a Preliminary Injunction, upon notice and hearing, as well as upon such conditions as the Court might deem appropriate, restraining and enjoining Defendants from taking affirmative action to remove or relocate the monument prior to a full adjudication of the respective rights and obligations of the Parties.

WHEREFORE, Plaintiffs respectfully pray the Court:

1. That this verified complaint be taken as an affidavit in the cause;
2. That a Declaratory Judgment be entered with respect to the Parties' respective liabilities and rights with regard to the monument;

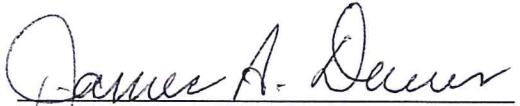
3. That a Temporary Restraining Order be entered restraining and enjoining Defendants from taking affirmative action to remove or relocate the monument prior to a full adjudication of the respective rights and obligations of the Parties;

4. That a Preliminary Injunction be entered restraining and enjoining Defendants from taking affirmative action to remove or relocate the monument prior to a full adjudication of the respective rights and obligations of the Parties;

5. That the Plaintiff be awarded the costs of this action, including reasonable attorneys' fees pursuant to G.S. 6-21.7; and

6. That they have such other and further relief as to the Court might seem just and proper.

This is the 22nd day of October 2019.


JAMES A DAVIS
North Carolina State Bar No. 12921
301 North Main Street, Suite 2424
Winston-Salem, North Carolina 27101
Phone: (336)-760-3421
Email: jad@jamesdavislaw.com
Attorney for Plaintiffs

NORTH CAROLINA

VERIFICATION

CHATHAM COUNTY

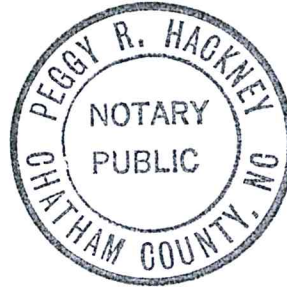
BARBARA CLARK PUGH, first being duly sworn, deposes and says that she is a Plaintiff in the above-entitled action; that he has read the foregoing complaint; that it is true and accurate to the best of her knowledge and belief; and that, as to those matters alleged upon information and belief, she believes them to be true.

This 22 day of October 2019.

Barbara Clark Pugh
BARABARA CLARK PUGH

Sworn to and subscribed before me,
this 22nd day of October 2019.

Peggy R. Hackney
Notary Public
My commission expires: 12/30/2020



NORTH CAROLINA

VERIFICATION

CHATHAM COUNTY

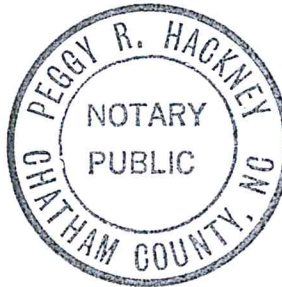
GENE TERRELL BROOKS, first being duly sworn, deposes and says that he is a Plaintiff in the above-entitled action; that he has read the foregoing complaint; that it is true and accurate to the best of his knowledge and belief; and that, as to those matters alleged upon information and belief, he believes them to be true.

This 23 day of October 2019.

Gene Terrell Brooks
GENE TERRELL BROOKS

Sworn to and subscribed before me,
this 22nd day of October 2019.

Peggy R. Hackney
Notary Public
My commission expires: 12/30/2020



NORTH CAROLINA

VERIFICATION

CHATHAM COUNTY

THOMAS HENRY CLEGG, first being duly sworn, deposes and says that he is a Plaintiff in the above-entitled action; that he has read the foregoing complaint; that it is true and accurate to the best of his knowledge and belief; and that, as to those matters alleged upon information and belief, he believes them to be true.

This 22 day of October 2019.

Thomas Henry Clegg
THOMAS HENRY CLEGG

Sworn to and subscribed before me,

This 22 day of October 2019.

William Crawford
Notary Public

My commission expires: 08-14-24

William Crawford
NOTARY PUBLIC
Chatham County, NC
My Commission Expires August 14, 2024

NORTH CAROLINA

CHATHAM COUNTY

VERIFICATION

BARBARA CLARK PUGH, first being duly sworn, deposes and says that she is the duly elected President of the Winnie Davis Chapter 259 of the United Daughters of the Confederacy which is a Plaintiff in the above-entitled action; that she has actual authority to make this verification on behalf of such entity; that she has read the foregoing complaint; that it is true and accurate to the best of her knowledge and belief; and that, as to those matters alleged upon information and belief, she believes them to be true.

This 22 day of October 2019.

Barbara Clark Pugh
BARBARA CLARK PUGH

Sworn to and subscribed before me,
this 22nd day of October 2019.

Peggy R. Hackney
Notary Public
My commission expires: 12/30/2020

