STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
THOMAS WALLER, LARRY JACKSON, P. DALE KITTLES, CHARLES L. MAUS, and TERRY C. WEEKS, Plaintiffs, vs.	)	No. 2015-CP-24-0514
STATE OF SOUTH CAROLINA, KEVIN BRYANT, Lt. Governor and President of the South Carolina Senate, JAY LUCAS, Speaker of the South Carolina House of Representatives, and ALAN WILSON, Attorney General of South Carolina, Defendants.	)	**REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO VACATE**

Defendant Jay Lucas, in his official capacity as Speaker of the South Carolina House of Representatives ("Defendant"), replies to Plaintiffs' Opposition to Motions to Dismiss for Mootness to point out that, like before, their response wholly evades the substance of Defendant's analysis. A matter is moot if "some event occurs making it impossible for a reviewing Court to grant effectual relief." *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). That event occurred here when a non-party replaced the plaques while motions to reconsider were pending and, thus, provided Plaintiffs with the relief they sought: removal of the plaques. Consequently, nothing else is left for the Court to do in this case. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, Op. No. 5573 (S.C. Ct. App. Filed July 11, 2018) (Shearouse

Adv.Sh. No. 28 at 14) (holding that case for ejectment became moot when party vacated the premises prior to appeal).

The Order thus is moot. Plaintiffs erroneously argue that "reversible acts in facial violation of a law do not moot a case that challenges the validity of that law." Pls.' Opp'n at 2. But Plaintiffs have waived any argument that the case is not moot based on the application of the Heritage Act by failing to move for reconsideration of the Order's express determination that the Heritage Act does not apply to the War Memorial. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error."). Plaintiffs thus can do no more than defend the Order's determination that the Heritage Act does not apply, which rejected Plaintiffs' arguments regarding any alleged "facial violation of [the Act]" and which means that removal of the plaques eliminated any controversy between the existing parties to this case. That is, if someone hypothetically—an indicator of mootness to be sure—now sought to restore the original plaques, the action to obtain that restoration would have to be brought against parties not presently before the Court, namely the City of Greenwood and American Legion Post 20.

In sum, there remains "no actual controversy between the parties" to this case because the plaques have been removed and Plaintiffs have received the relief that they sought. *Mathis*, 260 S.C. at 346, 195 S.E.2d at 714. Analogous to the Court of Appeals' determination that a party's vacation of property moots a case regarding the

right to possession of that property, *Skydive*, No. 5573, at 17-18, the removal of the original plaques mooted Plaintiffs' case seeking the right to make exactly that change. The Order inescapably is moot and should be vacated.

Conclusion

Through no action by the Court or by the parties, Plaintiffs received the relief that they sought when the plaques were replaced. There is nothing else that the Court can do in this case. And because the plaques were removed while an Order was in place determining that the Heritage Act did not apply, a holding unchallenged by Plaintiffs, there is no controversy between the parties. The Order should be vacated as moot.

Respectfully submitted,

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