



## FACTS

5. Plaintiff incorporates the above paragraphs by reference as if fully stated herein.

6. During her lifetime, Lillian L. Colby ("Mrs. Colby") regularly attended CSO productions, was a CSO season ticket holder for many years, and often made monetary contributions to CSO and other religious and charitable organizations.

7. In or around 1991, Mrs. Colby made plans for the distribution of her estate, and during this time expressed her intent to, among other things, provide specifically for CSO in a continuous manner after her death; that is, Mrs. Colby intended to provide CSO with more than a one-time bequest upon her death.

8. Mrs. Colby also intended to provide for Wayside Presbyterian Church ("Wayside") and other charities that provide aid to the poor, homeless, hungry, battered and those otherwise in need of assistance (the "Other Charitable Organizations") in a similarly continuous manner after her death.

9. To that end, Mrs. Colby created the Trust Agreement, Article 6 of which provides for a residuary trust (the "Residuary Trust") after Mrs. Colby's death.

10. Pursuant to Section 6.2 of the Trust Agreement, the Residuary Trust is apportioned into three shares: the Ying-wei Li Charitable Remainder Unitrust (the "Li Unitrust"), the Martha and Katie McClelland Charitable Remainder Unitrust (the "McClelland Unitrust"), and the remainder of the Residuary Trust was to be distributed as the third share to the Foundation, whose establishment and purpose were also set forth in Section 6.2 of the Trust Agreement.

11. Pursuant to Article 6, Section 6.2(iii) of the Trust Agreement, and consistent with Mrs. Colby's expressed intent before her death, the Foundation's exclusive purpose and obligation

is to equally distribute the Foundation's yearly revenue among CSO, Wayside, and Other Charitable Organizations:

The foundation shall be formed for exclusively charitable purposes and shall be for the purpose of supporting such charities as set out in subparagraphs (i) and (ii), above, and supporting charitable causes that aid the poor, homeless, hungry, battered or otherwise in the need of assistance.

(Trust Agreement, Article 6, Section 6.2(iii) (emphasis added)).

12. Wayside is the charitable organization set out in subparagraph (i) of Section 6.2 of the Trust Agreement, and CSO is the charitable organization set out in subparagraph (ii) of Section 6.2 of the Trust Agreement.

13. In addition, the Amended and Restated Bylaws of the Lillian L. Colby Charitable Foundation (the "Bylaws"), provide for the support of CSO, Wayside, and Other Charitable Organizations in accordance with the requirements set forth in the Trust Agreement:

This [Foundation] is organized to support the Wayside Presbyterian Church, Signal Mountain, Tennessee, the Chattanooga Symphony, and charitable organizations that aid the poor, homeless, hungry or battered, as specifically provided in the "Revocable Trust Agreement of Lillian L. Colby," dated May 6, 1991.

(Bylaws, Article III, ¶1). A true and accurate copy of the Bylaws is attached hereto as Exhibit B.

14. Mrs. Colby died on December 23, 2010, but the Foundation was not established until on or about November 16, 2012, and was not funded until November 28, 2012.

15. Since its inception, SunTrust and the Foundation's Board of Directors (the "Board")<sup>1</sup> have pursued a course of conduct that is inconsistent with Mrs. Colby's expressed intent for the Foundation and contrary to the requirements and limitations placed on the Foundation by the Trust Agreement.

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<sup>1</sup> The Board includes Jim Vaughn, Gary Chazen, Catherine Colby, Ryan Crimmins, Dana Perry, and Benjamin Probasco.

16. For example, Article 6, Section 6.2(iii) of the Trust Agreement states in pertinent part that SunTrust, as Trustee of the Trust Agreement, "shall serve as one [representative] of the initial directors" on the Board. (emphasis added).

17. CSO avers that the Board currently includes three (3) SunTrust representatives, which is in contravention of the Trust Agreement's limitation of SunTrust's presence on the Board to only one member.

18. In addition, the Board initially adopted articles and bylaws that did not conform to the specific terms of the Trust Agreement, and did not set forth the specific purpose of the Foundation as outlined in the Trust Agreement. The above-quoted section of the Bylaws was only included after an attorney involved with the preparation of the Trust Agreement informed the Board of the deficiencies in the initial bylaws.

19. Similarly, the Foundation's initial website did not accurately reflect the purpose of the Foundation in accordance with the language of the Trust Agreement, limited the amount of any one grant available to an organization, a limitation not created or otherwise mandated by the Trust Agreement, and stated that charitable organizations seeking grants must first be asked to apply by a Board member before the organization's application would be considered, yet another limitation not created or otherwise required by the Trust Agreement.

20. Accordingly, despite the Foundation's obligation to support it pursuant to Section 6.2(iii) of the Trust Agreement, CSO was required by the Board to apply for a grant before any funds were dispersed to CSO.

21. Further, it was only after trying to apply for a grant that CSO was informed that its application would not be considered unless and until a Board member asked CSO to apply.

22. CSO avers that the Foundation is obligated to support it in accordance with Section 6.2(iii) of the Trust Agreement, that CSO is not required to apply for a grant or distribution before it can receive funds from the Foundation, and that any such requirement placed on CSO by SunTrust and the Board is in contravention of the Trust Agreement.

23. In or around the spring of 2014, SunTrust informed CSO that grants from the Foundation would only be disbursed to support organizations with youth education programs, and that any grant to CSO would be deferred until SunTrust received information relative to CSO's youth education programs.

24. Article 6, Section 6.2(b) of the Trust Agreement states in pertinent part:

Limitation on use by institutions. Any distributions made to the institutions named above shall be used exclusively for one or more of the purposes of any such institution which qualify the institution as an organization which is exempt from taxation under Section 501(c)(3) and described in Sections 170(c) and 2055(a) of the Internal Revenue Code.

25. As set forth in Section 6.2(b), the only limitation on CSO's or any other organization's use of grants from the Foundation is that the funds be used for one or more of the purposes that qualifies the organization as a tax exempt entity under federal law.

26. The Trust Agreement does not limit CSO's use of any grant or distribution from the Foundation to only youth education programs, nor does the Trust Agreement require CSO or any other organization to have or otherwise facilitate a youth education program in order to receive a grant from the Foundation.

27. SunTrust's and the Board's limitation of distributions from the Foundation to only those organizations that facilitate youth education programs therefore is in contravention of the Trust Agreement.

28. SunTrust has also failed to provide CSO with certain reports that SunTrust is required to disclose upon request:

The Trustee shall, upon written request made no more often than annually, render to each permissible income beneficiary of the trust estate . . . full statements showing all items of income, receipts, expenses and disbursements and a schedule of all assets and liabilities of the trust estate.

(Trust Agreement, Article 10, Section 10.8(a)(i)).

29. SunTrust's failure to provide CSO or any other income beneficiary under the Trust Agreement with copies of the reports as required by Section 10.8(a)(i) is in contravention of the Trust Agreement.

30. Finally, SunTrust and the Board have not adhered to the requirement in Section 6.2(iii) of the Trust Agreement that the Foundation equally distribute its yearly revenue among CSO, Wayside, and Other Charitable Organizations.

31. CSO avers that Section 6.2(iii) of the Trust Agreement reflects that Mrs. Colby intended for three distinct organizations or classes of organizations to receive equal distributions of the Foundation's yearly revenue: CSO, Wayside, and Other Charitable Organizations.

32. Upon information and belief, the Board and SunTrust, however, maintain that the Trust Agreement only requires the Foundation to provide *some* amount of support to these organizations, but that the Board retains complete discretion in determining the extent of support each organization will receive.

33. Upon information and belief, CSO avers that SunTrust and the Board required Wayside to independently raise \$12,500 before Wayside would be eligible for a \$12,500 distribution from the Foundation.

34. The Trust Agreement does not require CSO, Wayside, or Other Charitable Organizations to raise funds independently in any amount in order to qualify for a distribution from the Foundation.

35. Upon information and belief, CSO avers that the Board has made distributions of the Foundation's assets to organizations or charities other than CSO, Wayside, and Other Charitable Organizations.

36. The Board therefore has not distributed the Foundation's yearly revenue consistent with Mrs. Colby's intent and the Trust Agreement.

37. CSO avers that the Board's failure to distribute one-third (1/3) of the Foundation's revenue to each of CSO, Wayside, and Other Charitable Organizations is contrary to Mrs. Colby's intent and is in contravention of the requirements placed on SunTrust and the Board by the Trust Agreement.

38. Attached to this Complaint as Exhibit C is a September 5, 2014 letter (the "Letter") from the attorney for the CSO to the Board with the Affidavit of John Roark (the "Affidavit") attached.

39. Mr. Roark was an employee of SunTrust from the end of 1988 until his retirement in 2006, and was the Manager of the SunTrust Personal Trust Department from the end of 1988 to 2001. (Affidavit at ¶ 1). Mrs. Colby was Mr. Roark's client from the end of 1988 to 2006, during which time Mr. Roark managed the trust accounts of Mrs. Colby and her husband (Affidavit at ¶ 2).

40. As evidenced by the Affidavit, the former manager of the SunTrust Trust Department confirms that Mrs. Colby intended for CSO, Wayside, and the Other Charitable Organizations to receive equal one-third shares of the Foundation's yearly revenue:

It was Mrs. Colby's further intention that the remainder of her estate go to her charitable Foundation which was intended to provide support to the three (3) beneficiaries in three (3) equal shares so that it would provide basic support to further the specified beneficiaries' existences (Wayside Presbyterian Church and the Chattanooga Symphony) in perpetuity, and the remaining one-third would be used to aid 'the poor, homeless, hungry, battered and otherwise in the need of assistance.'"

(Affidavit at ¶ 6).

41. Despite being provided with the sworn testimony of the former manager of the SunTrust Trust Department who was aware of Mrs. Colby's intent in creating the Trust Agreement and the Foundation, neither the Board nor SunTrust have responded to the Letter as of the filing of this Complaint. The Board and SunTrust have not otherwise undertaken any course of conduct that evidences a change in the Board's or SunTrust's construction or interpretation of the Trust Agreement or CSO's rights under that document.

42. CSO avers that the representatives of SunTrust and the members of the Board have committed serious breaches of trust and of their fiduciary duties by not administering the Trust Agreement or the Foundation in accordance with Mrs. Colby's intent. This is especially egregious because of SunTrust's and the Board's failure to amend or reconsider their interpretation of the Trust Agreement in light of the sworn testimony of the former manager of the SunTrust Trust Department.

43. CSO avers that the foregoing allegations demonstrate that SunTrust and its representatives and the Board and its members are unfit to serve in their respective positions, unwilling to adhere to the terms of the Trust Agreement, and have persistently not administered the Trust Agreement and the Foundation in accordance with Mrs. Colby's intent. SunTrust and the Board have demonstrated a pattern of indifference to the terms of the Trust Agreement and have established terms not even contemplated by the terms of the Trust Agreement or Mrs. Colby's



expressed intent, as evidenced by the Affidavit of the former manager of the SunTrust Trust Department. SunTrust's and the Board's pattern of indifference has also been demonstrated towards CSO and the other beneficiaries of the Trust Agreement.

44. Accordingly, removing SunTrust as the Trustee in this matter would serve the best interests not only of CSO but of Wayside and the Other Charitable Organizations, and would preclude SunTrust from taking any further action contrary to the intent of Mrs. Colby.

45. Similarly, removing the current members of the Board and replacing them with members who would act in accordance with the terms of the Trust Agreement would serve the best interests of CSO, Wayside, and the Other Charitable Organizations, and would prevent the Board from taking any further action contrary to the intent of Mrs. Colby.

**COUNT I**  
**BREACH OF THE TRUST AGREEMENT**

46. Plaintiff incorporates the above paragraphs by reference as if fully stated herein.

47. SunTrust and the Board have a duty to honor Mrs. Colby's intent and to adhere to the terms of the Trust Agreement.

48. SunTrust and the Board were made aware of the sworn testimony of the former manager of the SunTrust Trust Department relative to Mrs. Colby's intent when she executed the Trust Agreement, but have nevertheless failed to amend or revise their construction or interpretation of the Trust Agreement.

49. Accordingly, SunTrust and the Board have in bad faith pursued a course of conduct contrary to Mrs. Colby's intent.

50. SunTrust and the Board have in bad faith violated the Trust Agreement by, among other things, establishing a Board with more than one SunTrust representative, limiting the amount of any particular grant and placing conditions on CSO's use of such grants without authority from

the Trust Agreement, requiring CSO to submit an application for a grant from the Foundation, permitting CSO to submit applications for grants only after requested to do so by a Board member, failing to distribute one-third (1/3) of the Foundation's yearly revenue to CSO, distributing assets of the Foundation to organizations other than CSO, Wayside, and Other Charitable Organizations, and failing to provide CSO, a named beneficiary under the Trust Agreement, with financial information requested by CSO, as directed under Article 10, Section 10.8(a)(i) of the Trust Agreement and as required by Tennessee Law.

51. As a direct and proximate result of SunTrust's and the Board's bad faith breach of the Trust Agreement, CSO has not received the full amounts it is entitled to receive under the Trust Agreement and has been damaged.

**COUNT II**  
**DECLARATORY JUDGMENT**

52. Plaintiff incorporates the above paragraphs by reference as if fully stated herein.

53. CSO is an interested person, as that term is defined in Tenn. Code Ann. § 29-14-101, under the Trust Agreement.

54. SunTrust and the Board have erroneously and in bad faith construed the Trust Agreement such that CSO has been prevented from receiving one-third of the Foundation's yearly revenue, to which CSO avers it is entitled under the Trust Agreement.

55. Pursuant to Tennessee's Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101 *et seq.*, CSO seeks a declaration that SunTrust and the Board are obligated to distribute one-third of the Foundation's yearly revenue to CSO.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully prays as follows:

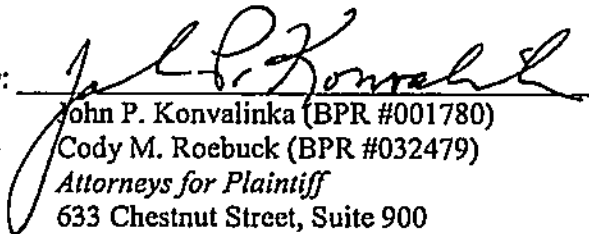
1. That proper process issue to Defendants requiring them to answer this Complaint within the time allowed by law;

2. That the Court, in accordance with Tenn. Code Ann. §§ 35-15-706(c) and 35-15-1001(5), appoint a special fiduciary to take possession of the property of the Trust Agreement and to administer the Trust Agreement during the pendency of this action;
3. That the Court remove SunTrust as Trustee of the Trust Agreement pursuant to Tenn. Code Ann. § 35-15-1001(7), and appoint a Successor Trustee in accordance with the Trust Agreement;
4. That the Court remove the current members of the Board and order the Successor Trustee to replace them in accordance with the Trust Agreement;
5. That the Court declare that Plaintiff is entitled to receive one-third (1/3) of the Foundation's net revenue each year under the Trust Agreement;
6. That the Court prohibit more than one representative of SunTrust or of the Successor Trustee from sitting on the Board;
7. That the Court require SunTrust and the Board to provide CSO with the reports required by Article 10, Section 10.8(a)(i) of the Trust Agreement;
8. That the Court restrict SunTrust and the Board from distributing assets of the Foundation to organizations or charities contrary to Mrs. Colby's intent and the Trust Agreement;
9. That the Court prohibit SunTrust and the Board from using funds or assets of the Residuary Trust or other funds or assets of the Foundation to defend this action;
10. That Plaintiff be awarded the costs and expenses of bringing this lawsuit, including its reasonable attorneys' fees;
11. That Plaintiff be awarded such other and further relief to which Plaintiff might be entitled.

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE**

Respectfully submitted,

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