

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-25-555

SEAL COVE AUTO MUSEUM,

Appellant,

v.

JOHN J. SANFORD ET AL.,

Appellees.

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT

**BRIEF OF APPELLEES JOHN J. SANFORD AND JOHN PEABODY
MONK HIGGINS, IN THEIR CAPACITY AS TRUSTEES, AND
THE RICHARD C. PAINE, JR. AUTOMOBILE COLLECTION
CHARITABLE TRUST**

George T. Dilworth, Bar No. 3639
Susan M. Weidner, Bar No. 10083

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INTRODUCTION

Although styled as a Motion to Enforce, this is a simple breach of contract action. In December 2020, after two years of litigation and several Judicial Settlement Conferences with the Business Court (*Duddy, J.*), Appellant Seal Cove Auto Museum (“SCAM” or “Museum”), Appellee Richard C. Paine, Jr. Automobile Collection Charitable Trust (“Trust”), and the Maine Attorney General’s Office entered into a General Release and Settlement Agreement and an Amended Relationship Agreement (“ARA”). Pursuant to the ARA, the Trustees agreed to, among other things, distribute the greater of \$200,000 or 4.5% of its “Endowment Assets” to the Museum each year and to make investment decisions consistent with that goal while at the same time reasonably protecting and maintaining the value of the Trust corpus. For the next four years, the Trustees provided the Museum with annual payments averaging \$300,000—50% more than the required \$200,000 minimum.

But that was not enough for SCAM. When the Trustees decided to donate to a different museum, the Owls Head Transportation Museum (“OH” or “Owls Head”), SCAM brought this Motion to Enforce, claiming that the Trustees’ pledge to Owls Head violated the Settlement Agreement by impermissibly impairing the financial viability of the Trust. (A. 58.) After extensive discovery and a two-day trial, the Court came to the unsurprising conclusion—given the Trustees’

distributions to the Museum and the substantial increase in the value of the Trust—that the donation and pledge to Owls Head did not impermissibly impair the financial viability of the Trust and that the Trustees did not breach the Settlement Agreement.

The BCD’s factual findings, which are reviewed for clear error, are virtually unassailable on appeal, and SCAM therefore attempts to find ambiguity in the language of the contract when there is none and to argue that it was error not to permit it to try issues that it never raised in its Motion to Enforce. There is no merit to SCAM’s arguments. The record in this case establishes that the Business Court’s findings of fact were sound, and certainly not clearly erroneous. This Court should affirm the BCD’s decision.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Trust

Mr. Paine collected antique cars and, in 1963, established the Museum to store and display them. *Attorney General v. Sanford*, 2020 ME 19, ¶ 4, 225 A.3d. 1026. In 1986, he established the Trust and conveyed the vast majority of his collection to the Trust in his will. *Id.* The Declaration of Trust provides that:

All or any part of the net income and principal may be paid for the charitable purpose of 1) providing educational and scientific study of antique automobiles, **whether owned by the trust or any other charitable organization**, and other methods of transportation, 2) providing for the display to the public of antique automobiles, **whether owned by the trust or any other charitable organization**, and 3) maintaining in suitable condition for the public display and study **any**

antique automobiles owned by the trust or any other charitable organization.

(Trial Ex. 1 (emphases supplied).) As this Court previously recognized, “[t]he Declaration of Trust expressly permits, but does not require, the Trustees to make distributions of Trust income or principal to Seal Cove.” *Sanford*, 2020 ME 19, ¶ 5, 225 A.3d. 1026; *see also id.* ¶ 13 (“Seal Cove is a permissible distributee” of the Trust.) The Trust and the Museum entered a Relationship Agreement formalizing their agreement to house the Trust’s car collection at the Museum in 2008, and again in 2014. (A. 89.)

B. The 2020 Settlement and Amended Relationship Agreement

In 2018, a dispute arose among the Trustees, the Maine Attorney General, and the Museum about the management of the Trust. Initially, the Superior Court held that the Museum lacked standing and dismissed it from the case. *Sanford*, 2020 ME 19, ¶ 3, 225 A.3d. 1026. The Trustees and the Attorney General continued the litigation and entered a Consent Decree, which the Museum appealed. This Court vacated the Superior Court’s Order, explaining that, although the Museum was not a qualified beneficiary, it had the rights of a qualified beneficiary.¹ *Id.* ¶ 11. This Court noted that the Relationship Agreement governing the Museum’s display of the

¹ The Museum asserts incorrectly that it is a “qualified beneficiary.” (Blue Br. 26, 28-29, 31.)

Trust's collection was a contract, and that the Museum's rights under the Relationship Agreement "exist[] outside of the Terms of the Trust." *Id.* ¶¶ 6, 13 n.4.

The Museum filed a new Complaint in docket number BCD-CV-2020-9, and the cases were consolidated in the BCD. The parties agreed to participate in judicial settlement conferences with Judge Duddy, who was actively engaged in the negotiations as the parties exchanged draft agreements. The parties ultimately executed three documents: the Settlement Term Sheet, (A. 105-115); the ARA (A. 88-103); and the General Release and Settlement Agreement (A. 116-123).

The ARA recognizes that the Trust has three "buckets" of assets: (1) the "Tangible Assets," consisting of Mr. Paine's collection of antique automobiles; (2) the "Acquisition Fund;" and (3) the "Endowment Fund." (A. 88-104, 124); *see also* (Museum Trial Brief at 3 (acknowledging that "the Trust consists of three buckets of assets").) The ARA does not define "corpus," but defines "Endowment assets" as "the Charitable Trust's investments and other intangible assets, less current liabilities and less the Acquisitions Fund." (A. 93-94 at ¶ 6.) The ARA defines the Acquisition Fund as "a portion of the Intangible Assets of the Charitable Trust that have been designated as an auto and motorcycle acquisitions fund to enable the Charitable Trust to make acquisitions of Tangible Assets that will enhance the collection from time to time." (A. 96 at ¶ 10.)

Paragraph 4 of the ARA provides that

The Charitable Trust will manage its own intangible property free of any control by the Museum, provided that the Trustees agree to make investment decisions consistent with the goal of providing the Museum at least \$200,000 of annual support during the term of this Agreement while at the same time reasonably protecting and maintaining the value of the corpus of the Charitable Trust.

(A. 93.) Paragraph 6 states that

The Charitable Trust will provide to the Museum annually the greater of (1) \$200,000.00 or (2) 4.5 percent of its “Endowment Assets” as averaged over the past twelve fiscal quarters for use as the Museum may determine for the Museum’s corporate and legal purposes.

(A. 93.)

The ARA also provides that the Trust shall indemnify the Museum for reasonable attorneys’ fees incurred by the Museum in any litigation between the Trustees and the Museum regardless of the outcome so long as the Museum’s position was neither frivolous nor asserted in bad faith. (A. 99-100.)

Pursuant to the Settlement Term Sheet, the Trustees agreed to pay the first \$175,000 of the Museum’s legal fees² from the Acquisition Fund, transfer \$700,000 from the Acquisition Fund to the Endowment Fund, and stop replenishing the Acquisition Fund. (A. 106, 108.) The Trustees also agreed to deposit \$350,000 into

² The Museum’s legal fees were more than \$280,000. (Trial Ex. 54; 8/19/2025 Transcript (“Tr. I”) at 131:12-19.)

the Endowment Fund.³ (A. 110.) The parties agreed that Judge Duddy or a replacement judge of the BCD would retain jurisdiction to decide any disputes arising from the Settlement Agreement, Settlement Term Sheet, and the ARA. (A. 111.) Other than its attorneys' fees, the Museum did not receive any funds from the settlement, and the ARA did not require the Trustees to retain a minimum balance in the Endowment Fund.

C. The Trustees' Donation to Owls Head

The Trustees, Jack Sanford and John Higgins, have broad experience. (Tr. II at 8:11-12.) Sanford is an attorney in Camden who represented Richard Paine for many years; Higgins has over 50 years of experience in the trust industry and is currently the co-chair of the board of directors of a trust company. (Tr. II at 7:20-8:10.) They bear equal responsibility for the management of the Trust, but Sanford takes the lead on matters involving the collection itself, while Higgins takes the lead on matters involving the Trust's investments. (Tr. II at 8:13-19.)

Sanford has long been familiar with OH, having previously served on its board of directors and occasionally as its legal counsel. (Tr. I at 209:5-15.) In 2021, he learned that Owls Head was in the "quiet phase" of a \$8.7 million capital campaign, and he reviewed the campaign materials before raising with Higgins the prospect of

³ The Museum asserts incorrectly that these funds were paid from the Trustees' personal funds. (Blue Br. 29 n.4.) In actuality, the \$350,000 payment to the Endowment came from the Trust's insurer. (8/20/2025 Transcript ("Tr. II") at 9:7-20.)

the Trust contributing to the campaign. (Tr. I at 215:19-24, 218:18-219:5.) In the fall of 2021, the Trustees met in person for about two hours to discuss the matter. (Tr. I at 222:1-10.) They discussed Owls Head’s general success over the years, the likelihood that Owls Head could actually raise \$8.9 million, and the current state of the Trust’s Endowment and Acquisition Funds. (Tr. I at 217:3-12, 219:21-24, 221:1-6.) They also reviewed the Trust document itself. (Tr. I at 220:9-11.) They discussed structuring the Donation over a period of time to mitigate risks in the event of a market downturn. (Tr. I at 221:7-19; 242:16-20.) At the time of these discussions, the Endowment Fund had around twice the funds necessary to meet the obligation to provide the Museum with a minimum of \$200,000 each year.⁴ (Tr. I at 229:2-17.)

Sanford believed that Owls Head’s campaign was an exciting opportunity and consistent with the purposes of the Trust. (Tr. I at 228:12-16.) Owls Head planned to add an automotive education center and facilitate STEM programming for Maine K-8 students. (Tr. I at 228:12-23.) Owls Head offered to name the auto education center after Richard Paine and utilize that new facility to perform restorative work on the Trust’s cars. (Tr. I at 65:12-25.) Sanford viewed the Donation as a “win” for each party: Owls Head would advance its capital campaign, the Trust would get

⁴ To generate \$200,000 annually from just the Endowment Fund under the 4.5% formula, the balance in the Endowment Fund had to be about \$4.4 million. (Tr. I at 246:5-11.)

appropriate cars in its collection restored, and the Museum would improve its visitors' experience with operational cars. (Tr. I at 228:10-229:1.)⁵

Higgins also reviewed the Trust's financials. (Tr. I at 247:12-14.) At trial, he recalled that the Endowment Fund balance was about \$8.2-8.3 million at the time and that the Acquisition account held about \$850,000. (Tr. I at 241:21-25, 242:1-4.) He calculated that, even if there was a sudden 30% market drop, 4.5% of that reduced Endowment would still exceed the minimum needed to pay the Museum.⁶ (Tr. I at 246:18-23); *see also* (Tr. I at 247:2-3 ("the math was fairly simple")). He also believed that the Endowment Fund would continue to grow with sound investment practices. (Tr. I at 247:19-22.)

Higgins also looked at the Endowment's cash flow for 2021: it started at about \$6.7 million; had an inflow of \$1.1 million (\$700,000 from the Acquisition Fund, plus the \$350,000 insurance payments); and had an outflow of \$700,000 (\$200,000 for legal fees, \$270,000 annual distribution to SCAM, \$150,000 in Trustee fees and administrative costs, \$50,000 for insurance, and approximately \$30,000 for other expenses). (Tr. II at 9:7-10:5.) This left a net balance of \$7.1 million in the

⁵ Sanford summarized the benefits of the Donation to the Museum's board president in an email that she forwarded to the board on December 12, 2021. (Trial Ex. 12.)

⁶ Despite Higgins performing this stress test evaluation, there is nothing in the ARA that requires the Trustees to ensure that 4.5% of the Endowment Fund is greater than or equal to \$200,000. Instead, Paragraph 6 of the ARA simply provides that the Trustees will annually provide to the Museum the "greater of" \$200,000 or 4.5% of the Endowment Fund. Thus, Paragraph 6 implicitly contemplates that 4.5% of the Endowment Fund may be less than \$200,000 and the Trustees could pay the distribution from the Acquisition Fund.

Endowment before taking into account the gains in the stock market that year, which added about \$1.5 million in value.⁷ (Tr. II at 10:7). Thus, before making the initial \$500,000 payment, the Endowment ended the year with over \$8 million of asset value. (A. 124; Tr. II 10:10-14, 10: 21-25, 11:10-12:6.) Given that appreciation, Higgins assessed that a \$500,000 payment to OH that year would not “move the needle very much.” (Tr. II at 10:14-19.) Meanwhile, the book value of the Trust’s tangible assets was holding steady at approximately \$8.7 million. (A. 124; Tr. II at 12:7-22.)⁸

On December 8, 2021, Sanford called Jeryl Schreiver, the Chair of the Museum’s Board of Directors, and informed her of the Trustees’ planned donation and its expected benefits to the Trust, the Museum, and Owls Head. (Tr. I at 23:23-25, 24:12-18; Trial Exs. 7, 7A.) In an email to the Museum Board on December 12, 2021, Ms. Schreiver recounted her conversation with Sanford and noted that the Trust’s distributions to the Museum would decrease as a result of the Donation, but “our \$200,000 minimum per year is not in jeopardy.” (Tr. I at 78:8-19; Trial Ex. 12.) The following day, she wrote that “Jack [Sanford] is giving \$500,000 of the

⁷ The Museum’s bad faith argument either does not understand or disregards these capital gains that the Trustees were considering when making the Donation, the initial \$500,000 installment of which was only a portion of the capital gains. *See* (Blue Br. 7 (“[S]oon after settling Seal Cove’s lawsuit against them by moving \$1.05 million into the Endowment Fund that funds Seal Cove’s operations, the Trustees proceeded to in effect nullify those transfers by giving \$1 million from the Endowment Fund to a third party.”).)

⁸ The Trustees did not consider the draft investment policy. (Tr. I at 257:13 – 258:14.) Higgins explained that it was never finalized or adopted. (Tr. I at 258:8 – 259:12.)

Payne endowment plus a \$100,000 per year/5 year commitment. (yes he can do that without our agreeing to it).” (Trial Ex. 13 at SC000051; Tr. I at 78:20-80:25.)

Sanford had a second call with Schriever and other Museum officials on December 20, 2021. (Tr. I at 44:21-45:5, 45:11-13; Trial Ex. 90.) He reiterated that the Trustees wanted to take the “extraordinary gains in the stock market” that year “off the table.” (Tr. I at 64:8-12.) He explained how Owls Head intended to use the Donation and asked the Museum to “advise us by year end if you have any questions concerning this.” (Tr. I at 76:6-8; Trial Ex. 26.) Having heard no objection from the Museum, the Trustees delivered the initial \$500,000 payment to Owls Head on December 30, 2021. (Trial Ex. 22.) The Museum did not notify the Trustees that it objected to the Donation until January 24, 2022, more than six weeks after the Trustees had informed the Museum of their plan. (Trial Ex. 29; Tr. I at 57:1-58:7, 86:16-18.)

D. The Museum Pursues Litigation Again

In accordance with the Settlement Agreement approved by Judge Duddy (A. 111, 117), the parties notified the BCD of the dispute. Judge Duddy held a conference with counsel for the Trustees, the Museum, and the Attorney General to discuss how to present the issue to the court. (A. 6 (Hearing/Conference Record of 8/16/2022)). The parties agreed that the Museum would file a Motion to Enforce. (A. 58.) The Museum’s Motion raised a single issue: that the Donation violates the

Settlement Agreement. (A. 57-58.) Following a discovery period,⁹ the BCD scheduled a bench trial for August 2025.

After the Museum raised issues outside of the Motion to Enforce in its portion of the Pretrial Joint Statement, the Trustees filed a Motion *in Limine* to limit the scope of the hearing to the singular issue the Museum raised in the Motion to Enforce. (A. 61-71 (“Scope MIL”).) The Museum also filed a motion to exclude an email from the Museum’s treasurer to Ms. Schriever and other Museum Board members recounting that, during the negotiations leading up to the 2020 settlement, he predicted that the Trustees would increase their contributions to other permissible distributees and lamented that the Museum had not sought to limit the Trustees’ authority to do so. (Pl.’s Mtn. *in Limine* to Exclude Evidence of Settlement Negotiations; Trial Ex. 17 at SC 00069.) The BCD ultimately excluded both parties’ proffered evidence, finding that the only issue properly presented by the Motion to Enforce was “whether the Court should enter an Order directing the Trustees to seek return of the funds already donated to Owls Head Transportation Museum and to cancel its pledge of future donations to Owls Head.” (A. 25.)¹⁰

⁹ The BCD permitted discovery, including expert discovery, over the Trustees’ objection. The Trustees maintained that the dispute could be resolved as a legal issue and expressed concern for unnecessarily expending Trust resources to fund both sides of the litigation.

¹⁰ In addition to recognizing that the Museum’s Motion to Enforce never raised the “five collateral issues” that it sought to also litigate, the BCD characterized those issues as so minor that they could likely be resolved without litigation. (A. 25.)

E. The Trial

Besides Sanford and Higgins, whose trial testimony is summarized above, the Museum called its expert witness, James MacLeod.¹¹ At the outset, Mr. MacLeod withdrew his opinion that unitrust principles apply to the Trust. (Tr. I at 105:21-106: 23.) He opined that the draft investment policy was binding on the Trustees, *see* (Trial Ex. 114), but conceded that the ARA does not contain any reference to a spending policy or a 4.5% spending limit, (Tr. I at 115:12-15, 139:25-141:2). He also agreed that nothing in the ARA requires the Trustees to grow the value of the Trust. (Tr. I at 139:16-22.)¹²

He claimed on direct examination that the Trustees had spent 16% of the Endowment Fund in 2021, consisting of \$500,000 to Owls Head, \$269,000 in distributions to the Museum, and \$383,000 in legal fees. (Tr. I at 131:12-19.) On cross-examination, he admitted that he had never seen the Settlement Agreement and was therefore unaware that \$175,000 of those legal fees were paid to the Museum from the Acquisition Fund, not the Endowment. (Tr. I at 132:2-19.) As a

¹¹ There was no court reporter present for the trial, so the transcript was derived from the audiotape. It has some errors. For example, it reflects that the parties agreed to “suppressing the witnesses” instead of “sequestering the witnesses.” (Tr. I at 4:8.) It confuses the speaker in several instances: it represents that Mr. Bryant resumed cross-examination of Jerryl Schreiber when it was Mr. Dilworth, (Tr. I at 71:25); that Mr. Higgins addressed evidentiary issues with the court when it was Mr. Bryant; and confuses Mr. Dilworth and Mr. Bryant during a discussion with the court, (Tr. I at 232:14). It also incorrectly refers to the “paid trust” when it should have been the Paine Trust. (Tr. II at 8:11.)

¹² He furthermore agreed that Owls Head was a qualified recipient of the Donation. (Tr. I at 129:8-17.)

result, he had to concede that his calculation was inaccurate. (Tr. I at 134:3-14.)¹³ He agreed that his calculation referred to 16% of the Endowment, not the corpus, (Tr. I at 136:7-11; 137:16-138:2), and that increasing the value of the cars by making them operable would increase the value of the corpus, (Tr. I at 130:19-22).

Regarding the stock market, Mr. MacLeod testified that it is reasonable to assume a rate of return of about 6.5%, but the rate of return in 2021 was about 20%. (Tr. I at 145:20-25.) Most importantly, he agreed that, even after the \$500,000 payment was made to OH, the value of the Trust increased significantly that year. (Tr. I at 151:21-15.)

In summary, the evidence at trial demonstrated that the Trust's finances have always been strong. The investment accounts have appreciated on average about 11% per year, (Tr. II at 17:21-25), and the Trust's overall financial position is stronger now, after the \$500,000 distribution to OH, than when the Settlement Agreement took effect on January 1, 2021, (Trial Ex. 71; Tr. II at 14:2-4). Between December 31, 2020 and December 31, 2021, the Endowment Fund increased \$1,409,899 or 21.2%. (Tr. II at 15:20-25.)¹⁴ The Trust corpus increased during the

¹³ Of the \$383,718 in attorneys' fees that the Trust paid in 2021, \$281,597 went to the Museum's counsel, and \$5,730 went to the firm that reviewed the Museum's legal bills. (Trial Ex. 52.) The first \$175,000 of the Museum's attorneys' fees and the entirety of the review counsel's legal fees came from the Acquisition Fund. (Trial Ex. 52; Tr. II at 19:3-4.) The remaining \$102,000 of attorneys' fees paid by the Trust in 2021 were split between counsel for the individual Trustees, the Trust itself, and counsel for Spinnaker Trust, which was a party to the 2020 settlement. *Id.*

¹⁴ Even if one puts aside the \$1,050,000 transferred into the Endowment as part of the settlement, the Endowment gained \$359,898, or 5.4% in 2021. (Tr. II at 16:1-12.)

same period by \$695,468, or 4.1%. (Tr. II at 16:13-17.) And it has remained strong. As of June 30, 2025, the latest figures available, the Endowment was \$7,915,573, an increase of about \$1.3 million since 2020, (Tr. I at 17:3–13), and, after paying the annual distributions to the Museum, Trustee fees, insurance on the collection, and legal fees, the Trust’s total assets still increased by \$754,028, or 4.4%. (Tr. II at 17:14-20.)

F. The Business Court Denied the Museum’s Motion to Enforce

In its decision, the BCD noted that the “Museum appears to believe that the Trust’s first duty is to Seal Cove, and any donations to other museums must be squared with that obligation. That is not what the ARA or the Trust documents say.” (A. 23 n. 14.) The court further explained that the “Trustees had no obligation to consult the Museum when making the Donation, much less seek their permission,” nor did they have an “obligation to maximize the distributions to the Museum. . . . The ARA places no limits or guidelines on the size of donations as long as the corpus is maintained, and so it is irrelevant that the Donation was significantly higher than previous donations. Both the Trust’s value at the time of the Donation and its subsequent financial performance plainly demonstrate that the Donation did nothing to impair the Trust’s long-term financial stability.” (A. 23-24.)

The Museum, but not the Attorney General, appealed the decision.

ISSUES PRESENTED

- I. Whether the BCD correctly applied the standard definition of “corpus” to mean all of the Trust’s assets.
- II. Whether the BCD properly limited the evidence at trial to the sole issue raised in SCAM’S Motion to Enforce.
- III. Whether SCAM has demonstrated that the BCD’s factual findings were “clearly erroneous.”

SUMMARY OF THE ARGUMENT

Initially, the Museum based its Motion to Enforce on a prediction: that the size of the Donation would make it impossible for the Trustees to meet their obligations under Paragraphs 4 and 6 of the ARA. Before making the Donation, the Trustees had calculated the risks and concluded that the Donation would not cause such a result. Time has proven that the Museum’s prediction was wrong and that the Trustees did not violate the ARA. In fact, the Trustees’ annual distributions to the Museum have exceeded \$300,000 since 2022. (Trial Exs. 53, 70.) Further, the Trustees have grown the value of the corpus—including the Endowment—even after paying all of the annual disbursements to the Museum, paying all the Trust’s expenses and legal bills, and making the initial \$500,000 payment to Owls Head. The Museum’s predictions of financial doom were entirely misplaced.

Because that argument failed, the Museum makes other assertions, claiming that the Trustees acted in bad faith, that they failed to comply with a draft spending policy, and that the Trust’s sole purpose should be to support the Museum by

hoarding the Endowment's funds to maximize the annual distribution to the Museum.

The ARA unambiguously allows the Trustees to manage the Endowment and Acquisition Funds without interference or second-guessing from the Museum so long as they make investment decisions consistent with the goal of providing the Museum with the minimum annual distribution required under the ARA and that reasonably protect and maintain the value of the entire Trust corpus. The ARA does not require the Trustees to manage the two accounts so as to maximize the annual distribution to the Museum, to increase that distribution every year, nor even to keep pace with inflation. The ARA does not refer to, let alone incorporate, any policies of the Trust—finalized or otherwise. Nor does the ARA require the Trustees to maintain a specific balance in the Endowment account, grow the corpus, or protect only the Endowment Fund.¹⁵ Rather, the ARA simply requires that the Trustees make investment decisions consistent with the goal of providing the Museum at least \$200,000 “while at the same time reasonably protecting and maintaining the value of the corpus.” The balance sheets demonstrate that they met this standard. The Trustees not only protected and maintained the value of the corpus; they grew it.

¹⁵ SCAM incorrectly asserts that the ARA lasts in perpetuity. In actuality, the ARA can be terminated if the Museum fails to meet certain conditions and standards, or if a party materially and repeatedly breaches the ARA. (A. 98-99 at ¶¶ 14, 16).

ARGUMENT

A. Standard of Review.

This Court reviews a trial court's factual findings for clear error and its legal conclusion that those facts do not make out a breach of contract *de novo*. *See, e.g., Harvey v. Dow*, 2011 ME 4, ¶ 7, 11 A.3d 303. This Court reviews a trial court's control of the presentation of evidence and its discretion to set reasonable time limits on testimonial hearings for an abuse of discretion. *See, e.g., Dolliver v. Dolliver*, 2001 ME 144, ¶ 10, 782 A.2d 316. The decision to exclude evidence is likewise reviewed for an abuse of discretion, *see, e.g., State v. Maine*, 2017 ME 25, ¶ 23, 155 A.3d 871, and the Museum must demonstrate that the admissibility of evidence excluded at trial based on relevance was in fact "compelled by the evidence," *see, e.g., Keybank Nat'l Ass'n v. Est. of Quint*, 2017 ME 237, ¶ 13, 176 A.3d 717. This Court can affirm a judgment for reasons different than those stated by the trial court. *See, e.g., State v. Flint*, 2011 ME 20, ¶ 10, 12 A.3d 54. Thus, where a judgment is based on incorrect reasoning, this Court will affirm that judgment where it discerns that it was proper on other grounds. *See, e.g., Est. of Smith v. Cumberland Cnty.*, 2013 ME 13, ¶ 22, 60 A.3d 759. Further, "[a]ny party claiming error must demonstrate prejudice from the error." *In re Joshua B.*, 2001 ME 115, ¶¶ 10-11, 776 A.2d 1240. Here, the BCD did not commit error, nor can the Museum demonstrate prejudice with respect to any of the issues it raises on appeal.

B. The BCD applied the correct meaning of “corpus,” and there was no clear error even under the Museum’s “preference” for the term.

- i. The term “corpus” in Paragraph 4 of the ARA is unambiguous and distinct from the term “Endowment Assets.”

When contract terms are unambiguous, this Court reviews such language *de novo*. See, e.g., *55 Oak Street, LLC v. RDR Enterprises, Inc.*, 2022 ME 28, ¶ 15, 275 A.3d 316. While on one hand the Museum contends that “[t]he trial court should have ruled that ‘corpus’ unambiguously means the Endowment Fund,” (Blue Br. 18), it also asserts that the word “corpus” in Paragraph 4 is ambiguous and synonymous with “Endowment” because “[t]he corpus that matters to Seal Cove is the Endowment Fund,” (Blue Br. 19).¹⁶ This argument ignores the plain language of the ARA, which defines “Endowment Assets” to mean “the Charitable Trust’s investment and other intangible assets, less current liabilities and less the Acquisition Fund as described below.”¹⁷ (Tr. Ex. 2; A. 93-94 ¶ 6.)

The ARA refers to the “Endowment” in other places, (A. 88-103 ¶¶ 6, 9, 10), but refers instead to “corpus” in Paragraph 4. The Museum overlooks these other portions of the ARA. However, this Court considers the “whole instrument” when

¹⁶ The Museum states that the ARA provides that “the primary purpose of the Trust” is to display the collection at the Museum. (Blue Br. 6, 20 & n.2 (emphasis supplied).) In actuality, the ARA states that the display of the collection at SCAM is “an implicit primary purpose of the Charitable Trust.” (A. 89 ¶ 2 (emphasis supplied).) The Trust has multiple purposes associated with the study, display, and maintenance of antique automobiles, whether they are at the Museum or another non-profit organization. (Trial Ex. 1 at ¶ 2(a).) As the BCD held, neither the ARA nor the Trust document provide that the Trustees’ first duty is to SCAM. (A. 23 n. 14.)

¹⁷ The “Acquisition Fund” is defined in Paragraph 10 of the ARA.

construing contracts, and “[a]ll parts and clauses must be considered together [so] that it may be seen if and how one clause is explained, modified, limited or controlled by the others.” *Dow v. Billing*, 2020 ME 10, ¶ 14, 224 A.3d 244 (quotation marks omitted). “Ultimately, [this Court] seek[s] to give effect to the plain meaning of the words used in the contract and avoid rendering any part meaningless.” *Id.*; *see also Scott v. Fall Line Condominium Ass’n*, 2019 ME 50, ¶ 7, 206 A.3d 307 (“The language employed by the parties is to be construed to give effect to the plain meaning of the words used.” (quotation marks omitted)).

That the contract uses two different terms is enough to conclude that “corpus” and “Endowment” have distinct meanings. The Museum’s proposed interpretation—or, as the Business Court called it, “preference,” (A. 22 n.10)—for the meaning of “corpus” in Paragraph 4 is not reasonable because it would render meaningless the distinct use of “Endowment Fund,” “Acquisition Fund,” and “Tangible Assets” elsewhere in the ARA, all of which make up the “corpus” of the Trust. *See Dow*, 2020 ME 10, ¶ 22, 224 A.3d 244 (“An interpretation that renders portions of a contract redundant or superfluous . . . is not reasonable.”); *see also* Restatement (Second) of Contracts § 203(a) (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”).

Concluding that the term “corpus” in Paragraph 4 unambiguously refers to something other than “Endowment,” the BCD correctly applied the Black’s Law definition for this common legal term in the absence of any definition in the ARA. (A. 21 n.4); *see, e.g.*, Restatement (Second) of Contracts § 202(3) (“Unless a different intention is manifested, where language has a generally prevailing meaning, it is interpreted in accordance with that meaning [and] technical terms and words of art are given their technical meaning when used in a transaction within their technical field); *Tondreau v. Sherwin-Williams, Co.*, 638 A.2d 728, 730-31 (Me. 1994) (citing this principle from the Restatement).

Further, the Museum’s argument that “Endowment” and “corpus” are synonymous is contradicted by its own expert and its opening brief. At trial, the Museum’s expert acknowledged that the corpus is more than just the Endowment when he agreed that, as the value of the Trust’s Tangible Assets increased, the value of the corpus would also increase. (Tr. I at 130:19-22.) Similarly, in discussing the scope of evidence admitted at trial, the Museum argues in this appeal that the BCD’s exclusion of proffered evidence about the value of the cars was wrongful, and that evidence regarding the discrepancy in the appraisals of tangible assets “was relevant in evaluating whether the million-dollar gift to Owls Head was consistent with ‘protecting and maintaining the value of the corpus of the Charitable Trust’ as

required by the [ARA].” (Blue Br. 13.) If, as the Museum claims, “corpus” was limited to the “Endowment,” then the value of tangible property is irrelevant.¹⁸

The Museum contends that Paragraph 4 “means the Trustees will support Seal Cove at a certain level while preserving the Trust’s ability to continue doing so. The Acquisition Fund and the Tangible Assets are not relevant to any of this,” citing Sanford’s testimony that it would be “inappropriate” to use funds from the Acquisition Fund to pay SCAM’s distributions. (Blue Br. 18.) Mr. Sanford was correct that the Acquisition Fund’s intended use is to grow the collection, not maintain it. However, nothing prohibits the Trustees from transferring funds from the Acquisition Fund to the Endowment Fund if necessary to meet the Trust’s obligations.¹⁹ The Trustees can also utilize tangible assets to meet such obligations. Thus, the BCD did not commit legal error when it found that “[t]he ARA unambiguously states that the value of the corpus refers to the value of the entire Trust, not a discrete fund within the Trust (. . . maintaining the value of the corpus of the *Charitable Trust*.)’” (A. 21 (emphasis in original).)

- ii. As the BCD noted, the Museum’s claim fails even if “corpus” means only “endowment.”

¹⁸ As explained more fully below, the proffered exhibit regarding an outdated appraisal was irrelevant and inadmissible hearsay, and SCAM had not identified an expert to opine about the current value of the collection.

¹⁹ In fact, the Trustees – with the Museum’s knowledge and consent – transferred \$700,000 from the Acquisition Fund to the Endowment Fund as part of the 2020 Settlement Agreement. (A. 108.)

Even if this Court applies the Museum’s definition of “corpus” and concludes that the ARA requires the Trustees to protect and maintain the Endowment, SCAM has no case. First, the obligation to “reasonably protect and maintain” relates to the Trustees’ investment decisions. Second, the Trustees have protected and maintained the Endowment, which actually grew from \$6.7 million in 2020 to \$8.1 million in December 2021—after the Trustees made the initial \$500,000 payment to Owls Head. (Trial Exs. 44, 71.) The Endowment has fluctuated with the markets and expenses, but it has always exceeded the amount necessary to generate at least \$200,000 for the Museum. (Trial Exs. 44, 70, 71.) According to the latest data available at the time of the trial, the Endowment Fund was \$7.9 million, or \$1.2 million more than it was at the ARA’s effective date. (Trial Exs. 44, 71.) The Museum’s case therefore fails even under its own preference for the meaning of “corpus.” The Business Court acknowledged this, *see* (A. 22 n.10), and, in its opening brief, the Museum does not contend that this conclusion was clearly erroneous.

C. The BCD properly exercised its discretion when it limited the issues for and evidence at the hearing.

i. The BCD properly limited the scope of issues for hearing.

In its Motion to Enforce, the Museum sought one thing: an order directing the Trustees to seek return of the \$500,000 payment already made to Owls Head and to cancel its pledge for the remainder of the Donation. However, in the Pretrial Joint

Statement, the Museum disclosed that it intended to offer evidence regarding five additional issues. (Pretrial Joint Statement at 2-3.) That none of these issues were raised in the Motion to Enforce was sufficient by itself to preclude other issues from the scope of the hearing. A review of each issue individually reveals other reasons why they were properly excluded, and the Business Court did not abuse its discretion in rejecting the Museum's attempt to present evidence of five "collateral issues." *See, e.g., Dolliver*, 2001 ME 144, ¶ 10, 782 A.2d 316 (explaining that a trial court has "broad discretion" to control the presentation of evidence and "to set and enforce reasonable time limits on testimonial hearings.").

(a) Insurance Coverage. The Museum planned to offer evidence regarding whether the Trustees breached Section 8(f) of the ARA by failing to "make the Plaintiff an additional insured on their comprehensive liability and property damage policies." (Pretrial Joint Statement at 2.) Insurance agents informed the Trustees that the Museum has no insurable interest in the Trust's automobiles and cannot be named as an additional insured, *see* (Ex. 7 to Scope MIL at 126:8-127:25; 129:13-20). The Trustees offered to secure a policy if SCAM identified a carrier willing to underwrite the policy. (Ex. 7 to Scope MIL at 130:1-131:8; Ex. 8 to Scope MIL at 2.) The Museum never responded, apparently also finding it impossible to locate a

willing carrier.²⁰

(b) The 1900 Hood Steamer. The Museum sought to offer evidence that the Trustees violated Sections 3(a-c) of the ARA when they purchased the 1900 Hood Steamer and used “approximately \$25,000 from the Endowment Fund, rather than the Acquisition Fund, to pay for making a post-purchase video of the restoration and uniqueness of the Hood Steamer.” (Pretrial Joint Statement at 2.) The Trust purchased the car on August 27, 2020, before the ARA’s effective date, (Ex. 9 to Scope MIL); thus, the ARA did not even apply to the purchase of that car. Further, the Museum released the Trustees of all claims surrounding its purchase. *See* (Ex. 10 to Scope MIL). The BCD did not err by excluding such evidence.

(c) The Camden National Bank (“CNB”) Account. The Museum complained that the money in the Trust’s CNB checking account is not included in the 4.5% calculation of the Endowment Assets to determine the Trust’s annual distribution, and that the Trustees were not providing it with copies of the Trust’s checking account statements. The checking account is maintained to promote efficiencies so that Sanford can pay Trust expenses without having to wait for a check via mail from

²⁰ While unmentioned by the Museum, the ARA contains a reciprocal provision requiring it to name the Trust as an additional named insured on its insurance policy. (Ex. 2 to Scope MIL at ¶ 11.) Like the Trust, the Museum apparently found it impossible to find a carrier willing to include the Trust as an additional named insured on its property damage policy. Moreover, neither party is prejudiced by these circumstances; in the event of a loss, only the owner of the property will receive the proceeds. An additional named insured will receive nothing. Given these circumstances, there was no point in taking testimony on this issue.

Higgins in Portland. The balance fluctuates, but usually remains below \$10,000. The balance is not included in the 4.5% calculation because it is earmarked for short-term Trust expenses, and the administrative costs associated with calculating the checking account's average daily balance for the sole purpose of determining the Trust's annual contribution to the Museum would cost more than the \$400 per year that the Museum claims it is losing as a result of the CNB account. Nevertheless, when the Museum raised this issue in 2024, the Trustees offered to consider any calculations the Museum had regarding the difference, but the Trustees heard no response. (Ex. 8 to Scope MIL.)

Regarding the Museum's expectation to inspect the checking account and other financial records upon demand, the Museum's treasurer, Mr. Glaser, testified at his deposition that the Trust has been responsive to his inquiries. (Ex. 14 to Scope MIL at 16:25-17:21.) The Trustees provide the Museum with far more information than the law requires. The Museum is not entitled to access any information it wants on demand; it has only the rights of a qualified beneficiary in this regard, and a trustee need only provide "at least annually . . . a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values and tax bases." 8 M.R.S.A. § 813(3). The Museum's argument is futile and the BCD properly excluded it from being an issue at trial.

(d) Consolidated Tax Payments. The Museum next complained that, “in 2023 and presumably in 2024,” the Trustees filed a single tax return and paid the Acquisition Fund’s share of the taxes from the Endowment Fund. (Pretrial Joint Statement at 3.) The Museum did not raise this issue at the Trustees’ depositions, nor had it identified an expert as to the tax treatment of these accounts. In 2022, the Trust paid approximately \$2,674 in federal excise taxes, and about 90% of that is likely allocable to activity in the Endowment Account. Even if the Trustees agreed to use funds from the Acquisition Account to pay the approximately \$270 purportedly allocable to it, the administrative cost of calculating the exact amount would far exceed the value to the Trust or the Museum.²¹ This issue had nothing to do with the Museum’s Motion to Enforce and it was properly excluded.

(e) Royal Automobile Club membership dues. The Museum contended that the Trust should not pay for Jack Sanford’s membership dues to the Royal Automobile Club (“RAC”). Like bar associations and other similar organizations, the RAC provides opportunities for its members to make connections, discuss common interests, and identify new resources. Through contacts Sanford made at the RAC, the Trust acquired several additions to the collection and located original factory records relating to the Peugeot, the Trust’s most valuable car. If the Museum

²¹ SCAM stood to gain 4.5% of \$270, or \$12.15 per year, if the Trustees followed SCAM’s suggestion.

wanted to force the Trustees to stop paying the RAC dues, it should have raised the issue during the negotiations in 2020. Instead, the ARA allows the Trust to manage its own intangible assets free from control by the Museum, and Sanford's expenses at the RAC are within the budget allotted to him by the ARA.

(f) The scope of the trial. The Museum contends there was an unwritten understanding that it could address additional issues at the trial. (Blue Br. 9.) The Trustees did not recall such an understanding and can find no reference in the parties' email correspondence about including other issues. The Court's Conference Records make no mention of other issues for hearing. In fact, the proposed Order submitted along with the Motion to Enforce and issued by the Court reflects that the Clerk was to "schedule a status conference to discuss whether limited discovery on the Motion is appropriate." Order dated October 14, 2022. Likewise, the Court's Conference Records of November 1, 2022, and December 7, 2022 refer to permitting only "limited discovery." Had the parties expected to litigate all potential issues at the hearing, it is unlikely that discovery would have been characterized as "limited."²²

From his comments at trial, it is apparent that Judge Duddy, who presided at all of the court conferences since the parties first notified the BCD of the latest

²² While the parties addressed other grievances raised in the course of the Judicial Settlement Conference, that does not provide adequate notice that such grievances will be tried at a hearing.

dispute, did not understand that the Museum planned to raise additional issues at trial. He stated: “I understand the history. I was part and parcel of the history and the litigation leading up to it,” and concluded that “[w]e’ve got a limited motion to enforce one component of the settlement agreement.” (A. 40-41 at 169:20-170:2.) He understood that the Museum’s “only issue for hearing” was whether the trustees should be ordered to reverse the donation. (A. 25). He went on, stating that “this case is all about was the gift too large or not. Everything else is superfluous,” and “the sole question . . . is whether the donation unreasonably depleted that value of the Trust.” (A. 22.) The Court would not have made such a ruling if it recalled events consistent with the Museum’s recollection.

Regardless, the BCD had the authority to limit the scope of the hearing, including for the purpose of not spending time on meritless or *de minimus* issues.²³ See, e.g., *Dolliver*, 2001 ME 144, ¶ 10, 782 A.2d 316; see also Field & Murray, *Maine Evidence* § 611.1 at 325 (6th ed. 2007) (“There should . . . be no mistake about the broad sweep of the judge’s power in pursuing the objective of effectively ascertaining the truth and avoiding needless consumption of time. The judge’s

²³ In fact, the Court risked issuing an advisory opinion if it heard issues beyond the singular issue raised in the Motion to Enforce. See, e.g., *Beckerman v. Pooler*, 2015 ME 80, ¶¶ 12-14, 119 A.3d 74 (vacating trial court’s judgment on a motion for contempt to the extent that the trial court decided issues that were not raised in the motion for contempt even where those additional issues that the trial court decided involved many of the same questions of law and fact as those raised by the motion to contempt).

exercise of discretion will be upheld on appeal unless he or she has clearly interfered with a party's right to a fair trial.").

Some of the issues the Museum sought to raise were not ready for adjudication. For example, if the Trustees knew the Museum intended to litigate the insurance issue, they would have designated an expert to explain what constitutes "an insurable interest" in the collection and whether it is possible to include the Museum and Trust as additional insureds on their respective property loss policies. The consolidated tax payments issue did not arise until after the Museum filed its Motion to Enforce, so the Trustees could not have contemplated that it fell within its scope. Nor does responding to a written discovery request, given the liberal discovery procedures contemplated by the Rules, constitute an agreement to allow additional issues for the hearing. The Museum offers no rationale as to why the Business Court should have heard testimony where its position was futile or the issues were inconsequential to the Motion to Enforce.

The Museum's brief lists a number of fiduciary duties it alleges the Trust breached. (Blue Br. 21-22.) However, the Motion to Enforce asserted only a breach of contract; it did not raise fiduciary claims.²⁴ As this Court previously held, the fiduciary and contract relationships between the Trust and the Museum are distinct.

²⁴ The Museum inexplicably cites to UPMIFA even though it acknowledges that the statute does not apply. (Blue Br 21 n. 3.)

Sanford, 2020 ME 19, ¶ 13 n.4, 225 A.3d. 1026 (declining to consider the Museum’s contract right to receive “at least \$200,000 annually” when determining its status as a permissible distributee). The Trust does not obligate the Trustees to make any distributions or provide any support to the Museum; SCAM’s right to distributions under the ARA “exists outside of the Trust.” *Id.* ¶¶ 5, 13 n. 4. The scope of the Trustees’ fiduciary duties are thus irrelevant to the Motion to Enforce.

ii. The parol evidence offered by SCAM was properly excluded.

Arguing that the Trustees’ “state of mind in connection with the Owls Head donation was key to Seal Cove’s theory that they violated their contractual and fiduciary duties in making it,” the Museum argues that the BCD prevented it from proving that the Donation “was made in bad faith to nullify the cash transfers Seal Cove had won in the Settlement Agreement.” (Blue Br. 22-23.) But the BCD’s exclusion of such testimony was well justified and certainly not an abuse of discretion. First, the only thing that SCAM “won” in the settlement was reimbursement of its attorneys’ fees. Further, the Museum is essentially seeking to impose a new limitation on the Trustees’ discretionary decisions about distributions to other permissible distributees. However, as the Court noted, the ARA does not

impose any such limits on the Trustees so long as they meet the standards of Paragraph 4.²⁵

Much of the parol evidence SCAM offered was irrelevant.²⁶ For example, whether Owls Head had a policy that the donation of a car had to be coupled with an endowment sufficient to maintain it, (Blue Br. 24), has no bearing here. The Trustees did not plan to donate a car to Owls Head, so whether Owls Head had such a policy is not germane. Other parol evidence was hearsay or lacked a sufficient foundation. For example, the BCD excluded evidence regarding a 2018 valuation of the Trust's collection. (Blue Br. 24.) The valuation was seven years old and SCAM had not designated a necessary expert on the issue; the valuation itself was hearsay. The BCD properly excluded it.

- iii. The Trustees would have prevailed even if the BCD allowed parol evidence.

While none of the evidence the Museum proffered was of sufficient weight to change the outcome, the most important exhibit, had the BCD entertained parol evidence, was the email from the Museum's treasurer to other members of SCAM's board on December 19, 2021. (Trial Ex. 17.) He conceded that, under the ARA's language as written, the Trustees could increase their distributions from the

²⁵ Further, and as already noted, the Museum's "bad faith" argument disregards the capital gains in the Endowment in 2021. *See* n.7, *supra*.

²⁶ Under M.R. Evid. 401(b), the proffered evidence must be "of consequence in determining the action."

Endowment Fund to other permissible distributees and that, when negotiating the ARA, the Museum decided not to try to cap those distributions. (Trial Ex. 17 at SC000069.) In other words, the Museum’s treasurer conceded that the Trustees were free to do exactly what they did. Had the BCD entertained parol evidence, the Trustees’ case would have been even stronger, and the Museum cannot show prejudice.

D. The BCD’s factual findings were not clearly erroneous.

The Museum makes a series of six unrelated arguments in the final section of its opening brief. (Blue Br. 27-34.)

First, it asserts that the Court relied on a single fact—that between 2020 and 2021, after the Trustees made the initial \$500,000 payment, the corpus increased by more than \$685,000. (Blue Br. 27.) That undisputed fact standing alone is sufficient for the Trust to prevail.²⁷

The Museum’s argument ignores that it simply failed to meet its burden. (A. 21-22.) The Museum produced “no credible evidence that suggests the Trust could not simultaneously fulfill its obligation to the Museum, make the Donation, and maintain its value.” (A. 22.) The Museum based much of its case on the testimony of its expert, which the BCD disregarded because it found such testimony

²⁷ The Museum overlooks that the BCD also found that the value of the Endowment increased by more than \$1.4 million between 2020 and 2021. (A. 22 n 10.)

unpersuasive and not credible. (A. 21 n.5); *see also* (A.23 n.12 (disregarding the expert’s testimony about the draft investment policy because he “continuously conflated the Investment Guidelines and the ARA and attempted to argue that the ARA simply incorporated the Investment Guidelines”)). “[W]ithout his testimony[,] the Museum and Attorney General ha[d] little support for their argument.” (A. 21 n.5.) In fact, the Museum’s expert supported many of the Trustees’ positions, agreeing that the endowment is distinct from the corpus and that the Trust was in strong condition financially. The BCD’s findings were not clearly erroneous.

The Museum contends that the Donation was improper because it was made a year after the Trustees agreed to transfer \$1.05 million into the Endowment, which the Museum describes as its “benefit” from the settlement. (Blue Br. 28.) As the BCD stated, “[n]either the Settlement Agreement nor the ARA places any restrictions on how the settlement funds are to be used.” (A.22 n. 11.) If the Museum wanted new restrictions on the Trustees’ discretion, it should have bargained for them. It did not.

The Museum refers to the transfer of \$1.05 million to the Endowment as part of the 2020 settlement as a “remedy for [the Trustees’] misconduct,” but there was no misconduct proven or admitted.²⁸ The Museum also refers to Owls Head as “an

²⁸ In yet another *ad hominem* attack, the Museum alleges that the Trustees engaged in wrongdoing and that the Attorney General had concluded that removal of Sanford as a trustee “was necessary to prevent further waste of assets.” (Blue Br. 29 n. 4.) What the Museum fails to reveal is that

entity other than the Trust's qualified beneficiary." (Blue Br. 28-29.) The ARA provides the Museum with certain contract rights, but, as this Court previously acknowledged, SCAM is not the Trust's qualified beneficiary, *Sanford*, 2020 ME 19, ¶ 11, 225 A.3d. 1026, and the Trustees are not obligated to make any distributions to it outside the contract rights. The Trustees can make large distributions to any qualified charitable organization within the confines of Paragraphs 4 and 6 and give nothing to the Museum beyond what is required under the ARA. Had the Museum wanted to earmark the \$1.05 million for a specific purpose or to require a minimum balance, it should have raised the point in negotiations. It cannot impose new limitations now.

The Museum's second assertion is that the Donation is "too large to be reasonable," citing the discredited opinion of its expert that "the corpus of a trust that does not receive donations and gives away 16 percent of its assets each year is not going to be protected and maintained for long." (Blue Br. 30.) As discussed above, the expert admitted that his calculations were flawed because some of the funds were drawn from the Acquisition Fund, not the Endowment. The Museum's argument also overlooks the Trustees' investment success: while it is true that the Trust does not receive cash donations, its investment returns average about 11%

these allegations were made almost twenty years ago, the court denied the Attorney General's motion, and the Attorney General ultimately agreed to Sanford remaining as a Trustee of the Charitable Trust. (Trial Ex. 64.)

annually. The Trustees knew when they agreed to make the Donation in December 2021 that the Endowment had appreciated about 20% that year. Further, no one has suggested that the Trustees would maintain that level of spending every year—nor did the structure of the Trustees’ Donation, which pledged \$100,000 annual installments to OH following the initial \$500,000 payment, suggest as much.²⁹

Third, the Museum further asserts, without citing any authority, that the Trustees were required to seek out—and presumably pay for—independent advice. (Blue Br 30-31.) Higgins is eminently qualified as a financial manager. Given the BCD’s findings regarding the Museum’s expert, it is unclear what the Museum’s preferred expertise would add to the analysis before the Trustees committed to make the Donation.

Fourth and fifth, the Museum argues that the BCD improperly limited its ability to challenge the value that the Trustees placed on the collection. (Blue Br. 32-33.) The Museum was free to offer admissible evidence about the valuation, but only offered an out-of-date appraisal. As explained above, the document was inadmissible hearsay, and the Museum had not designated an expert in the field. (Blue Br. 32.) The Trustees used the book value of the cars in its financial reports.

²⁹ The Museum was still the largest recipient of Trust funds in 2021. It received \$269,000 in annual distributions and \$281,000 for its legal fees, for a total of about \$550,000. (Trial Ex. 52, 70.)

Finally, the Museum argues, sixth, that the BCD deprived it of the chance to prove that the Trustees acted in bad faith as they “must have become aware of Owls Head’s capital campaign” when they signed the ARA. (Blue Br. 33-34.) But the Museum has no claim of error even if the Trustees did know about the campaign at that time. The BCD gave the Museum wide latitude on the discovery that it requested, and the Museum issued extensive document requests to Owls Head and subpoenaed its executive director as a witness for trial. Despite that, the Museum failed to proffer any evidence of bad faith, just insinuations. Even if the Trustees were aware (and there is no evidence that they were) of the capital campaign in 2020, nothing in the ARA prevented them from making the Donation.³⁰

CONCLUSION

As the Museum’s expert witness acknowledged, trustees of charitable trusts must strike a balance: on one hand, they should deploy Trust assets to support and promote the purposes of the Trust; on the other hand, they should preserve enough assets to meet ongoing obligations. (Tr. I at 143:7-11.) The Trustees struck that balance. While the Museum wishes that the Trustees would withhold support to

³⁰ As for the issue of bad faith generally, the Trustees were not required to inform the Museum of their plans in advance, but they did so anyway. On the other hand, the Museum withheld its objection for a month and a half, waiting until after the Trustees had made the first payment. It then filed the Motion to Enforce even after its board chair confided that “our \$200,000 minimum per year is not in jeopardy” and that the Trustees could make the Donation “without our agreeing to it.” (Tr. I at 78:8-80:25.) Moreover, the Museum’s treasurer told the Board Chair that he predicted in 2020 that the Trustees were going to make significant donations from the Endowment but the Museum did not seek to impose a limit.

other car museums, thereby maximizing the annual distribution to the Museum, that is inconsistent with the terms of the Declaration of Trust. The Trustees made a donation to a permissible distributee while at the same time meeting their obligations under the ARA. The Museum has not shown that the BCD's findings were clearly erroneous, and the BCD's decision should be affirmed.

Dated: May 7, 2026

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CERTIFICATE OF SERVICE

I, George T. Dilworth, hereby certify that on this 7th day of May, 2026, I served an electronic copy of the foregoing Brief of Appellees upon the attorneys listed below:

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Paper copies will be served on Appellants at the above mailing addresses pursuant to M.R. App. P. 7(c)(4).

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