

COMMONWEALTH OF MASSACHUSETTS.  
**Supreme Judicial Court**

No. DAR-\_\_\_\_\_

Appeals Court No. 2022-P-0479

MIDDLESEX COUNTY.

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TRUSTEES OF BOSTON COLLEGE,  
Plaintiff / Appellee,

v.

BOSTON ACADEMY OF THE SACRED HEART, INC.,  
Defendant / Appellant.

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ON APPEAL FROM A JUDGMENT OF THE LAND COURT

(Land Court Docket No. 16 Misc. No. 000360 and Middlesex Superior Court  
Docket No. 16-2231-A)

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**APPLICATION FOR DIRECT APPELLATE REVIEW**

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Dated: June 10, 2022

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Judicial Court Rule 1:21, Appellant Boston Academy of the Sacred Heart, Inc. hereby discloses that it is a Massachusetts not-for-profit corporation affiliated with Religious of the Sacred Heart in Massachusetts, Inc., which is a Massachusetts not-for-profit religious corporation. Boston Academy of the Sacred Heart, Inc. has no parent company and no publicly held corporation owns 10% or more of its stock.

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## **REQUEST FOR DIRECT APPELLATE REVIEW**

This appeal presents novel legal questions relating to the proper scope of evidence the trial court must consider when adjudicating a dispute over interpretation of real estate deeds, as well as the impact of the so-called Derelict Fee Statute, G.L.c. 183, §58, on such adjudication.

In 1974, as part of the Supreme Judicial Court supervised dissolution of Newton College of the Sacred Heart (“Newton College”), Boston Academy of the Sacred Heart, generally known as Newton Country Day School (“NCDS”), and Boston College were deeded parcels of land on opposite sides of a private way in Newton known as Colby Street, recorded in that order. Nearly forty (40) years later, a dispute arose as to NCDS’ rights (if any) to use Colby Street, which separates the campuses of the parties.

Considering only the language of the recorded 1974 deeds, the Land Court ruled on cross motions for summary judgment that NCDS (a) neither owned any portion of Colby Street, nor (b) had any rights to use Colby Street for any purpose without permission from Boston College, unless NCDS could establish an easement by prescription at trial.<sup>1</sup> On this appeal from the Judgment which

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<sup>1</sup> At trial, the Land Court ruled that NCDS had not established rights to use Colby Street by prescription. That determination was heavily fact based and NCDS does not challenge on appeal the Land Court’s findings and rulings as to potential rights by prescription.

incorporates the summary judgment rulings (Add. 62)<sup>2</sup>, NCDS argues that the Land Court erred when it ruled on cross motions for summary judgment without considering the Supreme Judicial Court supervised circumstances pursuant to which the relevant deeds were executed and delivered to the parties by Newton College. Albahari v. Zoning Bd. of Appeals of Brewster, 76 Mass. App. Ct. 245, 248 (2010) (“because the Land Court judge decided the case on cross motions for summary judgment, we give no deference to his decision. Instead, ‘[f]rom the same record as the motion judge, the reviewing court examines the allowance of summary judgment de novo.’”), quoting from Poon v. Massachusetts Inst. of Tech., 74 Mass. App. Ct. 185, 194 (2009).

Pursuant to Mass. R. App. P. 11, Defendant / Appellant Boston Academy of the Sacred Heart, Inc. hereby requests that the Court grant this application for direct appellate review of the Judgment entered by the Land Court.

### **STATEMENT OF PRIOR PROCEEDINGS**

On June 29, 2016, Boston College filed suit in the Land Court, seeking to establish that NCDS neither owned any portion of Colby Street (sometimes called Colby Road), nor had any rights to use Colby Street for any purpose without permission from Boston College. In its Complaint, Boston College alleged, inter

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<sup>2</sup> Record references herein are to documents which were part of the summary judgment record (“SJ Ex. \_\_\_”) and to the Addendum attached hereto (“Add. \_\_\_”).

alia, that the relevant deeds had been recorded in the wrong order (Complaint ¶101), and among other relief sought that the order of recording of the deeds be reformed (Prayer for Relief iii).<sup>3</sup> At summary judgment, Boston College argued that the deeds were recorded “simultaneously”, an argument adopted by the Land Court despite the command of G.L.c. 231, §87 (“In any civil action pleadings shall not be evidence on the trial, but the allegations therein shall bind the party making them.”).

NCDS asserted Counterclaims for declaratory relief that it owned fee title to the centerline of Colby Street, and had the right to use the entirety of Colby Street for all purposes, including the right to park on the unpaved shoulder (Counterclaim Count I). In the alternative, NCDS sought a declaration that it had acquired rights by prescription to use the entirety of Colby Street for all purposes, including the right to park on the unpaved shoulder on the northerly side of Colby Street (Counterclaim Count II).

Believing that the Land Court did not have subject matter jurisdiction over its claim for breach of the deed warranties contained in its deed from Newton College, NCDS commenced a related action in the Middlesex Superior Court, Civil Action No. 16-2231-A, in which NCDS alleged that Boston College is the

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<sup>3</sup> As to the proof required to alter the order of recording of deeds, see McGovern v. McGovern, 77 Mass. App. Ct. 688, 700 (2010) (“Clear and convincing proof of the mistake is required to reform a deed due to mutual mistake”).



successor to the obligations of Newton College, and sought damages for Boston College's breach of the covenants of warranty contained in the warranty deed from Newton College to NCDS (SJ Ex. No. 14, Add. 66). The Superior Court action was transferred to the Land Court pursuant to G.L.c. 211B, §9(x), so that all claims between the parties could be resolved in front of the same Judge.

Ruling on cross motions for summary judgment, the Land Court held that (a) Boston College owns all right, title and interest in Colby Street, (b) absent proof of an easement by prescription NCDS had no rights to use Colby Street for any purpose without permission from Boston College, and (c) dismissed NCDS' claims for breach of deed warranties (SJ Decision at 26, Add. 61).

The remaining claims were tried to the Land Court. By Decision dated February 11, 2022, the Land Court ruled in favor of Boston College on all remaining claims and entered Judgment in favor of Boston College incorporating the summary judgment rulings (Add. 62).

NCDS timely appealed and entered its appeal in the Appeals Court on May 20, 2022 (No. 2022-P-0479). A copy of the Land Court docket is attached hereto at Add. 27.

## **FACTS RELEVANT TO THE APPEAL**

The dispute over NCDS' rights to use the private way known as Colby Street arises out of the 1974 Supreme Judicial Court supervised dissolution of Newton College in SJC Equity No. 74-114. By Order of a single justice of this Court, the abutting campuses of the parties separated by Colby Street were conveyed by Newton College to NCDS and Boston College at the end of June 1974, in that order (SJ Exs. 14 & 15).

The properties involved in this action can be seen on a recorded March 4, 1965 Plan (Plan 1146 of 1965, SJ Ex. 1). See also the chalk presented to the Land Court at the summary judgment hearing (Add. 69). To the east, Colby Street intersects with Centre Street, a public way. To the west, Colby Street intersects with Westchester Road and Rochester Road, public ways.

Prior to the transactions relevant hereto, the lands now owned by the parties were owned and controlled by Religious of the Sacred Heart entities. By 1974, all of the land at issue in this case was held in the name of Newton College of the Sacred Heart ("Newton College").

The 1974 Conveyance to NCDS. On February 28, 1974, in the face of insurmountable financial challenges forcing the closure of its college, the Board of Trustees of Newton College authorized the President of Newton College to execute

an agreement with Boston College whereby Boston College would assume certain assets and liabilities of Newton College.

Effective June 19, 1974, the Board of Trustees of Newton College voted that Newton College apply to this Court “to authorize the liquidation of the Corporation, after payment or provision for payment of its liabilities, by the distribution of substantially all the assets of the Corporation to Boston College, the remainder to be transferred to Boston Academy of the Sacred Heart, Inc. [NCDS] and to the Religious of the Sacred Heart in Massachusetts, Inc.” and “to dissolve the Corporation” (SJ Ex. 11 at p. 7).

The agreed transactions required permission of this Court, and to that end, on June 21, 1974, Newton College filed a Petition for Dissolution in the proceeding entitled Newton College of the Sacred Heart v. Attorney General of the Commonwealth of Massachusetts, et al., SJC Equity No. 74-114. Boston College and the newly formed NCDS were parties to such proceeding, and were represented by counsel. The entire record in SJC Equity No. 74-114 was presented to the Land Court among the summary judgment papers (SJ Exs. 11, 16-21).

The NCDS Deed and the BC Deed were both recorded on June 28, 1974. The warranty deed from Newton College to NCDS (Book 12658, Page 286, Add. 66) was recorded before the quitclaim deed from Newton College to Boston College (Book 12658, Page 294, SJ Ex. 15). On summary judgment NCDS argued

that the deeds were recorded in the order intended by Newton College (see, e.g., Rainen Aff. ¶¶8, 10-12).

Newton College formally dissolved pursuant to order of the Supreme Judicial Court on August 20, 1976 (SJ Ex. 16).

The deed to NCDS (Add. 66) did not specifically exclude rights in Colby Street. Nor did such deed recite that the conveyance included rights in Colby Street, but NCDS argued on summary judgment that no such recitation was required by reason of G.L.c. 183, §58.<sup>4</sup>

Preparation of the deeds and their order of recording was handled in accordance with the Interlocutory Decree of this Court in SJC Equity No. 74-114, dated June 27, 1974 (SJ Ex. 19). Despite the very experienced law firms involved in the transaction, including Goodwin, Proctor & Hoar, Ropes & Gray and Bingham, Dana & Gould, no written instructions have been located stating the

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<sup>4</sup> On summary judgment, NCDS argued that pursuant to the Derelict Fee Statute, G.L.c. 183, §58, it owns to the centerline of Colby Street unless “the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line.” There being no express exception or reservation contained within the warranty deed from Newton College to NCDS (Add. 66; Rainen Aff. ¶14), NCDS argued that it owned to the centerline of Colby Street.

NCDS also argued that because the warranty deed from Newton College to NCDS (Add. 66) did not expressly exclude rights to use Colby Street, NCDS would enjoy easement rights to use the entirety of Colby Street even had the deed to NCDS been recorded after the quitclaim deed from Newton College to Boston College (SJ Ex. 15) (Rainen Aff. ¶15).

order in which the documents from the June 1974 transaction were to be recorded at the Registry of Deeds (Rainen Aff. ¶6).

### **STATEMENT OF ISSUES OF LAW**

The deeds construed by the Land Court were authorized by the Supreme Judicial Court in connection with the dissolution of Newton College in SJC Equity No. 74-114. By Order of a single justice of this Court, the campuses of the two parties were conveyed by Newton College to NCDS and Boston College at the end of June 1974, in that order (SJ Exs. 14 & 15).

The issues presented by this appeal are:

1. Whether the Land Court erred when it interpreted the two deeds in question and determined the “grantor’s intent” without considering the record of the Supreme Judicial Court supervised dissolution Newton College in SJC Equity No. 74-114 that authorized execution and delivery of those two deeds?
2. Whether the Land Court erred when it ruled that notwithstanding G.L.c. 183, §58 (the Derelict Fee Statute), NCDS had no deeded or implied rights to use Colby Street, the private way that abuts its campus?

NCDS raised and properly preserved these issues before the Land Court and they are ripe for review by the Supreme Judicial Court.

### **ARGUMENT**

When interpreting the two deeds in question and determining the “grantor’s

intent” on summary judgment, the Land Court did not consider or take into account the overwhelming admissible evidence of Newton College’s intent, including from the record of the Supreme Judicial Court’s supervised dissolution of Newton College in SJC Equity No. 74-114 that authorized those two deeds.

**A. NCDS Owns to the Centerline of Colby Street.**

The Legislature enacted the Derelict Fee Statute, G.L.c. 183, §58, as “an authoritative rule of construction for all instruments passing title to real estate abutting a way,” and applies “unless the instrument of conveyance evidences a different intent of the grantor by an express exception or reservation.” Rowley v. Massachusetts Elec. Co., 438 Mass. 798, 803-04 (2003) (internal quotations omitted). “[E]xtrinsic evidence may not be used to prove the grantor’s intent to retain the fee to the way.” Id. at 804. Moreover, the Court can take judicial notice that “the registry assigns book and page numbers to recorded instruments in a sequential manner” and can “therefore conclude that instruments with lower book and page numbers were recorded prior to instruments with higher book and page numbers.” Bevilacqua v. Rodriguez, 460 Mass. 762, 778-79 (2011).

It is undisputed that Newton College conveyed to NCDS a parcel of land bounded by the “northerly side of said Colby Street.” (Add. 66). The deed to NCDS was recorded *first* at Book 12658, Page 286, when Newton College still owned the land on the other side of Colby Street. Newton College then conveyed

the remainder of its property to Boston College, which deed was recorded at Book 12658, Page 294 (SJ Ex. 15). Because the Derelict Fee Statute expressly “mandates that every deed of real estate abutting a way includes the fee interest of the grantor in the way – to the center line if the grantor retains property on the other side of the way,” Tattan v. Kurlan, 32 Mass. App. Ct. 239, 243 (1992), quoting G.L.c. 183, §58, the deed to NCDS included Newton College’s fee interest to the centerline of Colby Street.

The only exception to this rule is provided by the statute itself – if the deed to NCDS contains “an express exception or reservation and *not alone by bounding by a side line.*” G.L.c. 183, §58 (emphasis added). Despite there being no such express exception or reservation in the deed to NCDS (Add. 66), the Land Court ruled that there was no evidence of Newton College’s intent to record the deed to NCDS first (SJ Decision at 9-11, Add. 44-46). However, the statutory presumption of the Derelict Fee Statute “is conclusive when the statute applies, unless . . . the ‘instrument passing title’ evidences a different intent ‘by an express . . . reservation.’” Tattan, 32 Mass. App. Ct. at 243-44. The Land Court’s requirement that NCDS provide evidence of Newton College’s intent goes against the strict and clear mandate prescribed by G.L.c. 183, §58. Accordingly, the Land Court should have ruled that NCDS owns to the centerline of Colby Street.

**B. The Undisputed Evidence Clearly Establishes that Newton College Intended that NCDS Own to the Centerline of Colby Street.**

The Land Court relied upon case law with respect to “simultaneous recording” of deeds (SJ Decision at 8-9, Add. 43-44), but the “simultaneous recording” cases require the court to construe deeds and the “facts existing at the time” to determine the grantor’s intent. Richardson v. Bigelow, 81 Mass. 154, 158 (1860); see also Lefavour v. McNulty, 158 Mass. 413, 416 (1893) (considering evidence to conclude that common grantors intended to give all grantees rights in way); Pomeroy v. Latting, 81 Mass. 435, 437 (1860) (considering mortgages “together with the relations in which the parties stood to each other” when determining rights conveyed by simultaneously recorded instruments).

While the Court need not look outside the first recorded deed to NCDS, the undisputed evidence, consisting of agreed documents on record at the Registry of Deeds and files of the Supreme Judicial Court,<sup>5</sup> clearly establishes that Newton College intended that the NCDS deed be recorded first and that NCDS have a fee interest to the centerline of Colby Street (Rainen Aff. ¶¶8, 10-12).

First, a Certificate of Clerk on file with the Registry of Deeds states that on May 10, 1974, the Members of Newton College voted, as part of its plan to dissolve, to “reconvey” to the to-be organized entity (NCDS) that would run the

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<sup>5</sup> The relevant documents were all in the summary judgment record.



Newton Country Day School, the real estate and related assets of the School that it had previously acquired from another dissolved Religious of the Sacred Heart entity (SJ Ex. 37). This vote authorized the deed to NCDS. The Members of Newton College also voted to “convey to Boston College substantially all the *remaining* assets” (*Id.*). This vote authorized the deed to Boston College. The Newton College vote to convey the “remaining assets” to Boston College only makes sense if Newton College intended the deed to NCDS to come first (Rainen Aff. ¶10).

Second, the Amended Petition in SJC Equity No. 74-114, seeking Supreme Judicial Court approval of the transaction (the “Amended Petition”), sought approval to transfer assets to NCDS and “to transfer and deliver *all its remaining assets*, subject to all of its remaining liabilities, to Respondent, Boston College [emphasis added]” (SJ Ex. 18, Prayer for Relief ¶1). Thus, the conveyance to NCDS was to take place before the conveyance to Boston College. That Prayer for Relief was adopted virtually word for word in the Supreme Judicial Court’s Interlocutory Decree dated June 27, 1974 (SJ Ex. 19; Rainen Aff. ¶11).

Finally, after the Supreme Judicial Court entered the Interlocutory Decree, Newton College was required to file an Affidavit that it had carried out the Court’s Interlocutory Decree. That Affidavit (SJ Ex. 20) was filed two years after recording of the two deeds at issue. Neither Newton College nor Boston College

claimed a “mistake” in the order of recording of the deeds. In reliance on that Affidavit, the Supreme Judicial Court entered its Final Decree dated August 20, 1976, again describing the transfer of “remaining assets” to Boston College (SJ Ex. 16).

The Land Court’s interpretation of the two deeds in question improperly ignored the close relationship of Newton College, Boston Academy of the Sacred Heart (the predecessor of NCDS) and NCDS. It defies logic that when it dissolved, Newton College intended to terminate NCDS’ rights to use Colby Street, which abutted its campus and had continuously provided access to public ways. Nor is it conceivable that this Court intended to cut off any rights of NCDS to use Colby Street in the absence of an express statement to that effect. See e.g., SMS Fin. V, LLC v. Conti, 68 Mass. App. Ct. 738, 750 (2007) (affirming trial court’s admission of extrinsic evidence “to aid in interpreting what the parties intended” in lieu of literal interpretation of a forbearance agreement that would have granted plaintiff windfall).

As outlined above, if the Court was to consider evidence outside the four corners of the first recorded deed, to NCDS (Add. 66), that evidence demonstrated Newton College’s intention, as grantor, to record the deed to NCDS first. Accordingly, the Land Court erred when it ruled that the first recorded deed, to NCDS, did not convey to NCDS a fee interest to the centerline of Colby Street.

**C. The Land Court Erred when it Concluded that Newton College Intended to Convey the Entirety of Colby Street to Boston College.**

In substance, the Land Court concluded that notwithstanding the order of deed recording, Newton College intended to convey the entirety of Colby Street to Boston College (SJ Decision at 14-15, Add. 49-50), but such conclusion was erroneous.

The fact that both deeds describe the lots as “running along the northerly side of [said] Colby Street” (SJ Exs. 14 & 15, Add. 66) appears to be the result of copying prior title descriptions word for word (Rainen Aff. ¶13). As the Derelict Fee Statute makes clear, deed language “bounding by a side line” is not evidence of the grantor’s intent. Tattan v. Kurlan, 32 Mass. App. Ct. 239, 243 (1992). The boundary description in the deeds is simply not relevant to the issues in this case.

The relevant portion of the second recorded deed, to Boston College (SJ Ex. 15), provides:

Said premises are conveyed with all of the Grantor’s right, title and interest, if any, in Centre Street, Mill Street, Colby Street, Westchester Road, Rochester Road and Everest Road all as shown on the two above-mentioned plans . . .

If any intent can be gleaned from this language, which is typical of quitclaim deeds, it is that Newton College was granting to Boston College its remaining interests in those abutting roads, after its conveyance to NCDS. Indeed, such deed language is consistent with the repeated statements that Newton College was only

granting its “remaining assets” to Boston College.

Finally, the Land Court erred when it failed to credit a 1988 letter from Boston College’s counsel to the Newton Planning Board, stating that NCDS “already has rights of access in Colby Street” (SJ Ex. 47).

Because there was no non-speculative evidence of Newton College’s intent to convey Colby Street in its entirety to Boston College to overcome the order of deed recording, the Derelict Fee Statute, and the record in SJC Equity No. 74-114, NCDS was entitled to a declaration that it holds a fee interest to the centerline of Colby Street.

**D. Even if it Had No Fee Interest in Colby Street, NCDS Had an Implied Easement to Use the Entirety of Colby Street.**

Implied easements have been recognized “when land was formerly in common ownership, when use of one part of the land was made for the benefit of another part up until the time of the severance of ownership, and when the use of one part is both reasonably ascertainable and reasonably necessary for the enjoyment of the other part.” Flax v. Smith, 20 Mass. App. Ct. 149, 152 (1985). “The origin of an implied easement whether by grant or by reservation . . . must be found in a presumed intention of the parties, to be gathered from the language of the instruments *when read in the light of the circumstances attending their execution*, the physical condition of the premises, and the knowledge which the parties had or with which they are chargeable.” Reagan v. Brissey, 446 Mass. 452,

458 (2006) (internal quotations omitted) (emphasis added).

“The mere fact that a severance of title is made by simultaneous instruments of grant does not prevent the implication of an easement.” Mt. Holyoke Realty Corp. v. Holyoke Realty Corp., 284 Mass. 100, 106 (1933). See Casella v. Sneirson, 325 Mass. 85, 89-90 (1949) (even when an abutter does not own to the centerline of a private way, the abutter enjoys an easement by implication and the grantor and its successors are estopped to deny the right to use the entire length of the way); Hickey v. Pathways Ass’n, Inc., 472 Mass. 735, 754 (2015) (“For land abutting a way, where the deed describes the way as a boundary and references a plan showing the way, the grantor’s intent to convey an easement over the way is assumed.”).

The Land Court erred when it declined rule that NCDS has an implied easement to use Colby Street, when it declined to consider the undisputed evidence of the circumstances surrounding execution of the 1974 deeds, and when it declined to consider NCDS’ evidence the history of use of Colby Street for access to the NCDS campus. NCDS submits that the evidence of Newton College’s intent in connection with the 1974 transactions is clear – Newton College intended to give NCDS rights in Colby Street, and NCDS enjoys an implied easement permitting NCDS to use Colby Street for campus access.

## **DIRECT APPELLATE REVIEW IS APPROPRIATE**

This case involves important questions of both first impression and significant public interest that warrant review by this Court.

When the Land Court ruled in Boston College's favor, it ignored the close relationship of Newton College, Boston Academy of the Sacred Heart (the predecessor of NCDS) and NCDS. It defies logic that when it dissolved, Newton College intended to terminate NCDS' rights to use Colby Street, which abutted its campus and had continuously provided access to public ways. Nor is it conceivable that this Court intended to cut off any rights of NCDS to use Colby Street in the absence of an express statement to that effect.

When it ruled in Boston College's favor, the Land Court rejected the impact of (a) the Derelict Fee Statute, G.L.c. 183, §58, (b) case law on easements by estoppel, e.g. Hickey v. Pathways Ass'n, Inc., 472 Mass. 735, 754 (2015) ("For land abutting a way, where the deed describes the way as a boundary and references a plan showing the way, the grantor's intent to convey an easement over the way is assumed."), and (c) the proof required to alter the order of recording of deeds, McGovern v. McGovern, 77 Mass. App. Ct. 688, 700 (2010) ("Clear and convincing proof of the mistake is required to reform a deed due to mutual mistake"), in favor of old appellate case law with respect to "simultaneous recording" of deeds (SJ Decision at 8-9, Add. 43-44). The "simultaneous

recording” case law has not been meaningfully discussed by a Massachusetts appellate court in more than 125 years.<sup>6</sup> These well-established doctrines are applied in numerous Massachusetts real estate cases, and should not be set aside by reference to old case law about “simultaneous” deeds. Review and a final determination by the full Supreme Judicial Court is necessary to provide clarity to Massachusetts easement law.

The Appellant is not aware of any case law discussing the impact of Supreme Judicial Court supervised dissolution of a non-profit entity that results in the conveyance of land on a subsequent dispute as to the dissolved entity’s (the deed grantor’s) intent. Given that there are roughly 100 public charity dissolutions per year,<sup>7</sup> the impact of this Court’s dissolution proceedings on subsequent disputes involving disposition of real estate is of substantial public interest and should be determined by this Court.

Accordingly, the questions presented by this case are of such public interest that justice requires a final determination by the full Supreme Judicial Court.

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<sup>6</sup> The last such appellate case of which the Appellant is aware is Lefavour v. McNulty, 158 Mass. 413 (1893).

<sup>7</sup> <https://www.nixonpeabody.com/en/ideas/articles/2009/09/01/the-voluntary-dissolution-of-a-massachusetts-public-charity>.

## **CONCLUSION**

For the above reasons, Boston Academy of the Sacred Heart, Inc.  
respectfully requests that the Court grant its Application for Direct Appellate  
Review.

Respectfully submitted,

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Dated: June 10, 2022



## **CERTIFICATE OF COMPLIANCE**

As required by Mass. R. App. P. 11(b), this Application for Direct Appellate Review complies with the rules of court that pertain to the filing of Applications for Direct Appellate Review, including, but not limited to: Mass. R. App. P. 11 (Direct Appellate Review), 16(k) (certificate of compliance), and 20 (form of Applications for Direct Appellate Review).

For the purposes of the length limitation contained in Appellate Rules 11(b) and the format requirements of Rule 20(a)(4), the Argument section of this Application contains 1,979 words as determined by Microsoft Word 2013 and uses Times New Roman 14-point font.

/s/ Sander A. Rikleen

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that on this day he served a copy of the foregoing Application for Direct Appellate Review on counsel of record for the Plaintiff / Appellee through the Tyler-filing system, directed to its counsel of record:

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Dated: June 10, 2022

## **ADDENDUM**

Land Court Docket Entries	Add. 27
Decision on Cross-Motions for Summary Judgment (Speicher, J.), dated October 8, 2019	Add. 36
Judgment (Speicher, J.), dated February 11, 2022	Add. 62
Warranty deed from Newton College to NCDS (Middlesex South Registry of Deeds Book 12658, Page 286, SJ Ex. 14)	Add. 66
Chalk presented to the Land Court at the Summary Judgment hearing	Add. 69