THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2019-CP-4006914

Appellate Case No.: 2022-000813

SPRING VALLEY INTERESTS, LLC, Appellant,

v.

THE BEST FOR LAST, LLC, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On December 11, 2019, the Appellant commenced this action by filing a Summons and Complaint in the Richland County Court of Common Pleas naming the Respondent, The Best For Last, LLC, as the sole defendant. The Complaint sought specific performance of an Option to Purchase Property (Count II) and reformation of a related document, the Loan Agreement, Count I. (R. p. 4 Complaint) The Complaint also included a claim for damages in the alternative that the Court did not grant its request for specific performance. (R. p. 5 Complaint, p. 4)

On January 17, 2020, the Respondent answered the Complaint and in its Ninth Defense and Second Counterclaim sought a declaration pursuant to the South Carolina Declaratory Judgment Act, S.C. Code Ann. §15-53-10, et seq. that the Purchase Option

was void on the basis that it violates the Common Law Rule and Uniform Statutory Rule Against Perpetuities. (R. p. 15 Defendant's Answer and Counterclaims, Paras 38 - 42). The Respondent asserted as its Fifth Defense and the defense that the Appellant's claim for specific performance was barred by the doctrine of estoppel, waiver and laches. (R. p. 18 Defendant's Answer and Counterclaims Answer, page 4) The Respondent asserted other defenses and counterclaims which are not relevant to the appeal.

On March 17, 2020, the Appellant served its Reply to the Counterclaims and denied 1) that the Purchase Option violated the Rule Against Perpetuities and 2) that the Respondent was entitled to the declaration that the Purchase Option is void on the basis that it violates the Common Law Rule Against Perpetuities and/or the Uniform Statutory Rule Against Perpetuities. The Appellant's Reply asserted as its Third Further Reply and Defense that S.C. Code Ann. §27-6-80 expressly states that the Uniform Statutory Rule Against Perpetuities supersedes the Common Law Rule Against Perpetuities in an express defense to any claims by the Respondent that the Common Law Rule Against Perpetuities barred enforcement of the Purchase Option. (R. p. 44 Plaintiff's Reply to Defendant's Counterclaim, p. 4).

On April 16, 2021, the Respondent filed its Motion for Partial Summary Judgment and Memorandum in Support. The motion was based on two grounds: 1) that the Purchase Option was barred by the Common Law Rule Against Perpetuities and/or the Statutory Rule Against Perpetuities and 2) that the Appellant had waived its right to exercise the Purchase Option. (R. p. 53 Defendant The Best for Last LLC's Motion for Partial Summary

Judgment and Memorandum in Support).

On April 29, 2021, the Appellant filed its Motion for Summary Judgment seeking an order dismissing the Respondent's Counterclaims and granting specific performance of the Purchase Option. (R. p. 65 Plaintiff's Motion for Summary Judgment) The Appellant filed a Memorandum in Support of its Motion for Summary Judgment. (R. p. 67 Plaintiff's Memorandum in Support of its Motion for Summary Judgment).

On August 26, 2021, the Court heard the competing motions for summary judgment and the order being appealed was issued as a result of this hearing.

On May 18, 2022, the Court entered an order declaring that the Purchase Option violated the Common Law Rule Against Perpetuities and therefore was unenforceable and granted the Respondent's Motion for Partial Summary Judgment and dismissed the Appellants claims for declaratory relief and specific performance. (R. p. 1 Order Granting Respondent's Motion for Partial Summary Judgment). The Court's order also stated that the Appellant's Motion for Summary Judgment was denied.

On June 13, 2022, the Appellant filed its Notice of Appeal of the Circuit Court's Order Granting the Defendant's Motion for Partial Summary Judgment. (R. p. 51, Notice of Appeal)

There were no orders of the Circuit Court which may have affected the appeal, or would have shed light upon the questions involved in this appeal.

The primary remedy sought in the Appellant's Complaint was specific performance of the Option to Purchase. The Purchase Price set forth in the Option was in the original

amount of Eight Hundred Thousand Dollars and no/100s ($800,000.00). Therefore, the amount involved in this appeal is the Purchase Price set forth in the Option, i.e., Eight Hundred Thousand Dollars and no/100s ($800,000.00).

There have been no changes to the parties to this action.

STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the Circuit Court pursuant to Rule 56, SCRCP. *Brockbank, supra*; *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). *Bayle v. South Carolina Dept. of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (S.C. App. 2001)

Summary Judgment is proper when there is no genuine issue of material of fact and the moving party is entitled to judgment as a matter of law. *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRCP. *See also Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct.App.2000) (motion for summary judgment shall be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as matter of law). In determining whether any triable issues of fact exist, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App.1999). If triable issues exist, those issues must be submitted to the jury. *Young, supra.*

Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Vermeer, supra.* Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997).

In a case in which the essential facts are largely undisputed, raises a novel question of law, the appellate court is free to decide the question of law with no particular deference to the lower court. *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 692 S.E.2d 499 (S.C. 2010).

"Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact..." *Mitchell v. City of Greenville*, 411 S.C. 632, 770 S.E.2d 391 (S.C. 2015).

STATEMENT OF FACTS

On or about May 3, 2017, the Appellant's predecessor, White Interests Limited Partnership, entered into a Loan Agreement with the Respondent, wherein White Interests Limited Partnership loaned $800,000.00 to the Respondent. (R. p. 4 Complaint, para. 5, R.

p. 15 Answer para 5, para 29) A copy of the Loan Agreement is attached to the Complaint as Exhibit B. (R. p. 11 Complaint- Exhibit B).

The Respondent used the loan proceeds to purchase certain real property located in Columbia, South Carolina (hereinafter, the "Property"). (R. p. 18 Answer and Counterclaims, para. 29)

As part of the consideration for the loan, in the Loan Agreement, the Respondent granted White Interests a freely assignable and perpetual option to purchase a 74.425% undivided co-tenancy interest in the Property.

The Purchase Option at issue in this case was set forth in Section 2 of the Loan Agreement which provides:

> Lender's Purchase Option. I[n] consideration for making the Loan, the Borrower hereby grants to Lender the perpetual option to purchase a 74.425% undivided co-tenancy interest in the Property (the "Purchase Option"0 for a purchase price of Eight Hundred Thousand and 00/100 Dollars (the "Purchase Price."). The Purchase Option shall be exercised at the Lender's sole discretion by delivery of a written notice no later than thirty (30) days before the intended closing. The Purchase Price shall be paid in cash or immediately available funds at the Closing. The Lender shall hold take [sic] title to the co-tenancy interest subject to (1) no mortgages other than the Borrower's then outstanding first lien mortgage, and (ii) a mutually acceptable co-tenancy agreement. The Purchase Option is freely assignable by the Lender.

(R. p. 4 Complaint, para 1-6. R. p. 11 Exhibit B to Complaint.) (R. p. 19-20 Answer and Counterclaim, para 39).

White Interests assigned its right to exercise the Purchase Option to the Appellant. (R. p. 6 Complaint, para 15, R. p. 19 Answer and Counterclaim, para 32).

On August 21, 2019, the Appellant sent the Respondent a letter entitled "Notice of Exercise of Option to Purchase." The letter notified the Respondent that the Appellant was

exercising its option to purchase a 74.425% undivided co-tenancy interest in the Property. (R. p. 221 Gavigan Deposition p. 30, L.1-22).

The Respondent objected to the exercise of the option and inexplicitly demanded that Appellant exercise the option by becoming a member of Respondent. (R. p. 340-344 Bethea Deposition, P. 10, L. 6 – P. 14, L.22, R. p. 278-287 Heyward Deposition, P. 22, L. 20 - P. 23, L. 3). This demand was completely contrary to the language of the Purchase Option. Neither the Purchase Option nor the Loan Agreement make any reference to the Appellant becoming a member of Respondent as a result of the exercise of the option. Instead, the language of the Purchase Option clearly states that the option is "to purchase a 74.425% undivided co-tenancy interest in the Property…" The basis for the Respondent's demand was that the Respondent, or its attorney, thought that the economics of the deal it had negotiated would be ridiculous unless it was folded into a membership interest, with the Appellant receiving a windfall and the Respondent receiving the corresponding detrimental consequences on the other side. (R. p. 251 Gavigan Deposition, P. 60, L. 14-16). In other words, the Respondent resisted the exercise of the Purchase Option because it thought it had negotiated a bad deal.

It is important to note that this demand for Appellant to be a member of the Respondent would translate into it receiving a 74.425% of a 50% interest instead of 74.425% of a 100% in the Property. (R. p. 352 Bethea Deposition, P. 22, L. 7 -13).

This demand that the Appellant become a member in the Respondent, instead of an owner of 74.425% co-tenancy interest in the Property caused the Appellant's exercise of the option to fall apart. (R. p. 250 Gavigan Deposition, P. 59, L. 10 - 21).

The parties attempted to resolve the dispute generated by the Respondent's response to the exercise of the option. The parties reached a general outline of a resolution wherein the Appellant would receive a 70% co-tenancy interest in an effort to resolve the dispute. (R. p. 253-254 Gavigan, P. 62, L. 10 - P. 63, L 13). As part of this general settlement, the parties expected to receive considerable funds from a refinance loan which would be disbursed as they agreed. The proposed disbursement of the funds was set forth in a spreadsheet. (R. p. 254-255 Gavigan deposition, P. 62, 19- P. 63, L. 3). So, while there was a general agreement outlined for a resolution of the dispute, the parties still needed to resolve the specifics of how the money would be disbursed to each party. The discussions of the disbursement of the funds included the issues of who was going to pay the attorney's fees and who was going to get reimbursed for attorneys' fees. (R. p. 255 Gavigan Deposition, P. 63, L. 4). The parties never reached a complete agreement on the issue of who was going to be paying the attorneys' fees and how much. (R. p. 255 Gavigan Deposition, P. 63, L. 8).

The attorneys for the parties drafted various documents to reflect the general plan of settlement. As they did so, they continued negotiations regarding the specific details of how the loan proceeds would be distributed as was required for a final settlement. The attorney for the Respondent eventually drafted a final version of the documents which would reflect the general agreement and delivered a copy of the same executed by his client to Gavigan, the attorney for the Appellant, conditioned on it signing the same. These documents included a co-tenancy agreement, an amendment to the loan agreement, and various other documents typical of a real estate closing. (R. p. 357 Bethea Deposition,

P. 27, L. 12). These negotiations bogged down by the Respondent's demand that some of the loan proceeds be used to pay its attorney's fees. This demand would result in a smaller amount of money going to the Appellant. In response, the Appellant demanded that loan proceeds be used to pay its expenses. The Respondent rejected this demand. Then, later the Respondent communicated that it was willing to pay said sums. However, at that time, the Appellant responded by saying no and demanded that it receive the full 74% co-tenancy interest as called for by the Loan Agreement. The Respondent refused. And as a result, the Appellant never delivered executed copies of the documents, and instead insisted on the enforcement of the Purchase Option. (R. p. 354-355 Bethea Deposition, P. 26, L. 24 - P. 27, L. 6).

ARGUMENTS

ISSUE I: The Trial Court Erroneously Dismissed the Appellant's Complaint On Basis That the Enforcement of the Purchase Option Was Barred by the Common Law Rule Against Perpetuities Because the South Carolina Uniform Statutory Rule Against Perpetuities Superseded the Common Law Rule Against Perpetuities and The Purchase Option Was a Non-donative Transfer Not Subject Invalidation Under U.S.C. §27-6-20.

The Circuit Court, in its order granting partial summary judgment, held that the Uniform Statutory Rule Against Perpetuities (hereinafter, the "USRAP") did not apply to the Purchase Option and further held that the Common Law Rule Against Perpetuities (hereinafter, the "CLRAP") applied to void the option. Therefore, the central issue in this appeal is a determination of the whether the statutory rule or the common law rule applies to the Purchase Order and the effect of the applicable rule. The analysis leads to the conclusion that the CLRAP did not apply as the USRAP replaced the common law rule.

Moreover, the USRAP applied to the Purchase Option but did not apply to invalidate or void it as the Purchase Option was exempted from the statute's invalidation section.

The analysis supporting this position is made in two prongs:

1. The first prong being that the USRAP did not invalidate the Purchase Option because although the USRAP applied, to the Purchase Option, the USRAP exempted the Purchase Option from the operation of the invalidation provision.

2. The second prong being that the CLRAP did not survive the enactment of the USRAP and therefore can not be the basis for invalidating the purchase option.

A. The USPAP Did Not Invalidate the Purchase Option Because Although the USRAP Applied to the Purchase Option, the USRAP Exempted the Purchase Option From the Operation of the Invalidation Provision.

1. History of CLRAP

The beginning of the analysis for this case is a brief and admitted cursory history of the CLRAP that lead to the efforts to create the Uniform Statutory Act to replace the common law rule. An exhaustive history of the CLRAP would be beyond the needs of this case (and the page limitation for briefs filed with this Court).

The Rule Against Perpetuities has been judicially called out as "every first-year law student's worst nightmare" *Shaver v. Clanton*, 31 Cal.Rptr.2d 595, 596, 26 Cal.App.4th 568 (Cal. App. 1994).

As one court has observed "When undertaking to construe and apply the Rule Against Perpetuities, a court will be well-advised to investigate and appreciate the history of the rule and its application." *Continental Cablevision of New England, Inc. v. United Broadcasting Co.*, 873 F.2d 717, 723 (4th Cir. 1989). The *Continental Cablevision* case

provides a very good history of the CLRAP as well as some insight into the criticism directed to it, especially as it is applied to commercial transactions. Of course, the Purchase Option, the nonvested interest in the case at hand, is a bargained for commercial transaction, not a gift or donative transfer.

The Rule Against Perpetuities had its origins in the *Duke of Norfolk's* case, 3 Ch. Cas. 1, decided in 1682. It was a judicially created rule adopted at one time by every jurisdiction in the United States. The fundamental purpose of the rule was to prohibit restraints on alienation of property which were unreasonably long or unlimited in duration. At its inception, the rule was designed to prevent a family from tying up property indefinitely by making future interests dependent on remote contingencies. *See generally, Hartnett v. Jones,* 629 P.2d 1357, 1361 (Wyo.1981). *Coulter & Smith, Ltd. v. Russell*, 966 P.2d 852, 856-857 (Utah 1998) (Citations omitted).

The application of the *CLRAP* often lead to "…unnecessarily all embracing, intention frustrating wooden disregard of the testator's or settlor's intent ..." *Continental Cablevision supra*, 873 F.2d at 730 .

The Common Law Rule was criticized because it could operate harshly and invalidate a disposition if there were any conceivable possibility it would violate the rule, regardless of whether it was likely to do so or how reasonable the disposition appeared. *Shaver supra* 31 Cal.Rptr.2d at 598, 26 Cal.App. 4th at 574.

The Common Law Rule Against Perpetuities in South Carolina was stated as follows: 'No interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest.' *Abrams v. Templeton*, 320 S.C. 325,

327, 465 S.E.2d 117, 119 (Ct.App.1995), *Accord, Webb v. Reames*, 485 S.E.2d 384, 326 S.C. 444 (S.C. App. 1997). The mere possibility that the interest may not vest within the 21 year period rendered the interest void. *Webb*, 485 S.E.2d at 385.

South Carolina adopted as its common law version of the rule, this version that was akin to a concealed bear trap with a hair trigger. It is easy for the drafter of a commercial agreement to be caught by the trap and once caught, there is no escape.

2. Criticism Regarding Application of CLRAP to Commercial Transactions

Indeed, the basic purpose of the [common law] rule was to limit family dispositions, and in that context the period of lives in being plus 21 years served as a proper measurement. Only later by an overextension of nineteenth century concepts did the courts apply the rule to commercial transactions. *Wong v. Di Grazia*, 60 Cal.2d 525, 35 *Cal.Rptr.* 241,246 (Cal. 1963).

Courts and commentators alike have noted that applying the CLRAP to modern commercial transactions has capricious consequences and they have sharply criticized the rule's application in the commercial setting. *Shaver, supra* 26 Cal.App 4th at 597.

"Business is an unlikely place to encounter an 'unborn widow' or a 'fertile octogenarian (the period of a life in being and 21 years thereafter has no significance in the world of commercial affairs).", *Continental Cablevision, supra*, 873 F.2d at 730. (*citing Leach, Perpetuities in a Nutshell*, 51 Harv.L.Rev. at 638).

> In fashioning of the law of the Rule Against Perpetuities for commercial transactions of the kind here involved, to require a modification from the somewhat unnecessarily all embracing, intention frustrating wooden disregard of the testator's or settlor's intent which applies when land

transactions of a non-commercial kind are concerned, would appear to be appropriate. *Id.*

Moreover, application of the CLRAP to commercial transactions often lead to commercial injustices and unexpected unjust enrichment that simply do not exist in traditional donative transfers. The source of such injustices and unjust enrichment is that one of the parties to the commercial transaction, who had received consideration for the invalidated transaction, reaps the benefit of the transaction but is freed from the burden he exchanged when the transaction is voided by the application of the CLRAP. *(See concurring opinion in Continental Cablevision of New England, Inc., supra*., which detailed the long history of struggle over this issue by Massachusetts courts that had "… repeatedly expressed their reluctance to mercilessly apply the RAP in a way that works a commercial injustice..." *Id.,* 873 F.2d at 730.)

In fact, in *Continental Cablevision*, the majority opinion, contrary to rigidly applying the CLRAP, found it a "… a simpler and fairer solution to uphold the right of first refusal for the fixed period named in the Rule Against Perpetuities, namely, twenty-one years. That is an approach much more in accord with the parties' intention and free of any complaint that it prevents vesting for an unreasonable period of time." *Id.*

An illustration of the unjust enrichment or injustice that can occur when the CLRAP is applied to void commercial transactions is the case at hand. The Purchase Option was part of the deal negotiated by the parties to the Loan Agreement. The Option had value that the Respondent traded to obtain the loan. Under the Circuit Court's order, the Appellant lost the option its successor had negotiated with Respondent as part of the Loan Agreement.

Yet, the Respondent retained all of the benefits of the Loan Agreement despite being freed from its obligation to honor the option when exercised by the Appellant. The Respondent received a windfall from the Circuit Court's application of the CLRAP to void the Option.

Indeed, the *Continental Cablevision* case is an example of a court modifying the application of the common law rule to avoid such unjust enrichment. *Continental Cablevision* lists several other situations where courts used clever logic to avoid the harsh, wooden application of the common law rule to transactions that did not seem to the family disposition transactions originally targeted by the rule. *Id.*, 873 F.2d at 724- 726.

3. South Carolina Uniform Statutory Rule Against Perpetuities

In 1987, the South Carolina Legislature enacted the Uniform Statutory Rule Against Perpetuities S.C. Code Ann. §27-6-10 (2022 Edition), et seq. The USRAP is based on the Uniform Statutory Rule Against Perpetuities promulgated by the National Conference of Commissioners on Uniform State Laws ('NCCUSL')...." Vol. 2, No. 6, Pg. 0026 (1991), What Every South Carolina Lawyer Should Know About The (Ugh!) Rule Against Perpetuities (South Carolina Lawyer (1991)).

The Uniform Law Commission "now 130 years old, promotes uniformity of law among the several states on subjects as to which uniformity is desirable and practicable. The ULC improves the law by providing states with non-partisan, carefully considered, and well drafted legislation that brings clarity and stability to critical areas of the law." Preamble to Guide to Uniform and Model Acts, 2021-2022, Uniform Law Commission.

4. USRAP's Contrasting Approach and Key Components

"The South Carolina General Assembly adopted this statutory provision to avoid the remorseless application of the common law rule. The law abhors a forfeiture." *Abrams, Supra*.

Even a cursory review of key components of the USRAP reveals an approach that is radically different from that taken by the CLRAP. The main difference can be described as where the CLRAP was a bear trap with a hair trigger with no release, the USRAP is a trap intentionally designed to be harder to spring by accidental encounters and the statute drafters even provided a key to allow unlucky victims to escape the trap as discussed below. The USRAP also responded to criticism of the over reach of the CLRAP to interests and transactions not intended to be covered by the original common law rule by exempting those interests from the invalidation section of the Act.

(a) Softer Invalidation Provision

Section 27-6-20 (A) is the provision that operates to invalidate certain nonvested property interest under the USRAP. S.C. Code Ann. §27-6-20 (2022 Edition). The section invalidates such nonvested interest unless one of two conditions are met. The first, found in subsection 1, is that: "when the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive…" S.C. Code Ann. §27-6-20 (A)(1) (2022 Edition).

The "it is certain to vest no later than twenty-one years" language under the statute is a very different approach to invalidation than that taken by the CLRAP. This approach under the USRAP seeks to avoid forfeiture. Whereas, the CLARP's "mere possibility an

interest may not vest during the twenty-one years" approach is a more aggressive approach that leads to the invalidation of more interests than would be the case under the USRAP.

But, even if the nonvested interest does not meet the terms of subsection 1, it is not invalidated if "the interest either vests or terminates within ninety years after its creation." S.C. Code Ann. §27-6-20(A)(2) (2022 Edition).

Subsection 2 has been referred to as the "wait and see" provision. *Mizell v. Greensboro Jaycees–Greensboro Junior Chamber of Commerce, Inc.*, 105 N.C.App. 284, 287, 412 S.E.2d 904, 906–907 (1992). The USRAP which, among other actions, added a 90–year "wait and see" alternative to the common law RAP. Under this section, certain nonvested property interests that violate the common law RAP can survive if the interest actually "vests or terminates within 90 years after its creation." *Id*.

This is a contrast to the CLRAP which deemed the nonvested interest immediately void upon creation if there was any possibility that it would not vest within the 21 years plus life in being. Under the CLRAP, a person could try to exercise his interest the year after it was created, but that effort would be unsuccessful because the interest was void as of its creation due to any remote possibility that it would not vest within the time period. Under the USRAP, the nonvested interest holder has up to ninety years from the date of creation to enforce the interest and it can't be invalidated until the expiration of the ninety years period. Again, this is a much softer, gentler approach to invalidating nonvested interest than that existing under the CLRAP. The approach reflects that the USRAP was designed is to avoid forfeitures.

(b) Reformation Provision

S.C. Code Ann. §27-6-40 entitled Reformation of Property Dispositions is the key under the USRAP that allows unwary victims of the application of the Invalidation Clause to avoid the termination of their transaction. This provision states "Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years permitted by this chapter..." for interest that are found to be invalid or subject to being found invalid under Section 27-6-20. S.C. Code Ann. §27-6-40 (2022 Edition). Again, this is a radical diversion from the CLRAP which did not provide for such reformation.

(c) Exceptions Section

As discussed above, as the CLRAP's application was expanded, criticism of such application to non-traditional family related real estate transactions grew. Application of the rule to commercial transactions generated such criticism.

The USRAP responds to the criticism by exempting some interests from the application of the Invalidation Section. Section 27-6-50 is the provision that exempts seven different categories of interest from the application of Section 27-6-20. S.C. Code Ann. §27-6-50 (2022 Edition). It is important for this analysis to note that these exempted interests are covered by the USRAP, but the USRAP, via Section 27-6-50, exempts them from Section 27-6-20, the Invalidation Section. In fact, the opening sentence of Section 27-6-50 states: "Section 27-6-20 does not apply to:" as the preamble to the list of seven exemptions.

The first category of exempted nonvested interests is non-donative interests. S.C. Code Ann. §27-6-50(1) (2022 Edition). The statute does not define "non-donative interest." The term seems targeted to commercial transactions. Non-donative interests certainly encompasses commercial transactions.

As a California court stated: The exclusion found in this subsection of the model statute results in the exclusion of most non-donative transfers, i.e., commercial-type transactions, from the operation of the voiding section of the model act. *Shaver, supra*. 36 Cal.Rptr.2d at 598, 26 Cal.App.4th at 574. (Cal. App. 1994). (holding that the Uniform Act changed California law by explicitly excluding such commercial transactions from coverage under the rule, meaning the Invalidation Section of the California version of the USRAP, Id, at fn 7.) The rule is now irrelevant to such transactions. *Id*.

There does not seem to be a dispute for the purposes of this appeal that the Purchase Option would constitute a nondonative interest under the USRAP. If the Purchase Option was not a nondonative interest (or other interest exempted from invalidation under Section 27-6-20), there would be no basis for the Circuit Court's conclusion that the USRAP did not apply, the underlying tenant to her conclusion that the CLRAP applied.

Under the South Carolina SRAP, Section 27-6-80(1) applies to commercial transactions but exempts such transactions for invalidation under Section 27-6-20.

In the case at hand, the Purchase Option was a nondonative property interest as it was a party of the Loan Agreement, a commercial transaction, negotiated by the Appellant and the Respondent. Therefore, the USRAP applied to the Purchase Option, but the option falls within the Section 27-6-50(A)(1) and is exempt from invalidation under Section 27-

6-20. This is the first point of the two-prong argument that the Circuit Court's opinion granting summary judgment was erroneous. The first prong being that the USRAP applied to the Purchase Option, but the USRAP exempted the Purchase Option from the operation of the invalidation provision and would not be grounds to void it.

B. The CLRAP Did Not Survive the Enactment of the USRAP and Therefore Can Not be the Basis for Invalidating the Purchase Option.

The completion of the first prong of the analysis is the stepping off point for the next prong in showing the error of the Circuit Court's granting of summary judgment: that is, the CLRAP did not survive the enactment of the USRAP for interests created after its effective date, and therefore it could not be the basis for invalidating the Purchase Option. It is important in the analysis to highlight the reasoning applied by the Circuit Court to reach its conclusion that the common law applied. The Circuit Court Judge expressed the reasoning in her order as follows:

> The Uniform Statutory Rule Against Perpetuities (USRAP) does not apply in this case. Generally, the USRAP supersedes the common law rule against perpetuities. S.C. CODE Ann. 27-6-80 (2021). However, USRAP does not apply to nonvested property interests arising out of a donative transfer. S.C. CODE ANN. 27-6-50 (1) (2021). Here, the basis of the parties' arguments concerns-a nondonative transfer-the commercial transaction involving the purchase option. Because the USRAP does not apply to nondonative transfers, the USRAP cannot supersede or replace the common law, thus the common law is the appropriate legal standard to conclude that the purchase option is unenforceable.

The Circuit Court's establishes a two-tier system for determining if nonvested interests are voided by a rule against perpetuities. One system, the USRAP applies to all such interests other than those shielded from invalidation under its Exemption Section.

The second system, the CLRAP applies to those only those transactions that are exempted from invalidation under the USRAP's Invalidation Section by its Exemption Section.

This statement raises the issue of legislative intent: is the Circuit Court's position consistent with the intent of the legislation. That is, did the legislature intend to have a two-tiered system applicable to nonvested property interests after the effective date of the USRAP?

Or, was the legislative intent to have the one uniform statutory scheme that applied to the total universe of nonvested property interests, with a section that exempt certain interests from invalidation under the statute.

There is no South Carolina case directly on point on this issue.

The undersigned could find only one reported case dealing with the issue, *New Bar Partnership v. Martin*, 221 N.C.App. 302, 729 S.E.2d 675 (2012). *New Bar* specifically concludes that "In turn, because the USRAP specifically excludes the nondonative transfer here from its provisions, there is nothing to "supercede" the common law RAP as to New Bar's right of first refusal." *Id*., 729 S.E.2d at 683, The Circuit Court reasoning is consistent with, if not an adoption of, the reasoning of *New Bar P'ship*.

Of course, there is a glaring fallacy in *New Bar's* logic (and that of the Circuit Court). The defect with this logic is demonstrated in the language from *New Bar* that states "because the USRAP specifically excludes the nondonative transfer from its provisions." This language is inaccurate. As demonstrated below, the USRAP does not exclude the nondonative transfer (or the other six types of exempted interests) from the coverage of the USRAP. Rather, the Act merely exempts these interests from the application of the

Invalidation Section. The two are not tantamount to the same. The logic of *New Bar* is demonstratively faulty because it incorporates language of the USRAP that applies to the commercial interest involved, the Exemption Section, to reach their conclusion that the statute excludes the interest from the USRAP. Their position that the USRAP does not apply to the nondonative interest rests upon their reference to the USRAP Exemption Section exempting the interest from invalidation. So, the *New Bar* reasoning applies the Exemption Section of the USRAP to reach its conclusion that the USRAP does not apply. The fallacy is that *New Bar* is applying the statute to the interest to say the statute does not apply.

1. Legislative Intent – One System

To answer this question of one system or two sets of rules, one must turn directly to the issue of Legislative Intent. An examination of the wording of the statute and the probable goals of the legislation, taken in the context of the history of the CLRAP, supports the position that the legislative intent was to have one uniform set of rules applicable to nonvested interests.

(a) The Wording of The USRAP Clearly Shows That the CLRAP No Longer Applies to Interest Created After the Effective Date of the Statutory Rule.

"'The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible.' *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980); *Merchants Mutual Insurance Company v. South Carolina Second Injury Fund*, 277 S.C. 604, 291 S.E.2d 667 (1982)." *Gardner v. McDonald*, 316 S.E.2d 374, 281 S.C. 455 (S.C. 1984).

If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. Where the terms of the statute are clear, the court must apply those terms according to their literal meaning. This Court cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope.

Paschal v. State Election Com'n, 454 S.E.2d 890, 317 S.C. 434, 437-438 (S.C. 1994). (Citations Omitted).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). A statute's language must be construed in light of the intended purpose of the statute. *Id*.

The USRAP, under the title, "Effect on common law" states: "This chapter supersedes the common law rule against perpetuities." S.C. Code Ann. §27-6-80 (2022 Edition).

Merriam-Webster defines supersede as:

1. a: to cause to be set aside;
   b: to force out of use as inferior;
2. to take the place or position of; and
3. to displace in favor of another.

"Supersede." Merrian-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/supercede. Accessed 8 Oct. 2022.

"Supersede" means "to annul, make void, or repeal by taking the place of[.]" *New Bar P'ship supra*, 729 S.E.2d at 683 *citing Black's Law Dictionary* 1479 (8th ed.2004).

New Bar Partnership v. Martin, 221 N.C.App. 302, 729 S.E.2d 675 (2012)

The language of S.C. Code Ann. §27-6-80 (2022 Edition) clearly expresses the intent that the USRAP replaced the CLRAP and caused the CLRAP to be set aside. The USRAP's effect on the common law rule was not limited. This provision does not say that this chapter supersedes some, but not all of the common law. S.C. Code Ann. §27-6-80 does not say that the statutory act applies to replace the common rule but only for the interests subject to possible invalidation under Section 27-6-20 but does not replace the common law that was applicable to the transactions exempted from Section 27-6-20. The legislature could have included such wording to indicate a limited replacement of the common law rule if that were its intent. But it did not. The legislative intent was that the superseding language of §27-6-80 applied to the entire common law relating to the rule against perpetuities-and with no limitations on this effect. Simply put, the intent was that the CLRAP did not survive for interest created after the effective date of the of the USRAP.

Of course, the USRAP applies to interests created after July 1, 1987. S.C. Code Ann. §27-6-60 (2022 Edition). The Purchase Option was created on May 3, 2017. So, the USRAP applies to the Purchase Option as it was created after the effective date of the statute.

Additional evidence of the Legislative Intent that the USRAP replaced the CLRAP created after its effective date is the fact that §27-6-80 states that "[T]his chapter" supersedes the common law rule. (Emphasis added). S.C. Code Ann. §27-6-80(2022 Edition). Inherent in the Circuit Court's ruling is the finding that §27-6-80 applied to replace only the common law as to interests subject to the voiding provision found in §27-

6-20. But the language "this chapter" evidences an intent that the replacement of the common law was not limited to interests covered under §27-6-20. Rather the supersede language applies to all of the interests covered under the chapter, including the seven types of interests exempt from invalidation under Section 27-6-20. The USRAP applies to the exempted property interests even though it shields the exempted interests from invalidation.

It is no wonder that given the language of §27-6-80 that this Court has stated that "In 1987, South Carolina enacted the Uniform Rule Against Perpetuities (S.C. Code Ann. §27-6-10 et seq.) which supersedes the common law rule." *Abrams, Supra.*, 320 S.C. 325, 465 S.E.2d 117 (S.C. App. 1995).

Further evidence that the Legislature intended the statutory rule to apply to all nonvested property interests is found in S.C. Code Ann. §27-6-60 (2022 Edition). This provision states that "(A) Except as extended by subsection (B), this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 1987." S.C. Code Ann. §27-6-60 (2022 Edition). (Subsection B referred to, is subsection B of Section 27-6-60, which is the saving clause section which requires that upon petition, a court reform a disposition that violated the common law rule when created by inserting a savings clause that brings the interest within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.)

Again, the use of the language "this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 1987" supports the position that the USRAP set forth the rules that apply to all nonvested property interests, including

those exempted from the operation of Section 27-6-20 by the Exemptions Section. This provision does not say that the chapter applies only to some nonvested property transfers. This provision does not say that the chapter applies only to those nonvested property interests subject to invalidation under the Section 27-6-20. Of course, this language that this chapter applies to a nonvested property interest that is created on or after July 1, 1987 directly contradicts the Circuit Court's holding that the USRAP does not apply to the Purchase Option.

The very language of Section 27-6-50, the Exemption Section, that *New Bar* and the Circuit Court relies upon to reach their conclusion that the USRAP does not apply contradicts their position. As stated above Section 27-6-50 states: "Section 27-6-20 does not apply to…" and then lists the exempted interests. This section does not state that the USRAP does not apply to the exempted interests. There is no section of the USRAP that exempts its coverage to any non-vested interest created after its effective date.

(b) <u>Purpose of USRAP Is Consistent With One System</u>

The Circuit Court's ruling that the superseding effect of §27-6-80 was limited to interests subject to possible invalidation under §27-6-20 and that the CLRAP still applies to such other interests not subject to the Invalidation Section runs counter to the purpose of the statute which was to promote the uniform application of rules relating to perpetuities.

"In determining the legislative intent, it is proper to consider the purpose sought to be accomplished." *Arkwright Mills v. Murph*, 219 S.C. 438, 65 S.E.2d 665, 667 (S.C. 1951)

"Statutory provisions should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Ocean Winds Corp. of*

Johns Island v. Lane, 347 S.C. 416, 556 S.E.2d 377,419 (S.C. 2001), *citing Folk v. Thomas*, 344 S.C. 77, 81, 543 S.E.2d 556, 558 (2001)."

As noted above, there have been different interpretations of the common law rule against perpetuities among the various state courts.

The Act expressly stated that uniform application was one of the goals of the statute. In Section 27-6-70, under the title "Application and construction," the USRAP states "This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it." S.C. Code Ann. §27-6-70 (2022 Edition). The limited replacement of the common law approach taken by the Circuit Court upends the goal of uniform application. The reason is obvious. If the limited replacement applies, each state adopting the statutory rule would have two rules against perpetuities. One rule, the statutory rule, would apply to those interests subject to invalidation under §27-6-20. The second rule, the common rule would apply to the exceptions listed in Section 27-6-50. Of course, the fact that each adopting state's common law may treat various issues differently would cause difficulty in trying to achieve the goal of uniform law applicable to the rule against perpetuities.

Uniformity of the law with respect to the <u>subject of this chapter</u> was the goal. The goal was not limited to uniformity of the law with respect to the unvested property interest subject to invalidation under Section 27-6-20. Again, the use of the language "subject of this chapter" supports the position that the USRAP applies to all non-vested property interests made after its effective date, whether covered by Section 27-6-20 or not. This

language supports the position that the USRAP superseding language applies to supersede the common law entirely.

Another purpose underlying the uniform statute is the desire to avoid the harsh results that occurred from the unintended violations of the complex common law rule. "The South Carolina General Assembly adopted this statutory provision to avoid the remorseless application of the common law rule. The law abhors a forfeiture." *Abrams, supra.* As noted above, the USRAP contains features, such as the "wait and see 90-year period" contained in Section 27-6-20 which are designed to avoid the remorseless application which occurred under the common law rule. The Circuit Court's limited superseding effect on the common law would result in the incongruent situation where one group of interests, those subject to invalidation under Section 27-6-20, are protected from the remorseless application of the common law rule, but the interests exempted from invalidation under Section 27-6-20 would be subject to the harsh common law. The group subject to Section 27-6-20 would not only face a less harsh invalidation rule than the other, but would enjoy the benefit of having the reformation key to escape provided under Section 27-6-40. The other group, in addition to being subject to a harsher invalidation rule would have no escape in the form of reformation. So, one would have to ask, why would the legislature intend to replace the common law for the first group of interests but not the seven interests exempted from the application of §27-6-20? Why would the legislature create such an unequal two-tier system? There does not appear to be any basis for doing so.

The obvious answer to the question is that the legislature did not intend to create such an unequal two-tier system. The USRAP completely superseded the CLRAP. There

is only one rule applicable for interests created after July 1, 1987, the effective date of the USRAP. The CLRAP does not survive to apply to interests created after the effective date.

Commentators have criticized the common law's application to commercial transactions on the grounds that the rule was designed to apply to donative transfers by family members, not commercial transactions negotiated by sophisticated businessmen. It would be especially odd that the Legislature would provide relief from the application of the common law to the types of transactions the rule was originally developed to apply to, i.e., donative transactions, but to deny this same relief to commercial transactions. Under the two-tiered system inherent in the Circuit Court's opinion, the beneficiary of a commercial interest would not be able to avail itself of the protection of the 90 years wait and see period or the savings clause provision because it would be subject to the common law. Again, why would the Legislature intend this result. This result is contrary to the purpose of the USRAP. The case at hand illustrates this incongruity. The Purchase Option was exercised well within the 90 year wait and see period. The more likely answer is that the Legislature intended there to be the one statutory system and as part of the system, the response to the criticism regarding commercial transactions was to shield them from the statute's Invalidation Section.

(C) <u>Summary of Arguments – Issue I</u>

In summary, the legislative intent of the USRAP was to create one uniform set of rules that apply to the entire universe of nonvested property interests created after its enactment. Under this statutory scheme, provisions were deliberately included to remove certain interests, such as commercial, non-donative interests, not from the USRAP, but

from its Invalidation Section that could potentially invalidate them. The Exemption Section, which shields the exempted interests from invalidation, is part of the statutory scheme. The language of Section 27-6-80 is clear that the USRAP superseded the common law rule entirely. This language does not say that the superseding effect of the statute was generally or in a limited manner. The purpose of the USRAP -uniform application of the law on the subject of perpetuities- is best achieved if the language of Section 27-6-80 is enforced as to the common law entirely and not limited to unvested property interests' subject invalidation under Section 27-6-20. For these reasons, the Circuit Court's conclusion that the common law against perpetuities continued to exist after the enactment of the USRAP was erroneous. Therefore, the Circuit Court's ruling that the Purchase Option was void due to the application of the Common Law Rule Against Perpetuities was erroneous and the Order Granting Partial Summary Judgment should be reversed.

ISSUE II: <u>In the Alternative that the Common Law Rule Against Perpetuities Applied to the Appellant's Purchase Option, An Implied Term That the Purchase Option Would Be Exercised Within a Reasonable Time Existed That Would Prevent The Option From Violating The Common Law Rule Against Perpetuities.</u>

Even though the Appellant contends that the common law was abolished and does not apply to the Purchase Option, the Appellant contends that even if the CLRAP applied, it would not automatically apply to bar the enforcement of the Purchase Option. The reason being is that the Purchase Option, a commercial transaction, would have included an implied reasonable time for performance and that time would have been within the CLRAP time limits.

The general rule that "Where a contract sets no date for performance, time is not of the essence of the contract and it must be performed within a reasonable time..." has been applied to a host of different contractual subjects. *See, Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc.*, 371 S.E.2d 532, 296 S.C. 207 (S.C. 1988).

"Where the parties to an option contract do not specify a time for performance, a reasonable time will be implied..." *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (S.C. App. 1984).

Numerous courts have used similar implied reasonable time for performance provisions to save commercial transactions from invalidation under the CLRAP.

In *Continental Cablevision*, the majority opinion, contrary to rigidly applying the CLRAP, found it a "… a simpler and fairer solution to uphold the right of first refusal for the fixed period named in the Rule Against Perpetuities, namely, twenty-one years." That is an approach much more in accord with the parties' intention and free of any complaint that it prevents vesting for an unreasonable period of time. *Continental Cablevision of New England, Inc. supra*, 873 F.2d at 730 (4th Cir. 1989).

The implied reasonable time for performance could certainly be found to be within the time to satisfy the limits of the common law rule. *In Byke Construction Co. v. Miller*, 140 Ariz. 57, 59-60, 680 P.2d 193, 195-96 the court found as a matter of law that the parties to the option contract could not have intended to leave the option to repurchase open for a period longer than then the twenty-one years plus a life in being, i.e, the time that would have subjected the option to invalidation under the CLRAP.

So, under the alternative that the CLRAP survived the enactment of the USRAP, the implied term of a reasonable time for performance would provide a date for performance that was within the CLRAP and thus prevent the Purchase Option form invalidation under the common law.

ISSUE III: The Appellant Did Not Waive Its Right to Exercise the Purchase Option By Negotiating With The Respondent In An Attempt To Resolve The Respondent's Refusal To Honor the Purchase Option And Waiver Would Not Be An Alternative Basis For The Circuit Court's Order Granting Summary Judgment.

The Respondent contended as an alternative basis for its Motion for Partial Summary Judgment that the Appellant waived its right to exercise the Purchase Option by participating in the effort to resolve the dispute created by the Respondent's initial demand that the Appellant purchased a membership interest in the Respondent in response to the Appellant's exercise of the Purchase Option. The Circuit Court did not rule on this alternative grounds for the motion for summary judgment. However, the facts of the case show that the Respondent was not entitled to summary judgment on the grounds of waiver.

The Respondent's waiver claim is a clumsy sleight of hand effort to distort the fact that the Respondent refused to honor its commitment to convey the property in response to the Appellant's notice of exercise of the option. The consummation of the exercise of the option should have been fairly simple. Respondent would accept the Appellant's tender of the purchase price and deliver a deed to the Appellant. However, that did not happen. Instead, Respondent objected to the tender. Heywood, the principal directing Respondent, simply refused to convey the co-tenancy interest because he wanted a transfer of a

membership interest in Respondent and not a transfer of a 74.425% co-tenancy interest in the real estate. Of course, the position was totally contrary to the wording of the Purchase Option itself. The Respondent's response was simply a breach of contract.

As a result, the parties attempted to work out a compromise of the Respondent's breach. The parties were close to a resolution and in fact reached a general plan for the resolution of the dispute caused by the Respondent's failure to honor the exercise of the purchase option, which included Respondent conveying a 70% co-tenancy interest to the Appellant. However, the parties were still in the process of working out the specifics of the distribution of the monies from the re-finance loan initiated by Respondent. One of the issues involved was the payment of attorney's fees. The compromise effort broke down over the issue of attorneys' fees and thus no final agreement was reached on the compromise. After, the breakdown and Respondent's continued refusal to transfer the property in response to the option, the Appellant filed this lawsuit seeking to compel performance.

In its memorandum to the Circuit Court, the Respondent argued that the Appellant waived its right to demand specific performance of the Purchase Option "[B]y exercising the option and then failing to close on the agreement reached by the parties." (R. pp. 63 Defendant The Best For Last, LLC's Motion for Partial Summary Judgment and Memorandum in Support). The simple answer to this issue is that the Respondent can not treat a failure to compromise the dispute over the Respondent's breach of the Purchase Option as a failure by the Appellant to complete the purchase of the property under the terms of the Purchase Option. The Appellant never had a chance to complete the purchase

because the Respondent refused to convey the 74.425% interest in the Property because the Respondent refused to honor the Purchase Agreement. The parties did not reach a complete agreement regarding the effort to compromise the dispute caused by the Respondent's refusal to honor the Purchase Agreement. Under these facts, there was no abandonment of the right to compel specific performance of the Purchase Option.

"Waiver, of course, involves the intentional relinquishment of a known right." *Hinds v. United Ins. Co. of America*, 248 S.C. 285, 149 S.E.2d 771, 775 (S.C. 1966).

Generally, waiver is a question for the jury. *Harvey v. Jefferson Standard Life Ins. Co.*, 165 S.C. 427, 164 S.E.6, (1932).

An action for specific performance lies in equity. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290 (2000).

> In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Campbell v. Carr, 361 S.C. 258, 262, 603 S.E.2d 625, 628 (Ct.App.2004).

In the case at hand, the evidence shows that the Appellant met the requirements for specific performance. The response by the Respondent was to refuse to honor the option. This lead to efforts by the parties to try to negotiate a settlement of the dispute caused by the Respondent's blatant and unfounded refusal to honor the option. These efforts were not successful.

Certainly, equity does not look with favor upon the Respondent's argument that the Appellant has lost its right to purchase simply because it entered into negotiations to resolve the dispute caused by the Respondent's refusal to honor the Appellant's exercise of its Purchase Option. *See, Southern Silica Mining & Mfg. Co v. Hoefer*, 215 S.C. 480, 56 S.E.2d 321 (S.C. 1949) (Per Curium).

Therefore, the Respondent's claim that the Appellant waived its right to enforce the Purchase Options is unfounded and would not be an alternative basis for the Circuit Court's dismissal of the Appellant's claim.

CONCLUSION

The Circuit Court's order dismissing the Appellant's Complaint was based on the assumption that the common law rule against perpetuities voided the Purchase Option. However, the USRAP superseded the common law rule against perpetuities entirely after its effective date. The Circuit Court's ruling that the USRAP only partially superseded the common law rule was incorrect as was its application of the CLRAP to void the Purchase Option. After its effective date, the USRAP is the sole law on unvested property interest and perpetuities. The USRAP does not apply to void the Purchase Order. Therefore, the Circuit Court's ruling that the CLRAP voided the Purchase Option was erroneous. No other basis existed to support the Circuit Court's Order Granting Partial Summary Judgment.

The Appellant respectfully requests this Court to reverse the Circuit Court's Order Granting Partial Summary Judgment.

Dated: January 18, 2023

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing was served on this date by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed to the party/attorney or attorneys for said parties.

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2019-CP-4006914

Appellate Case No.: 2022-000813

SPRING VALLEY INTERESTS, LLC, Appellant,

v.

THE BEST FOR LAST, LLC, Respondent.

APPELLANT'S CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief complies with Rule 211(b), SCACR.

Dated: January 18, 2023

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