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SC Court of Appeals

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.

RETURN TO PETITION FOR REHEARING

As ordered by this Court in its letter of September 3, 2024, Respondent The Best for Last, LLC ("Respondent" or "TBFL") respectfully submits this Return to the Petition for Rehearing filed by Appellant Spring Calley Interests, LLC ("Appellant" or "Spring Valley"). The Court correctly affirmed the circuit court's ruling that the parties' contract purchase option ("Purchase Option") was void pursuant to the common law Rule Against Perpetuities ("CLRAP").

ARGUMENT

In its Petition, Spring Valley argues: (1) the Purchase Option is not subject to any rule against perpetuities; and (2) even if the CLRAP applies, the Court should salvage the Purchase Option by implying a reasonable period of time for the duration of the option. Spring Valley's

Petition merely reiterates arguments already addressed by the Court, without offering any new basis for reconsideration. The Petition also fails to demonstrate with particularity the points supposedly overlooked or misapprehended by the Court. Accordingly, the Petition for Rehearing should be denied.

I. THE PURCHASE OPTION IS VOID UNDER THE CLRAP

In its Petition, Spring Valley contends this Court "misapprehend[ed] and misinterpret[ed] the plain, unambiguous language of the [South Carolina Uniform Rule Against Perpetuities ("SCURAP")] and defeats the clear intent expressed by the General Assembly." Pet. Reh'g 4. In support of its argument, Spring Valley improperly relies on extrinsic sources—such as the preamble of the bill proposing the SCURAP, unadopted commentary to the Uniform Act, and inapposite case law from other jurisdictions. *Id.* at 5-9. However, the language of the SCURAP is clear, and as Spring Valley itself concedes, plain and unambiguous. *Id.* at 4. Therefore, statutory interpretation encouraged by Spring Valley in its Petition is neither necessary or appropriate.

Under South Carolina law, courts apply the plain meaning of clear statutes without resorting to extrinsic interpretation. "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* (citing *In re Vincent J.*, 333 S.C. at 233, 509 S.E.2d at 262).

Here, the SCURAP is explicit: it exempts certain types of transfers, including nondonative transfers, from its application. S.C. Code Ann. § 27-6-50. It is undisputed that the Purchase Option involves a nondonative transfer, meaning the SCURAP does not apply, and the CLRAP

governs. The Legislature's specific intent to except nondonative transfers is clear and unambiguous from the plain language of the statute. This clear language leaves no room for Spring Valley's argument that the General Assembly intended to abolish the CLRAP entirely, and it is wrong to delve into extrinsic evidence, such as scholarly commentary and other states' cases, to argue something different from the Legislature's clearly expressed intent.

Contrary to Spring Valley's argument, the statute does not replace the common law in every instance, particularly where nondonative transfers are concerned. As the common law is not displaced by doubtful implication, the Purchase Option remains subject to the CLRAP. *See Coakley v. Tidewater Const. Corp.*, 194 S.C. 284, 9 S.E.2d 724, 726 (1940) (citing *Nuckolls v. Great Atlantic & Pacific Tea Company*, 192 S.C. 156, 5 S.E.2d 862 (1939)) ("[R]ules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language."); *see also Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993) ("The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment."); *cf. Hitachi Elec. Devices (USA), Inc. v. Platinum Techs., Inc.*, 366 S.C. 163, 170, 621 S.E.2d 38, 41 (2005) ("Only where the U.C.C. is incomplete does the common law provide applicable rules.").

South Carolina CLRAP does not exclude nondonative transfers from its application. "The common law rule is 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.'" *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 370 n.18, 628 S.E.2d 902, 918 n.18 (Ct. App. 2006) (quoting *Abrams v. Templeton*, 320 S.C. 325, 327, 465 S.E.2d 117, 119 (Ct.App.1995)). The infinite nature of the Purchase Option clearly violates this rule and thus violates well-established public policy in South Carolina. *See S. Bank & Tr. Co. v. Brown*, 271

S.C. 260, 265, 246 S.E.2d 598, 600 (1978) ("A violation of the rule against perpetuities would of course, violate public policy and defeat intent."); *Webb v. Reames,* 485 S.E.2d 384, 326 S.C. 444 (Ct. App. 1997) (finding a right of first refusal that was a preemptive right violated the rule against perpetuities and was therefore void). Therefore, the Court rightly concluded that the Purchase Option is void under the CLRAP.

While TBFL maintains it is not the Court's place to resort to statutory interpretation beyond that expressed in the plain language of the statute, even if the Court were to entertain the extrinsic arguments raised in Spring Valley's Petition, those arguments fail. First, Spring Valley cites to the preamble of the bill introduced proposing the enactment of the SCURAP. Pet. Reh'g 5. The preamble states that this is a "Bill to amend Title 27, Code of Laws of South Carolina, 1976, relating to property and conveyances, by adding Chapter 6 so as to abolish the common law rule against perpetuities and replace it with a statutory rule against perpetuities . . . ." 1987 Act No. 12, § 1. Spring Valley places much emphasis on the use of the word "abolish" to argue the General Assembly clearly intended to "abolish" the CLRAP. Pet. Reh'g 5-6. However, the General Assembly elected not to use the word "abolish" in the text of the statute, instead stating that "[t]his chapter *supersedes* the common law rule against perpetuities." S.C. Code Ann. § 27-6-80. Moreover, the General Assembly indicated in the Bill that, to the extent the statute "abolishes" the common law rule, it intends to "replace it with a statutory rule against perpetuities." 1987 Act No. 12, § 1. Because the statutory rule against perpetuities does not apply to nondonative transfers, the common law rule was not replaced by it, again showing the General Assembly did not intend to abolish the common law rule in situations where the statute would not operate to replace it.

Next, Spring Valley discusses comments to the Uniform Statutory Rule Against Perpetuities drafted by the National Conference of Commissioners on Uniform State Laws to

further argue the unexpressed intent of the South Carolina General Assembly. Had the General Assembly desired to adopt the commentary expressed by the National Conference of Commissioners, it could have easily done so. It did not.

Finally, Spring Valley suggests that other jurisdictions that have adopted the Uniform Statutory Rule have concluded that "nondonative transfers are excepted *from any rule against perpetutities*." Pet. Reh'g 9 (emphasis added). In support of this sweeping statement, Spring Valley cites to only two cases from other jurisdictions: New Jersey and California. However, these cases are contrary to the majority rule: "The Uniform Statutory Rule against Perpetuities does not replace the common law rule against perpetuities as to preemptive rights arising from nondonative transfers . . . ." 70 C.J.S. Perpetuities § 50.

New Jersey was recognized in *American Jurisprudence* as the one state where the enactment of the Uniform Statutory Rule Against Perpetuities has abolished the common law outright. *See* 61 Am. Jur. 2d *Perpetuities, Etc.* § 12 (citing *Juliano & Sons Enters., Inc. v. Chevron*, U.S.A., Inc., 250 N.J. Super. 148, 593 A.2d 814 (App. Div. 1991)).

Likewise, long before the adoption of the Uniform Statutory Rule Against Perpetuities, California took the radical approach of categorically stating that the rule against perpetuities has no significance in the world of commercial affairs. *Wong v. Di Grazia*, 60 Cal. 2d 525, 533, 386 P.2d 817, 823 (1963). Unlike California, South Carolina maintains a strong public policy against restraints on the free alienability of property. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987) ("The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land."); "Nonvested property interests tend to restrain the free alienability of property and interfere with its beneficial use." *Queen's Grant II Horizontal Prop.*

Regime, 368 S.C. at 369, 628 S.E.2d at 917.

This Court correctly ruled that the CLRAP was not preempted by the SCURAP as to nondonative transfers. Accordingly, the Purchase Option was void pursuant to the CLRAP. Nothing raised in Spring Valley's Petition for Rehearing merits reconsideration of the Court's well-reasoned opinion.

II. AN IMPLIED TERM DOES NOT SAVE THE PURCHASE OPTION

Spring Valley maintains that nondonative transfers are not subject to any Rule Against Perpetuities. Pet. Reh'g 10. Based on this logic, options to purchase real property can continue indefinitely and freely disrupt the alienability of property and interfere with its beneficial use. *See Queen's Grant II Horizontal Prop. Regime*, 368 S.C. at 369, 628 S.E.2d at 917. Such a result cannot be what the Legislature intended when it enacted the SCURAP. In the alternative, Spring Valley argues that the Court should imply a reasonable time for the duration of the option to save the Purchase Option from violating the CLRAP.

First, this argument is not preserved for appellate review, as it was neither addressed by the trial court nor raised in a motion to alter or amend. It is fundamental that "[a]n issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment." *Doe v. Roe*, 369 S.C. 351, 376, 631 S.E.2d 317, 330 (Ct. App. 2006). This Court should not save Spring Valley from a problem of its own making and overrule a trial court on a matter not properly brought before it.

Second, even if the issue were properly before the Court, the imposition of a reasonable time term contradicts the very purpose of the CLRAP, which demands certainty in vesting, and is contrary to South Carolina common law. Imposing a flexible reasonable time standard introduces uncertainty, contrary to the very purpose of the CLRAP. This Court correctly rejected Spring

Valley's argument to imply a reasonable time term.

Moreover, the Purchase Option itself expressly grants a "perpetual option," *Spring Valley Ints., LLC v. Best for Last, LLC*, No. 2022-000813, 2024 WL 3351146, at *1 (S.C. Ct. App. July 10, 2024), demonstrating the parties' intent to create an option of indefinite duration. There is no evidence the parties intended to imply a reasonable time limit. The Court should not rewrite the agreement by implying a term that the parties did not negotiate or intend.[1]

Lastly, Spring Valley fails to state with particularity the points overlooked or misapprehended by the Court on this issue. The Court's opinion reaches the correct result on this issue and is well reasoned and supported by South Carolina law.

III. SPRING VALLEY WAIVED ANY RIGHT UNDER THE PURCHASE OPTION

As an alternate sustaining ground, TBFL maintains that Spring Valley waived its right to re-exercise the purchase option after exercising the option, agreeing to the terms of purchase, executing the closing documents, and then failing to proceed with the agreed-upon sale. Spring Valley provides no new argument or law to contest a finding of waiver, and this remains a valid basis to affirm the circuit court's ruling.

CONCLUSION

For all of the foregoing reasons and the reasons set forth in the Brief of Respondent, which

[1] Ironically, the New Jersey case that Spring Valley urges this Court to follow finds the agreement at issue there similarly could not be saved by a reasonable time limit. *See Juliano & Sons Enters., Inc.*, 250 N.J. Super. at 153, 593 A.2d at 816–17 ("We recognize that the contract in this case, negotiated at arms length with the assistance of competent counsel, may well have contained clear manifestations of the parties' intent and provides rights and obligations for the parties' 'successors and assigns.' Further, the agreement provides that the right may be exercised whenever Gulf received a bona fide offer for the property 'at any time hereafter.' Thus, the agreement cannot be 'saved' in the traditional way by construction of a 'reasonable' time limit as a matter of fact or law. However, if the agreement is not subject to the rule against perpetuities, the parties' intent and expectations can be effectuated without being declared void and unenforceable as a matter of law.").

are incorporated herein, this Court should deny the Petition for Rehearing.

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September 13, 2024.

CERTIFICATE OF SERVICE

I certify that I have served **Respondent's Return to Petition for Rehearing** on Appellant by sending a copy of said documents to Appellant's counsel via email on September 13, 2024, as follows:

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September 13, 2024.