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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
THE HONORABLE JOCELYN NEWMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000813
CIVIL ACTION NO. 2019-CP-21-40-06914

Opinion No. 6070 (S.C. Ct. App. filed July 10, 2024)

Spring Valley Interests, LLC,

APPELLANT,

versus

The Best for Last, LLC,

RESPONDENT.

REPLY TO RETURN TO PETITION FOR REHEARING

The Appellant, Spring Valley Interests, LLC (“Spring Valley”), hereby files its Reply to Respondent The Best for Last, LLC’s (“Best”) Return to the Petition for Rehearing and states as follows:

- I. The Purchase Option is enforceable and not subject to any rule against perpetuities under the express language of the South Carolina Uniform Statutory Rule Against Perpetuities.**

Spring Valley agrees with Best that the language of the South Carolina Uniform Statutory Rule Against Perpetuities (“SCUSRAP”) is “plain and unambiguous and conveys a clear and definite meaning” and that the courts must give effect to what the General

Assembly has stated in the text of the statute. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citations omitted).

As fully explained in the Petition for Rehearing, the General Assembly drafted the SCUSRAP to encompass the entirety of the law on the rule against perpetuities as shown by its explicit statement in S.C. CODE ANN. § 27-6-80: “This chapter supersedes the common law rule against perpetuities.” While the common law is not to be changed by “doubtful implication,” it can be overturned by “clear and unambiguous language.” Coakley v. Tidewater Const. Corp., 194 S.C. 284, 9 S.E.2d 724, 726 (1940) (citation omitted). And here, in Section 27-6-80 of the SCUSRAP, the General Assembly used clear and unambiguous language to express its intent that the common law no longer exists as to the rule against perpetuities and is instead replaced by Chapter 6 of Title 27 of the South Carolina Code. The SCUSRAP provides a complete scheme with respect to the rule against perpetuities. See 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.”).

Furthermore, as also fully explained in the Petition for Rehearing, the plain text of Section 27-6-50 makes clear that the seven categories of interests, including nondonative transfers, are not exempt from the entire Chapter 6, but only from Section 27-6-20. This Section 27-6-20 sets forth the required vesting time periods for a nonvested interest to remain valid, and the General Assembly, by expressly exempting nondonative transfers as well as certain other interests from Section 27-6-20, has made the determination that these interests are not subject to any vesting time requirements and remain valid without any regard to vesting requirements.

The General Assembly did not say that these interests are exempt from the entire Chapter 6 – only the particular rule set forth in Section 27-6-20. These seven exempted interests, including nondonative transfers, are still covered under the complete statutory scheme which now supersedes the common law. Under the plain language used by the General Assembly, there is only one interpretation: (1) the SCUSRAP has superseded the common law rule against perpetuities such that the common law no longer exists and validity of property interests are now determined by Chapter 6 of Title 27 of the South Carolina Code; (2) Section 27-6-20 sets forth the vesting requirements; and (3) Section 27-6-50 provides that there are seven categories of interests, including nondonative transfers, which remain valid without regard to the vesting requirements of Section 27-6-20. Therefore, the Purchase Option at issue in this case is valid under the provisions of the SCUSRAP.

Spring Valley agrees this Court need not go beyond the plain language of the SCUSRAP to reach the above conclusion. Spring Valley merely pointed this Court to case law from other jurisdictions to show that other courts have interpreted similarly plain language in the manner as urged by Spring Valley. Spring Valley respectfully asks this Court to give effect to the unambiguous language of the SCUSRAP to find the Purchase Option valid and enforceable.

II. In the alternative, if the common law rule against perpetuities applies to the Purchase Option, an implied term that the Purchase Option would be exercised within a reasonable amount of time operates to prevent the Purchase Option from violating the common law rule against perpetuities.

Spring Valley continues to maintain that the common law rule against perpetuities does not void the Purchase Option as set forth above in Section I. hereof, but does submit to this Court in the alternative that an implied period of reasonable time for the duration of

the option can be supplied to prevent the option from violating the common law rule against perpetuities. Best argues that imposing a reasonable time would be contrary to the common law rule against perpetuities, but the common law has long allowed a reasonable time to be implied for the exercise of an option. See King v. Oxford, 282 S.C. 307, 316, 318 S.E.2d 125, 130 (Ct. App. 1984) (“The failure of the parties to express a date certain by which the option to lease must be exercised is not fatal. Where the parties to an option contract do not specify a time for performance, a reasonable time will be implied.”); see also Lindler v. Adcock, 250 S.C. 383, 386, 158 S.E.2d 192, 194 (1967) (“[T]he option must be exercised in a reasonable time if no time is specified.”)¹.

¹ Best points out that in Juliano & Sons Enters., Inc. v. Chevron, U.S.A., Inc., 593 A.2d 814, 817-18 (N.J. Super. Ct., App. Div. 1991), a case relied upon by Spring Valley, a right of first refusal could not be saved under New Jersey Law by implication of a reasonable time. But in Juliano & Sons Enters., Inc., the court did find that the right of first refusal, a nondonative commercial transaction, was not subject to the common law rule against perpetuities and was valid under the Uniform Statutory Rule Against Perpetuities. There, as here, it was not even necessary to reach the issue of an implied reasonable time because the transaction was clearly valid under the statutory scheme.

CONCLUSION

For all reasons set forth herein and in the previously submitted Petition for Rehearing, Appellant Spring Valley respectfully requests that the Court grant its Petition for Rehearing, withdraw the Opinion of the Court, reverse the circuit court's grant of summary judgment to Best, and hold that the Purchase Option is enforceable for the reasons set forth in Spring Valley's submissions to this Court.

Respectfully submitted,

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September 20, 2024.

Sep 20 2024**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant, Spring Valley Interests, LLC, do hereby certify that I have this date served the foregoing Reply to the Return to the Petition for Rehearing, dated September 20, 2024, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent e-mail is attached to this Certificate of Service.

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Dated: September 20, 2024.

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Date: Friday, September 20, 2024 1:16:08 PM
Attachments: [2022-000813 Spring Valley v. Best \(Reply to Rtn to Pet for Rehearing\) \(3508089\).pdf](#)

Pursuant to the Supreme Court's Order dated April 24, 2024, please find served upon you the Reply to the Return to the Petition for Rehearing in the above-referenced appeal on behalf of the Appellant Spring Valley Interests, LLC.

Thank you,
Carmen Ganjehsani

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