STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor
Circuit Court Judge

Appellate Case No. 2024-001811

Devan Chokshi, Individually and
as Personal Representative of the
Estate of Freni Hazare, Deceased;
Vatsal Chokshi, Individually and
as Personal Representative of the
Estate of Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC;
PAC-Summerville, LLC;
Beach Investment Fund, L.P.;
Beach Real Estate Funds, LLC;
Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 1-3; Corporation XYZ 1-3, Defendants,

of which BIF-Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

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II. Whether the Circuit Court correctly held the Jury Waiver Provision cannot feasibly apply to the entirety of the "case" because the majority of the Defendants are not third-party beneficiaries, thus they cannot invoke the waiver, and because the wrongful deaths at issue in this case are outside scope of the Provision.

III. Whether the Circuit Court correctly determined that Decedent Dhruv Chokshi, a minor and non-signatory to the Lease Agreement, did not "invoke the benefits of the lease agreement" and is, therefore, not bound by Jury Waiver Provision.

STATEMENT OF THE CASE

In the early morning hours of September 29, 2022, a massive fire engulfed much of the Summerville Station Apartment Complex, resulting in the deaths of residents Freni Hazare and her teenage son, Dhruv Chokshi. (Fourth Am. Compl., filed Sept. 24, 2024, R.__). Devan Chokshi, Personal Representative of the Estate of Freni Hazare, and Vatsal Chokshi, Personal Representative of the Estate of Dhruv Chokshi, ("Respondents") have brought this lawsuit against BIF-Summerville Station, LLC, and PAC-Summerville, LLC, ("Appellants"), which alleges, among other causes of actions, negligence in survival and wrongful death. *Id.*

On February 6, 2024, Appellants filed a motion to strike Respondents' jury demand arguing that Respondents were bound by a Jury Waiver Provision in the lease agreement signed by Freni Hazare. (Def.'s Mot. Strike, filed Feb. 6, 2024, R.__). On May 2, 2024, Respondents filed a Memorandum in Opposition to the Motion to Strike. (Memo in Opp., R.__). A hearing on the motion was held on May 6, 2024. (Transcript, R.__). On May 28, 2024, the Circuit Court denied Appellants' motion. (Form 4 Order, filed May 28, 2024, R.__).

On June 7, 2024, Appellants filed a subsequent motion to alter or amend the May 28, 2024 Order. (Def's. Mot. Alter or Amend, filed June 7, 2024, R.__). Appellants argued "(1) the Jury Waiver Provision is enforceable at least to Decedent Freni Hazare; (2) Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, is bound by the Jury Waiver Provision; (3) the Jury Waiver Provision applies to the instant lawsuit in its entirety; and (4) Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, invoked the Jury Waiver Provision by alleging claims under the South Carolina Residential Landlord Tenant Act." (*Id.* at p. 1, R.__). On October 4, 2024, the Circuit Court denied this motion. (Form 4 Order, filed October 4, 2024, R.__). In that order, the Circuit Court stated:

> This matter is before the Court on Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC's motion to alter or amend the Court's May 28, 2024 order denying their motion to strike. The Court's prior order as to Dhruv Chokshi and Vatsal Chokshi remains unchanged. The Court's prior order with regard to Devan Chokshi and Freni Hazare is hereby amended as follows: While Freni Hazare did sign the lease agreement which contains a facially valid jury trial waiver, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Freni Hazare. Conversely, paragraph 1 of the lease agreement specifically provides that the lease agreement applies to the successors' in interest or assigns of the owners. Had the drafter of the agreement intended the agreement to survive the death of Ms. Hazare, it certainly could have included language to that effect.
>
> See, Kelly v. McCombs, 2019 WL 4052491 (S.C. Ct. App. 2019). Therefore, Devan Chokshi, as personal representative of Freni Hazare, is not a party to the lease agreement. The motion to strike jury demand remains denied. See, North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992) (holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

Id. (Emphasis added).

On October 24, 2024, Appellants filed a Notice of Appeal of the Circuit Court's Order. Appellants filed their Initial Brief on January 16, 2024.

STATEMENT OF THE FACTS

On September 29, 2022, a fire broke out, ravaging several apartments in the Summerville Station Apartment Complex ("Summerville Station") in Summerville, South Carolina. (Fourth Am. Compl., filed Sep. 24, 2024, R.__). Freni Hazare and Dhruv Chokshi tragically perished in the fire. (*Id.*, at ¶¶ 60-64, R.__). 911 recordings reveal Ms. Hazare crying out in pain as she is burning alive. The 911 recordings of Ms. Hazare's son, Dhruv, reveal him repeatedly calling for help while he hears his mother dying. Dhruv frantically attempts to find a means to escape the apartment, but he is unsuccessful, and ultimately succumbs to the fire. (*Id.* ¶¶ 60-63, R.__). In this matter, Respondents are the Personal Representatives of the Estates of Hazare and Chokshi who filed a lawsuit against the owners and operators of Summerville Station, Appellants, as well as other Defendants. (*Id.*, R.__). Respondents assert that the Appellants' negligence was a proximate cause of the deaths of their loved ones.

Decedent Hazare had recently renewed her lease at Summerville Station in July 2022, after previously living in the building for an unknown period of time. (Exhibit A to Mot. Strike, Lease Agreement, R.__). Decedent Chokshi, her 15-year-old son, was not a signatory to the lease, and is not listed on the lease as a tenant, resident, occupant or guest. (*Id.*, R. __). Central to this appeal is a Jury Waiver Provision included within the Lease Agreement that Decedent Hazare signed on July 7, 2022 (hereinafter, the "Lease Agreement"). (Lease Agreement, § 39, R.__). The Jury Waiver Provision reads:

> Waiver of Jury Trial. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

(*Id.*, § 39) ("Jury Waiver Provision").

During Circuit Court proceedings, the Appellants filed a motion to strike the jury demand on account of this language, which the Circuit Court correctly denied. (Mot. Strike, R.__). The Circuit Court also denied the Appellants' motion for reconsideration. (Form 4 Order; filed Oct. 4, 2024), R.__). Now, Appellants appeal the denial of the motion to strike the jury demand.

STANDARD OF REVIEW

"Whether a party is entitled to a jury trial is a question of law." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). "Whether a contract [provision] is . . . unenforceable is generally a question of law." *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 629, 799 S.E.2d 318, 322 (Ct. App. 2017) (quoting *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012)). When reviewing questions of law, the Court of Appeals reviews de novo. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 569-70, 776 S.E.2d 397, 402 (Ct. App. 2015).

ARGUMENT

"The South Carolina Constitution provides that '[t]he right of trial by jury shall be preserved inviolate.'" *Wells Fargo Bank, NA v. Smith*, 398 S,C, 487, 493, 730 S.E.2d 328, 331 (Ct. App, 2012) (quoting S.C. Const. art. I, § 14). "The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868." *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) (citation omitted).

This Court should AFFIRM the Circuit Court's ruling preserving the right to a jury trial because (I) Devan Chokshi and Vatsal Chokshi, as non-parties and non-signatories, are not bound by the Lease Agreement; (II) The scope of the Jury Waiver Provision cannot apply to the "case" in its entirety because the majority of Defendants are neither signatories nor third-party beneficiaries to the Lease Agreement; (III) Decedent Dhruv Chokshi, a deceased minor who never signed the

Lease, is not bound by its terms, and Respondents did not "invoke the Lease Agreement's benefits" by asserting claims against the Landlord. As an additional sustaining ground, the Circuit Court's decision should be affirmed because Defendants failed to timely file their Motion to Strike under Rule 12, SCRCP, having waived this defense by not raising it with their initial responsive pleading.

I. Devan Chokshi and Vatsal Chokshi are Not Bound by the Lease Agreement as they are Not Signatories of the Lease Agreement.

Under well-established South Carolina law, non-signatories to a lease agreement are not bound by that agreement. In *N. Charleston Joint Venture*, a landlord sued its tenant for past-due rent and joined tenant's guarantors to the lawsuit. *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 534, 416 S.E.2d 637, 638 (1992). The guarantors counterclaimed and requested a jury trial. *Id.* As was the case here, the landlord moved to strike the jury demand on the grounds that the lease contained a jury waiver provision. *Id.* Nevertheless, the South Carolina Supreme Court held that the "[g]uarantors, not being parties to the waiver clause, are entitled to a jury trial." *Id.* The Court stated:

> Trial by jury is a substantial right and any waiver thereof must be ***strictly construed***. Here, the waiver clause, by its express terms, is applicable ***only*** to Landlord and Tenant. Although the guaranty was incorporated by reference into the lease contract, Guarantors were not parties to the lease nor were they named in the waiver clause.

Id. (emphasis added). The rule set forth by the Supreme Court is clear – jury waivers are only enforceable against the actual parties to the lease. *See also Anderson Bros. Bank v. Adams*, 305 S.C. 25, 28, 406 S.E.2d 173, 175 (1991) (holding that waiver of right to appraisal contained in mortgage did not bind guarantors of the borrower because "boilerplate language, inserted by Bank, at the end of a mortgage signed only by Debtors, is not binding upon Guarantors"). Appellants' argument that *North Charleston Joint Venture* is inapplicable because it addresses guarantors rather than personal representatives is misplaced. The fundamental principle established by the South

Carolina Supreme Court is that jury waivers must be "strictly construed" and are enforceable only against the actual parties to the agreement.

This central holding of *N. Charleston Joint Venture* has since been reaffirmed by the South Carolina Supreme Court. In *Broome v. Watts*, two individuals involved in an automobile accident entered into a settlement agreement where the parties would conduct a trial for the sole purpose of determining the liability of various insurers. *Broome v. Watts,* 319 S.C. 337, 338, 461 S.E.2d 46, 47 (1995). As part of the settlement, the defendant waived her right to a jury trial. *Id.,* 319 S.C. at 338, 461 S.E.2d at 47. After the trial, the plaintiffs filed suit against an insurance company, USAA, to recover on their underinsured motorist coverage. *Id.* USAA, who was not party to the agreement, claimed that it was entitled to invoke the Jury waiver provision because, as the UIM carrier, its contract with the original defendant allowed it "to defend 'in the name of the underinsured motorist'" and "step[] into the shoes' of the underinsured motorist." *Id.*, 319 S.C. at 340, 461 S.E.2d at 48. **The Supreme Court expressly rejected USAA's argument**, and extended *N. Charleston Joint Venture*'s holding, by saying USAA could not invoke the jury waiver as doing so would "blur[] the distinction between the named defendant (Watts)," who was a party to the agreement thus waiving her right to a jury trial, and "the actual defendant (USAA)," who was not. *Id.*

Here, the Circuit Court correctly determined Freni Hazare alone was a signatory to this Lease Agreement. (Order, R.__; Lease, R.__). Section 1 of the Lease Agreement clearly defines the parties bound by the agreement, stating that "The terms **'you'** and **'your'** refer to all residents listed above" – which only includes Freni Hazare. (R.__). However, Ms. Hazare is now deceased and is not a party to this lawsuit. Ms. Hazare's adult son, Devan Chokshi, who *is* a party/plaintiff to this lawsuit, *never* signed the Lease Agreement containing the Jury Waiver Provision. As *N.*

Charleston Joint Venture holds, Devan Chokshi, a non-signatory to this Lease Agreement, cannot be bound by the Jury Waiver Provision as "[t]rial by jury is a substantial right and any waiver thereof must be strictly construed." *N. Charleston Joint Venture,* 307 S.C. at 535, 416 S.E.2d at 638.[1]

Significantly, the Lease Agreement demonstrates through its asymmetrical language that the drafters knew precisely how to bind non-signatories when they intended to do so. While Section 1 of the Lease Agreement explicitly extends to "owner's successors in interest or assigns," it contains no similar provision extending the agreement to the tenant's heirs, representatives, or estate. (R.__). This deliberate asymmetry in the contract language cannot be dismissed as accidental in what is clearly a thoroughly drafted form contract. The principle of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of other) compels the conclusion that this omission was deliberate—the drafters knew how to bind successors but chose not to do so for tenant's representatives. "[T]he maxim 'Expressio unius est exclusio alterius' is defined as: 'When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.'" *Evins v. Richland Cty. Historic Pres.*

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[1] *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011), cited by Appellants (Appellants' Br. at 4), is distinguishable both because it involved an arbitration provision and because the personal representative in that case *had in fact* signed the contract as a "Fiduciary Party". Other cases cited by Appellants focus on whether the personal representative can bring certain claims, and not whether the representative is entitled to a specific procedural right, such as a jury trial. *See Est. of Stokes ex rel. Spell v. Pee Dee Family Physicians, LLP*, 699 S.E.2d 143, 145–46, 389 S.C. 343, 348-49 (2010) (holding personal representative cannot recover under a wrongful death action because the claim was barred by statute of limitations); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988) (holding personal representative cannot recover under wrongful death action because the claim was barred by statute of limitations); *Cox v. Duke Energy, Inc.*, 176 F. Supp.3d 530, 542 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017) (barring personal representative from suing police department in connection with decedent's arrest because decedent had signed release that he would not sue the department).

Comm'n, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) (quoting *Little v. Town of Conway*, 171 S.C. 27, 31, 171 S.E. 447, 448 (1933)); *See also Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C. 113, 119, 463 S.E.2d 600, 604 (1995) (stating the rule "expressio unius est exclusio alterius" means the "enumeration of particular things excludes [the] idea of something else not mentioned.").

Further, the jury waiver at issue in Section 39 provides that "**you and we** agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury." (R.___). The terms "you and we" are explicitly defined in Section 1 as referring only to the named resident (Freni Hazare) and the property owner, reinforcing that the waiver was intended to bind only the actual signatories to the agreement. (R.__). Had the drafters intended this provision to bind representatives or heirs, they would have included explicit language to that effect, as they did elsewhere in the agreement for the owner's successors.

Additionally, Section 32 of the Lease Contract explicitly states: "Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us." (R.__). This provision reinforces that the agreement is strictly between the named parties. When read together with the definitions in Section 1, this language establishes that the contract – including the jury waiver – was personal to the signatories and not intended to bind the non-signatory personal representatives of a deceased tenant. Further, under *N. Charleston Joint Venture* and the progeny of cases affirming its holding, it is likewise indisputable that the Lease Agreement cannot be held to bind neither the decedent Dhruv Chokshi (who was a minor that did not – and legally could not – sign the Lease Agreement), nor his personal representative, Vatsal Chokshi.

Appellants nevertheless argue that "South Carolina law allows parties to contractually waive the right to jury trial." (App. Br. at 4). However, each of the cases relied upon by Appellants are wholly distinguishable because they involve situations where the party against whom the motion to strike the jury demand is levied is *a signatory* of the agreement with the waiver provision, or is *a party* agreeing to forgo trial by jury. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 440, 814 S.E.2d 643, 647 (Ct. App. 2018) ("Skywaves entered into a factoring agreement . . . The agreement stated in bold writing, immediately prior to the signature page, Skywaves waived its right to trial by jury . . . ." (quotation omitted)); *see also Banks v. Frith*, 97 S.C. 362, 81 S.E. 677, 680 (1914) (Gage, J. dissenting) ("The *parties* waive trial by jury, as *they* have a right to do so." (emphasis added)); *Southern Ry. Co. v. Surety Ins. Co. of Greenville*, 249 S.C. 407, 413, 154 S.E.2d 561, 564 (1967) ("*Both parties having assented* to the discharge of the jury, neither has standing here to complain that issues of fact were not submitted to it." (emphasis added)). Here, Respondents are neither a signatory nor a party agreeing to forgo the right to a trial by jury.

The only names on the lease are (1) Freni Hazare, (2) BIF-Summerville Station, LLC, and (3) PAC-Summerville, LLC. Thus, the Respondents in this case – Vatsal Chokshi and Devan Chokshi – are not signatories to the Lease Agreement and are not bound by its jury waiver provision. This argument applies with particular force in the case of Respondent Vatsal Chokshi, the personal representative and father of Dhruv Chokshi. Dhruv Chokshi was not a signatory to the lease, and because the plain terms of the jury waiver provision do not identify him as a covered

party,[2] Vatsal Chokshi's representative claim on Dhruv's behalf is plainly not subject to the jury waiver provision under *N. Charleston Joint Venture*. *See also Johnston-Gebre v. IH4 Prop. Fla., L.P.*, 2023 WL 6443096, at *4 (S.D. Fla. Oct. 2, 2023) ("If the parties to the lease agreement intended for the jury waiver provision to cover claims brought by the 'Resident Parties' and not just a 'Resident,' the lease should have so stated. Thus, the plain language of the contract does not extend the jury waiver [beyond the Resident]).

Therefore, the jury demand must stand in accordance with the South Carolina Supreme Court's previous decisions in *N. Charleston Joint Venture* and its progeny, as Respondents are entitled to the "substantial right" of trial by jury because (1) "any waiver thereof must be strictly construed," (2) the Respondents are not signatories to the Lease Agreement containing the Jury Waiver Provision, and (3) "you and we" cannot be construed to incorporate either Respondent as non-parties to the lease. *See N. Charleston Join Venture*, 307 S.C. at 535, 416 S.E.2d at 638; *see also Anderson Bros. Bank*, 305 S.C. at 28, 406 S.E.2d at 175.

II. The Scope of the Jury Waiver Cannot Apply to the "Case" in its Entirety.

The Jury Waiver Provision cannot apply to the "Case" in its entirety because (A) a majority of the Defendants are neither signatories to the Lease Agreement nor third-party beneficiaries and

[2] The lease agreement contains no reference to Freni Hazare's children, and no provision addressing other potential residents of the apartment. A section asking the parties to "list all other occupants not signing the Lease Contract" is blank. (R.__). Thus, even if Freni Hazare signed the lease agreement with the intent to reside there with Dhruv Chokshi, there is nothing in the lease agreement indicating the jury waiver provision binds Dhruv. *See, generally*, *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) ("The contract, so far as the plaintiff was concerned, since he was a minor, was *voidable* at his election, although it was fully binding upon the defendants . . . .").

(B) the Jury Waiver Provision clearly was not intended to encompass the tragic fire, and decedents' deaths, at issue in this case.

A. A Majority of the Defendants are Neither Signatories Nor Third-Party Beneficiaries of the Lease Agreement, thus the Jury Waiver Provision Cannot Apply.

The request to strike the jury demand in this case is brought by Appellants BIF-Summerville Station, LLC and PAC-Summerville, LLC. The remaining Defendants in this case – The Beach Co., Beach Company, Inc., Beach Investment Fund, L.P., Beach Real Estate Funds, LLC (collectively, "Beach Defendants"), Lincoln BP Management, Inc., and Lincoln Property Company National, LLC (collectively, "Lincoln Defendants") – do not, and cannot, invoke the Jury Waiver Provision in this case.[3]

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Here, it is undisputed that the Beach Defendants and the Lincoln Defendants and other recently added Defendants are not parties to the Lease Agreement.[4]

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[3] Four additional Defendants have since been added to the case. (R. __; 4th Am. Compl.).

[4] *See, e.g.*, *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1166 (9th Cir. 1996) ("The Investors again argue that the defendants cannot invoke the jury waiver clause because they were not parties to the Purchase Agreement. As with the choice-of-law clause, a jury waiver is a contractual right and generally may not be invoked by one who is not a party to the contract. And, as with the choice-of-law clause, ordinary contract and agency principles do not provide GE Capital or Burton with standing to invoke the jury waiver. . . .Therefore, we reverse the order waiving jury trial."); *Barnello v. Bayview Loan Servicing, LLC*, 2016 WL 11565618, at *3 (M.D. Fla. Mar. 15, 2016) ("Defendant is not a party to the Mortgage, has not otherwise shown that it should stand in the shoes of the holder of the note and Mortgage, and has not, as noted above, established that it is an intended beneficiary of the Mortgage agreement. Thus, as a non-party to or beneficiary of the contract, Defendant has not established that it has a right to enforce the jury trial waiver, and the Motion to Strike will be denied."); *Brown & Brown, Inc. v. Cola*, 2011 WL

Moreover, under South Carolina law, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). Nothing in the Lease Agreement suggests it was intended to any of these non-signatory defendants.[5] (Lease Agreement, § 39, R.__) (specifically noting "**you and we** agree" without indicating any third-party beneficiaries).

4380445, at *5 (E.D. Pa. Sept. 20, 2011) ("None of the Defendants in this case was a signatory or party to the [agreement containing the jury waiver], and thus cannot invoke the jury waiver provision against Plaintiffs."); *Bateman Litwin N.V. v. Swain*, 2009 WL 10688302, at *8 (E.D. Va. Mar. 18, 2009) (denying third-party defendants' motion to strike because they "were not signatories to the documents" containing the jury waiver provision); *Sensoria, LLC v. Kaweske*, 2021 WL 103020, at *9 (D. Colo. Jan. 12, 2021) ("The Kaweske Defendants did not act as Clover Top Holdings, Inc.'s agents (or at least consistent with an agent's fiduciary duties), and they did not act in concert with Clover Top Holdings, Inc. The Kaweske Defendants lack a sufficiently close relationship with Clover Top Holdings, Inc. to invoke any term of the Subscription Agreement against Plaintiffs."); *Omega v. Deutsche Bank Tr. Co. Americas*, 920 F. Supp. 2d 1298, 1300 (S.D. Fla. 2013) ("Wells Fargo is a non-party to the Mortgage, but seeks to enforce the jury-trial waiver contained therein. Because the waiver is part of a contractual relationship between Plaintiffs and the owner of the Note, and not between Plaintiffs and Wells Fargo, the Court finds that Wells Fargo cannot enforce the waiver against Plaintiffs."); *ExactLogix, Inc. v. JobProgress, LLC*, 2022 WL 1004423, at *1 (N.D. Ill. Apr. 4, 2022) ("[T]he Court holds that David Buzzelli and JobProgress are not able to invoke the contractual jury waiver because they are not parties to the contract[and] they are not successors or permitted assigns of a party to the contract."); *Foxfield Villa Assocs., LLC v. Robben*, 2017 WL 3085780, at *2 (D. Kan. July 20, 2017) ("In light of the court's policy of indulging every reasonable presumption against wa[iv]er, the court finds that defendants have not shown that they are entitled to enforce the waiver. Defendants' motion is therefore denied."); *Nat'l Med. Imaging, LLC v. DVI Receivables XIV, LLC*, 2016 WL 4554692, at *5 (E.D. Pa. Sept. 1, 2016) ("Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX were not parties to the Settlement Agreement, and the Guaranty was not executed in favor of these Defendants. . . . These Defendants therefore may not invoke either jury trial waiver,31 and thus Plaintiffs have not waived their right to a jury trial as to Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX.").

[5] *See, e.g.*, *Beverly v. Grand Strand Reg'l Med. Ctr., LLC*, 429 S.C. 502, 512, 839 S.E.2d 468, 473 (Ct. App. 2020), *aff'd*, 435 S.C. 594, 869 S.E.2d 812 (2022) (finding that members of health insurance network were third-party beneficiaries where "the Agreement's language, structure, and purpose directly benefit Members" and noting out-of-state cases involving contracts that expressly referenced members and described benefits accruing to them as supporting third-party beneficiary

The Jury Waiver Provision specifically notes that "you and we agree" to waive the right to a jury trial without indicating any third-party beneficiaries. (Lease Agreement, § 39, R.__). The pronouns "you and we" plainly refer to the contracting parties – Freni Hazare and the owner entities – not to any third parties such as the numerous defendants named in this lawsuit.

Even if this Court were to find that Devan Chokshi, as personal representative of Freni Hazare's estate, is somehow bound to the Jury Waiver Provision (which Respondents dispute for multiple reasons set forth herein), that finding would not extend to claims brought against defendants who were not parties to the lease agreement. The Jury Waiver provision applies only to disputes between "you and we" – Freni Hazare and the owner entities. It cannot reasonably be interpreted to waive the right to a jury trial in claims against entirely separate entities that have no connection to the lease agreement.[6]

This case illustrates precisely why jury waivers are strictly construed and limited to the actual parties who agree to them. If Appellants' position were accepted, a tenant signing a form lease with a jury waiver provision would unknowingly surrender their constitutional right to a jury trial not only against their landlord but against any number of third parties who might later be joined in litigation arising from the tenant's residency. Such an expansive reading of jury waiver

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status); *contrast Pancakes of Hawaii, Inc. v. Pomare Properties Corp.*, 85 Haw. 300, 309 (Ct. App. 1997) ("[N]othing in the terms of the lease or in the record indicates Sofos or Carter would benefit in any way from the lease agreement. Thus, Sofos and Carter do not have any enforceable contract rights as third-party beneficiaries in the agreement between Pancakes and Pomare Properties.")

[6] *See Lapkass v. Wells Fargo Clearing Services*, No. C099944, p. 8 (Cal. Ct. App. 3d. Mar. 11, 2025) ("there is no evidence Ulrike designated Paul as her agent with authority to enter into arbitration agreements on her behalf, or that some conduct by Ulrike reasonably caused Wells Fargo and Schoenike to believe that Paul was authorized to enter into arbitration agreements for Ulrike . . .Paul did not bind Ulrike to the arbitration clauses.").

provisions would render them unreasonably overbroad and contrary to the fundamental principle that "[t]rial by jury is a substantial right and any waiver thereof must be strictly construed." *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.

B. The Jury Waiver Provision was Clearly Not Intended to Encompass the Fire at Issue and the Death of the Decedents.

Even if the Jury Waiver Provision is found to apply, it cannot be properly construed to apply to a *wrongful death* case brought by the *personal representative* of the signatory. As a threshold principle, any waiver of a jury trial should be narrowly construed as the right to a jury is a substantial right. *See N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638.[7]

The Jury Waiver Provision states that "a trial of any lawsuit based on statute common law, *and/or related to this Lease Contract* shall be to a judge and not a jury." (Ex. A. to Mot. Strike, § 39) (emphasis added). As the rules of contract interpretation are to "ascertain and give legal effect to the parties' intentions *as determined by the contract language*" and courts are not to "rewrite or torture the meaning" of contracts, the Court must consider the limiting language "related to this Lease Contract." *See Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134 (emphasis added); *see also Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) ("The language alone will determine the contract's force where such language is unambiguous.").[8]

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[7] Courts "should indulge every reasonable presumption against waiver." *Zaklit v. Glob. Linguist Sols., LLC*, 53 Supp. 3d 835, 855 (E.D. Va. 2014). This proposition is consistent with the South Carolina Constitution and existing case law arguing for the narrow interpretation of jury waiver provisions. *See* S.C. Const. art. I, § 14; *N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638.

[8] Even where there is some ambiguity, courts have cautioned that jury waiver provisions should be construed narrowly, with an eye to preserving the right to trial by jury. *See N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638; *Quinn Const., Inc. v. Skanska USA Bldg., Inc.*, 2010 WL 4909587, at *6 (E.D. Pa. Nov. 30, 2010).

Appellant's argument that "any lawsuit" should be given its possible broadest meaning ignores the qualifying phrase "related to this Lease Contract." (Lease Agreement, § 39, R.__). This language clearly limits the scope of the waiver to disputes arising directly from the landlord-tenant relationship governed by the contract – such as disputes over rent, maintenance, or security deposits. A catastrophic fire resulting in death involves matters far beyond routine landlord-tenant disputes contemplated by the lease agreement. The horrific circumstances of this case – where recordings capture Ms. Hazare crying out in pain while burning alive and her son frantically attempting to escape – could not reasonably have been contemplated as falling within the scope of a boilerplate jury waiver in a form lease agreement.

Under the doctrine of *ejusdem generis*,[9] the proper interpretation of the clause is that it encompasses any lawsuit or claim "related to this Lease Contract".[10] Indeed, a contrary reading, which applies the provision to *any lawsuit* between the Parties would render the clause "related to

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[9] *U.S. v. Migi*, 329 F.3d 1085, 1088 (9th Cir. 2003) (quoting Black's Law Dictionary 535 (7th ed. 1999)) ("*Ejusdem generis* requires that 'when a general word or phrase follows a list of specific ... things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.'").

[10] *See*, *e.g.*, *Matador Drilling Co., Inc. v. Post*, 662 F.2d 1190, 1198 (5th Cir. 1981) ("Matador was required to show that the cessation of operations during this period resulted from a cause beyond its control, of the same general character as 'strikes, actions of the elements, water conditions, inability to obtain fuel or other critical materials.' . . .The damages to the derrick occurred during normal operations . . .and [are] not the kind of calamitous and unanticipated event that the force majeure clause contemplates."); *United We Stand Am., Inc. v. United We Stand Am., New York, Inc.*, 941 F. Supp. 39, 40 (S.D.N.Y. 1996), *aff'd,* 128 F.3d 86 (2d Cir. 1997) ("The Lanham Act in several places confines its application to persons who are engaged in offering for sale or distribution 'goods or services.' Defendants persuasively argue that, under the doctrine of *eusdem generis,* the meaning of 'services' should be colored by its constant association with the word "goods.") (internal citation omitted).

this Lease Contract" surplusage.[11] *See*, *e.g.*, *Fontius Shoe Co. v. Indus. W., Inc.*, 596 P.2d 1209, 1210 (Colo. App. 1979) "Had the landlord intended that the first clause be as general as it now contends, instead of the qualified phrase it did use, it could have provided merely that "the tenant shall be liable for any changes required by any governmental entity." This suggests the parties intended a meaning different than a general phrase would have accomplished."

Thus, the limiting language "related to this Lease Contract" makes it clear that the Jury Waiver Provision is intended to encompass issues like day-to-day maintenance and repairs, nonpayment of rent, and so on. There is no suggestion, either in the language of the Jury Waiver Provision or anywhere in the Lease Agreement, that it was intended to cover the aftermath of a tragic event like a fire. Moreover, Freni Hazare, as the sole signatory, could not possibly have contemplated that the Jury Waiver Provision would be invoked in a lawsuit following her death.[12]

III. Decedent Dhruv Chokshi, a Deceased Minor and Non-Signatory to the Lease, is Not Bound by the Terms of the Lease. Respondents Did Not "Invoke the Lease Agreement's Benefits" by Asserting Claims Against the Landlord.

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[11] "A construction which renders meaningless a provision expressed in the contract or results in surplusage should be avoided if possible." *Lauterbach v. Brown*, 96 N.W.2d 605, 606 (Wis. 1959) (*citing Knuth v. Fidelity & Casualty Company*, 1956, 275 Wis. 603, 83 N.W.2d 126; *Bank of Cashton v. LaCrosse County S. T. M. I. Co.*, 1934, 216 Wis. 513, 257 N.W. 451; 3 Williston on Contracts, par. 619, p. 1781); *see also Hill v. Stanolind Oil & Gas Co.*, 205 P.2d 643, 648 (Colo. 1949) ("It is a cardinal rule that a contract must be construed as a whole and effect given, if possible, to its every provision[.]").

[12] This contrasts with *Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530, 542 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017). In *Cox*, the personal representative was barred from suing the police department in connection to the decedent's arrest as the decedent had signed a release of all claims connected to the police department's conduct. *Id.* This is distinguishable from the present case as in *Cox*, the decedent could plausibly assume that the release would extinguish claims made after his death in connection with the events covered by the release, whereas here, that plausibility is not necessarily reasonable to presume.

Contrary to Appellants' contention, Respondents' claims in this case arise from wrongful death and survival actions, not from the Lease Agreement.

Appellant's reliance on the doctrine of equitable estoppel to bind Dhruv Chokshi to the Lease Agreement because his representative brought SCRLTA claims misconstrues both the nature of the South Carolina Residential Landlord and Tenant Act and the doctrine itself. Tenancy can be established without a written lease agreement, and SCRLTA duties exist independent of any lease. As discussed below, the statute imposes duties that cannot be waived by agreement, as they are matters of public policy. More importantly, equitable doctrines cannot be used to deprive parties of constitutional rights, particularly when those rights belong to a deceased minor who never signed or agreed to any waiver.

The South Carolina legislature has, through the SCRLTA, imposed duties on landlords and tenants that are distinct from any existing contractual duties. *See Burbach v. Invs. Mgmt. Corp. Int'l,* 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (referencing the SCRLTA and explaining that "[w]hile landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants"). Laws like the SCRLTA reflect the legislature's acknowledgment that the nature of the relationship between landlords and tenants has implications for the broader public – these laws impose duties that "protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves." *Id.*

The SCRLTA places an affirmative duty on the landlord to "keep the premises in a fit and habitable condition". *See Nedrow v. Pruitt*, 336 S.C. 668, 675-76, 521 S.E.2d 755, 759 (S.C. App. 1999) (citing *Watson v. Seller*s, 299 S.C. 426, 385 S.E.2d 369 (Ct.App.1989) and S.C. Code Ann. § 27–40–440 (1991)) ("In adopting the RLTA, the General Assembly expressly provided that the

landlord has a duty to make all repairs and to do whatever is reasonably necessary to keep the premises in a fit and habitable condition."); *Watson*, 385 S.E.2d at 374, 385 S.E.2d at 373 ("the preamble to the Act expressly states that it was the intent of the Legislature to provide for the obligations and liabilities of the landlord"). The SCRLTA represents the South Carolina legislature's intent to create a separate scheme to hold landlords accountable, and to create rights and remedies for tenants that are independent of any lease agreement.

Under S.C. Code Ann. § 15-51-10, "[w]henever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages." The statute further provides that "the action shall be brought by or in the name of the executor or administrator of such person." S.C. Code Ann. § 15-51-20. Moreover, damages recovered in such actions "to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate." S.C. Code Ann. § 15-51-40. This scheme creates a completely separate cause of action that exists independently from any lease agreement.

Similarly, Respondents have alleged survival claims under S.C. Code Ann. § 15-5-90, which provides that "[c]auses of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive" the death of the person entitled to bring such actions. These claims are also independent of the Lease Agreement and arise from Appellants' broader legal duties.

Unlike arbitration clauses, which are enforced against non-signatories under principles like direct-benefits estoppel, jury waivers implicate constitutional rights and must be strictly construed. Courts have recognized this critical distinction. In *Dixon v. Pattee*, this Court held that an arbitration clause was enforceable against a non-signatory because the non-signatory's "causes of action are dependent upon the agreements that require arbitration and are within the scope of the arbitration agreements." *Dixon v. Pattee*, 442 S.C. 233, 256, 898 S.E.2d 158, 170 (Ct. App. 2023). Numerous other courts have recognized that estoppel theory does not apply in the jury waiver context.

Specifically, courts in other states have considered, and rejected, similar attempts to extend this estoppel non-signatory enforceability doctrine from the arbitration to the jury waiver context. *See In re Credit Suisse First Bos. Mortg. Cap.*, L.L.C., 257 S.W.3d 486, 492-3 (Tex. App. 2008) ("We are unaware of any court . . . that has applied direct-benefits estoppel to a jury waiver provision . . . These mechanisms cannot be treated interchangeably merely because they both lead to decisions by factfinders other than jurors. Jury waiver provisions and arbitration clauses implicate significantly different policies and principles."); *Ex Parte Carter*, 66 So. 3d 231, 239 (Ala. 2010) (declining to bind a non-signatory to the jury waiver provision contained in a loan agreement because doing so would "rewrite the loan documents to give the jury-waiver provisions a broader effect when our standard of review requires strict construction of such provisions in deference to the constitutional guarantee of the right to trial by jury.").

Respondents have also alleged negligence claims based on duties of care that arise independently from the SCRLTA. S.C. Code Ann. § 27-40-440 provides that landlords shall "(1) comply with the requirements of applicable building and housing codes materially affecting health and safety," "(2) make all repairs and do whatever is reasonably necessary to put and keep the

premises in a fit and habitable condition," and "(3) keep all common areas of the premises in a clean and safe condition." These duties exist regardless of any contractual relationship and cannot be abrogated by a jury waiver provision in a form lease agreement.

While Appellant argues that by bringing SCRLTA claims, Dhruv Chokshi has "invoked the benefits" of the lease agreement, this argument fundamentally misunderstands the nature of SCRLTA. The statute creates duties that exist independently of any written lease—they are obligations imposed as a matter of public policy. Dhruv Chokshi's status as an occupant of the property, not his connection to any written lease, is what brings him within the protections of the SCRLTA. See Section 27-40-210, defining "building and housing codes", discussed above, to "include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, **occupancy**, use, or appearance of any premise, or dwelling unit." (Emphasis added). Furthermore, the doctrine of equitable estoppel raised by Appellant is inapplicable here, as it cannot be used to circumvent the constitutional right to a jury trial, particularly for a minor who never personally agreed to any waiver. "It is well known that equity follows the law." *Regions Bank v. Wingard Properties, Inc.,* 394 S.C. 241, 254, 715 S.E.2d 348, 355 (2011). "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." *Id.* (quoting *Lonchar v. Thomas*, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Courts have consistently recognized the distinction between claims that arise from a contract and claims that arise from independent legal duties. "Contract law seeks to protect the expectancy interests of the parties. Tort law, on the other hand, seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property." *Sapp v. Ford*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009).

The tragic fire that caused the deaths of Freni Hazare and Dhruv Chokshi implicates Appellants' broader duties as property owners and managers, not merely their contractual duties as landlords. These independent duties include: (1) The duty to maintain the premises in compliance with applicable fire safety codes; (2) The duty to ensure proper functioning of fire detection and suppression systems; (3) The duty to provide and maintain adequate fire exits and escape routes; (4) The duty to warn residents of known fire hazards; and (5) The duty to exercise reasonable care in the ownership and management of multi-family residential properties.

These duties exist regardless of any contractual relationship between the parties. They are imposed by legislation, regulation, and judicial precedent, and they would apply equally to any person lawfully present on the property, whether a tenant, guest, or visitor. The sources of these duties include not only the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-440, but also state and local building and fire codes that establish minimum safety standards for residential properties.

Furthermore, public policy strongly supports preserving the right to a jury trial in cases involving wrongful death claims. Residential lease agreements are typically presented to tenants on a take-it-or-leave-it basis, with little or no opportunity for negotiation. Allowing landlords to use such agreements to secure blanket waivers of the constitutional right to a jury trial for all claims that might conceivably relate to a tenant's occupancy, including claims brought by personal representatives after the tenant's death, would create a significant imbalance of power and undermine the protections afforded by S.C. Const. art. I, § 14.

The facts of this case vividly illustrate why the jury waiver provision should not apply to Respondents' claims. This is not a routine landlord-tenant dispute over unpaid rent or a security deposit. It involves the tragic deaths of two people in a catastrophic fire—precisely the kind of

case where the community's judgment, as expressed through a jury verdict, is most important. Appellants' attempt to avoid a jury trial for these claims is inconsistent with both the language of the Jury Waiver Provision and the fundamental principles of justice that underlie our civil justice system.

Therefore, because Respondents' claims arise from legal duties that exist independently from any contractual obligations in the Lease Agreement, this Court should AFFIRM the Circuit Court's denial of Appellants' motion to strike the jury demand.

IV. As an Additional Sustaining Ground, the Circuit Court's Decision Should Be Affirmed Because Defendants Failed to Timely File Their Motion to Strike Under Rule 12, SCRCP

Rule 12, SCRCP requires all defenses and, specifically, any motion to strike to be filed prior to any responsive pleading or contemporaneously with any motion to dismiss. Here, Defendants' Motion to Strike is untimely and warrants the Court's denial before any consideration is given to the motion's merits. Rule 12, SCRCP. Rule 12(b), SCRCP states, in relevant part, "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required[.]" Rule 12(g), SCRCP requires that "[i]f a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted […]."

In response to Plaintiffs' initial Complaint filed on May 13, 2023, Defendants chose to file their Rule 12(b)(6), SCRCP motion in lieu of filing an Answer, as allowed by Rule 12(b), SCRCP (Motion to Dismiss, file 08/23/23, R.___). Defendants' decision to file the Rule 12(b)(6), SCRCP motion, however, required Defendants to preserve other defenses available at the time by joining those motions in the same pleading. Rule 12(b), SCRCP. Rather than file the Motion to Strike

Plaintiff's request for a jury demand at the same time they filed their Rule 12(b)(6), SCRCP motion in response to Plaintiffs' initial Complaint, as required by Rule 12(g), SCRCP, Defendants waited until a day after filing their third motion to dismiss to raise the defense that was procedurally available in August of 2023. Defendants' failure to make their Motion to Strike at the time of the filing of its third Rule 12(b)(6), SCRCP motion on February 5, 2024, instead of simultaneously filing this Motion with their first Rule 12(b)(6), SCRCP motion, which was procedurally available at the time, results in Defendants' being precluded from making such motion as the Rule clearly indicates the objection is "omitted." Rule 12(g), SCRCP.

Furthermore, Plaintiffs' amendments of their Complaint do not revive defenses that were available at the time Defendants filed their Rule 12(b)(6), SCRCP motion. Initially, Rule 12(g), SCRCP is identical to the Federal Rule. See Note to Rule 12(g), SCRCP "This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions." Thus, amendments "will not revive the right to present by motion defenses that were available but were not asserted in timely fashion prior to the amended pleading." C. Wright, A. Miller, E. Cooper, & R. Freer, Federal Practice and Procedure § 1388 (3d ed.2008). Plaintiffs' amendments in this case do not "revive" Defendants' right to file a motion that was procedurally available at the time Defendants filed their Rule 12(b)(6), SCRCP motion.

Accordingly, the Circuit Court's denial of Appellants' motion to strike should be affirmed on this procedural ground alone, without the need to reach the substantive arguments regarding the applicability of the jury waiver provision.

CONCLUSION

For the foregoing reasons, the Circuit Court's denial of Appellants' motion to strike the jury demand should be AFFIRMED. First, Respondents Devan Chokshi and Vatsal Chokshi, as non-signatories to the Lease Agreement, cannot be bound by its Jury Waiver Provision under well-established South Carolina Supreme Court precedent requiring strict construction of jury trial waivers. Second, the Jury Waiver Provision cannot apply to this lawsuit in its entirety because most defendants are neither signatories nor third-party beneficiaries of the Lease Agreement. Third, the scope of the Jury Waiver Provision was clearly not intended to encompass claims arising from the catastrophic fire that caused the deaths of Freni Hazare and Dhruv Chokshi, particularly since Dhruv Chokshi was a minor who never signed the agreement. Finally, as an additional sustaining ground, the Circuit Court's decision should be affirmed because Appellants failed to timely file their motion to strike under Rule 12, SCRCP, having omitted this defense in their earlier motions.

South Carolina law has consistently protected the constitutional right to a jury trial, particularly for non-signatories to an agreement. The tragic circumstances of this case – involving the deaths of two people in a fire – represent precisely the type of situation where the community's judgment through a jury is most appropriate and where the constitutional right to a jury trial should be preserved. The Circuit Court's denial of Appellants' motion to strike the jury demand should be AFFIRMED.

[Signatures on following page]

Respectfully submitted,

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