THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836
App 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, Beach Co., Lincoln BP Management, Inc., Lincoln Property Company National LLC, John/Mary Does 1-3, Corporations XYZ 1-3, Defendants,

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

FINAL REPLY BRIEF OF APPELLANTS

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ARGUMENT

I. Devan Chokshi Is Bound by the Lease Agreement as the Personal Representative of Freni Hazari Because a Personal Representative Stands in the Shoes of Decedent.

Respondents seek to avoid the Jury Waiver Provision of the Lease Agreement by emphasizing the fact that Devan Chokshi himself did not sign the Lease Agreement. (Resp't Initial Br. at p. 5, filed March 20, 2025). This argument ignores the legal status afforded to a personal representative and conflates it with that of a mere heir or successor. (*Id*. at 1-2). Respondent Devan Chokshi asserts causes of action in his capacity as the Personal Representative of the Estate of Freni Hazare; by doing so, he has assumed all rights and limitations that Hazare would have had if she had filed the underlying lawsuit herself. South Carolina law is clear that these claims are owned not by the personal representative as an individual but by the estate of the decedent, and the personal representative is bound to the same degree as the estate is bound.

Respondents rely on distinguishable cases related to guarantors and UIM carriers rather than ones that involve a personal representative. (*Id*. at 5-10). Respondents argue that *Broome v. Watts* is instructive because in that case the Supreme Court rejected the UIM carrier's attempts to enforce a waiver provision. That case is inapposite, though, because the relationship between a UIM carrier and a defendant in a lawsuit is a fundamentally different relationship than an estate and its personal representative. *Broome* aptly notes that "[a]lthough the UIM carrier 'steps into the shoes' of the underinsured motorist, it has rights separate and distinct from those of the underinsured motorist." *Broome v. Watts*, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995); *see also Crawford v. Henderson*, 356 S.C. 389, 398, 589 S.E.2d 204, 209 (Ct. App. 2003) ("[T]here is no direct relationship between the UIM carrier's attorney and the named defendant.") Cases governing other types of relationships have no bearing on Respondents' standing to sue and should be disregarded. *See Farmer v. Monsanto Corp.*, 353 S.C. 553, 558 n.2, 579 S.E.2d 325, 328 n.2

(2003) (finding cases governing capacity to bring wrongful death claims inapposite in a class action due to the fundamentally distinct nature of the representative's capacity). Unlike a personal representative, who owes a fiduciary duty to advance the interests of the estate, a UIM carrier who participates in litigation does so "for its own benefit." *Hood v. United Servs. Auto Ass'n*, 445 S.C. 1, 16, 910 S.E.2d 767, 775 (2025), *reh'g denied* (Jan. 24, 2025) (citing S.C. Code Ann. § 38-77-160); *compare Turpin v. Lowther*, 404 S.C. 581, 590, 745 S.E.2d 397, 401 (Ct. App. 2013) (citing S.C. Code Ann. § 62-3-703(a) (2009)).

Respondents go as far as outright denying their representational role in this matter by rejecting the application of the terms "you" and "your" in the Lease Agreement. (Resp't Initial Br. pp. 5-10). Respondents plainly misstate the structure of this litigation when they state that "Ms. Hazare is now deceased and not a party to this lawsuit." (*Id*. at 6). Respondents misunderstand that, for purposes of standing, a personal representative is not a mere heir, successor, or an assignee of the decedent; the personal representative is the decedent. In South Carolina, an action for wrongful death "inheres in the personal representative, and the statutory beneficiaries cannot proceed in their own names." *Lester v. McFaddon*, 415 F.2d 1101, 1103 (4th Cir. 1969); *In Re: Dickey*, 395 S.C. 336, 345 n. 4, 718 S.E.2d 739, 743 n.4 (2011) (noting that the Court of Appeals affirmed the dismissal of a plaintiff's individual claims for wrongful death for lack of capacity). Said differently, a person has no right to bring a claim for wrongful death unless they are duly appointed as the personal representative of the estate and mere heirs do not have legal capacity to assert wrongful death claims. *Glenn v. E. I. DuPont De Nemours & Co*., 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970); *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018).

Here, Respondents did not suffer individual harms of their own and have no standing to assert claims personally. Rather, they assert the harms of the Decedents as the basis for their negligence claims. While it is true that they did not sign the Lease Agreement themselves, it is not their claims that are at issue but the claims of the Estates of the Decedents. The Circuit Court committed an error of law by ignoring this principle and holding that Respondent Devan Chokshi is not bound by the jury waiver provision as the Personal Representative of the Estate of Freni Hazare.

II. The Scope of the Jury Waiver Provision Applies to the "Case" in its Entirety.

The incredibly tragic nature of this case does not change the plain language of the Lease Agreement, yet Respondents seek to avoid its binding effect by asserting that this case should receive a special exception. Respondents ask this Court to ignore the inclusion of the words "any lawsuit," and instead limit the valid jury waiver provision to "issues like day-to-day maintenance and repairs, nonpayment of rent, and so on." (Resp't Initial Br. at p. 16). However, "[t]here is no suggestion, either in the language of the Jury Waiver Provision or anywhere in the Lease Agreement, that" the jury waiver provision was intended to be limited to "issues like day-to-day maintenance and repairs, nonpayment of rent, and so on." (*Id*.). Rather, the valid jury waiver provision provides that "**any lawsuit** . . . shall be to a judge and not a jury." (R. at p. 135) (emphasis added). Respondents argue that this phrasing amounts to "surplusage" that should be ignored rather than enforced in accordance with its meaning. Yet, this argument asks the Court to do that which it cannot do – pick and choose favorable portions of the Lease Agreement at the expense of less favorable portions.

The only thing specified in the Jury Waiver Provision is that "any lawsuit" shall be tried as a non-jury trial. While Respondents argue that Appellants' interpretation of this is the "broadest"

interpretation possible, spades should be called spades and the word "any" is by definition broad. It is worth noting that the inclusion of "and/or" in combination with the terms "statute, common law, and/or related to this Lease Contract" in the jury waiver provision supports the position that the waiver applies to any lawsuit based on any of the three categories, any combination of the three, or all of them together. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 125 (2012) ("When [and/or] is meant, careful drafters would say A or B or both or- if several items were to be listed, they would introduce the list with any one or more of the following."). In sum, while the underlying facts of this matter are certainly tragic, this does not justify any limitation of the plain language of the Jury Waiver Provision that expressly applies to "any lawsuit."

III. Decedent Dhruv Chokshi is Bound by the Terms of the Lease Agreement Because He Invoked the Lease Agreement's Benefits by Landlord-Tenant Claims.

Next, Respondents describe various causes of actions, legal doctrines, statutes, constitutional principles, and legal duties in an attempt to refute that Decedent Chokshi is not bound by the terms of the Lease Agreement. These arguments ignore one important fact – that Respondent Vastal Chokshi affirmatively invoked the Lease Agreement by filing the underlying lawsuit against Appellants and claiming Decedent Chokshi had status as a tenant under the South Carolina Landlord Tenant Act ("SCRLTA"). By invoking the protections of the SCRLTA, and regardless of whatever claims may be asserted, Respondent Vatsal Chokshi necessarily inherits the burdens that come from the Lease Agreement upon which he bases his SCRLTA claims.

The existence of a rental agreement is a prerequisite to have standing to sue under the SCRLTA. S.C. Code Ann. § 27-4-210; *see also Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989). Through their assertion of claims pursuant to the SCRLTA, Respondents allege that it applies and, therefore, necessarily invoke the Lease Agreement. Respondents cannot seek

to reap the benefits of the Lease Agreement by accessing the statutory protection of the SCRLTA while simultaneously taking the position that they are not bound by the valid jury waiver provision of the Lease Agreement. *See Dixon v. Pattee*, 442 S.C. 233, 258, 898 S.E.2d 158, 171 (Ct. App. 2023). Further, at no point have Respondents attempted to deny that the Lease Agreement is the governing document by and between Decedents and Appellants for Decedents' tenancy. Rather, they merely assert that the SCRLTA can somehow apply without consideration of the Lease Agreement. As such, the Circuit Court erred in holding that Decedent Dhruv Chokshi and Respondent Vatsal Chokshi were not bound by the jury waiver provision.

IV. Appellants' Motion to Strike was Timely as Motions to Strike Jury Demands are governed by Rules 38 and 39, SCRCP.

Respondents argue that the Circuit Court's decision should be affirmed because Appellants failed to timely file their Motion to Strike under Rule 12, *SCRCP*. (Resp't Initial Br. at p. 22). Respondents have misconstrued the use of the phrase "motion to strike" and mistakenly interpreted it as a motion governed by Rule 12, *SCRCP*. Motions to strike jury demands are made pursuant to Rules 38 and 39, *SCRCP*. *See, e.g.,* Rule 39(a)(2), *SCRCP* (permitting the court to make a finding as to right of trial by jury "upon motion or its own initiative.") Conversely, motions under Rule 12(f), *SCRCP*, concern "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." *See, e.g.,* Rule 12(f), SCRCP. During the May 6, 2024, hearing for Appellants' Motion to Strike, undersigned counsel expressly stated the following:

> "This is not a Rule 12[, *SCRCP*] motion to strike. This is, again, a motion as to the mode of trial, which is within the general purview of [the] trial court, and can be granted essentially all the way up until the eve of trial. And there's some Fourth Circuit law on that as well as a couple of cases from the South Carolina Supreme Court where they've had cases go all the way up on appeal on other matters, come back down, and then they filed the motion to strike, and the Court has rules on it and not had any issues with timeliness."

(R. at p. 105). Motions to strike a jury demand may be made at any time prior to trial. *See e.g. Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 447, 814 S.E.2d 643, 651 (Ct. App. 2018) (detailing procedural history in which defendants moved to strike plaintiff's jury demand after 5 years of litigation and after filing motions to dismiss and answers). Federal courts interpreting the substantially similar federal rule agree. *Mowbray v. Zumot*, 536 F. Supp. 2d 617, 621 (D. Md. 2008) (citing *Moore's Federal Practice,* § 39.13[2][c] (3d ed.2007)). As such, Appellants motion was timely.

CONCLUSION

For the reasons set forth herein and in Appellants' Initial Brief, this Court should reverse the Circuit Court's denial of Appellants' Motion to Strike Respondents' Jury Demand.

Dated this _15th_ day of May 2025.

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