

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
THE HONORABLE JOCELYN NEWMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-001994
CIVIL ACTION NO. 2019-CP-21-40-06914

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

Spring Valley Interests, LLC,

PETITIONER,

versus

The Best for Last, LLC,

RESPONDENT.

REPLY BRIEF OF PETITIONER

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STATEMENT OF ISSUES IN REPLY

- I. The Court of Appeals erred in failing to hold that the nondonative 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.
- II. Best is not entitled to summary judgment as a matter of law as to whether Spring Valley waived its right to exercise the Purchase Option where the issue of waiver presents a question of fact.

ARGUMENT IN REPLY

- I. The Court of Appeals erred in failing to hold that the nondonative 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.**

In its Brief of Respondent, The Best for Last, LLC (“Best”) perpetuates the erroneous conclusion of the Trial Court and the Court of Appeals that nonvested property interests arising out of nondonative transfers are exempt from the statutory scheme created by the General Assembly in South Carolina’s Uniform Statutory Rule Against Perpetuities (“SCUSRAP”), S.C. CODE ANN. §§ 27-6-10 *et al.* As thoroughly explained in the Brief of Petitioner of Spring Valley Interests, LLC (“Spring Valley”), nondonative transfers are not exempt from Chapter 6 of Title 27 of the South Carolina Code which embodies the SCUSRAP. Instead, nondonative transfers are only exempt from the vesting requirements set forth in Section 27-6-20. See S.C. CODE ANN. § 27-6-50(1) (“Section 27-6-20 [which sets forth vesting requirements] does not apply to: (1) a nonvested property interest or a power of appointment arising out of a nondonative transfer”). Nonvested property interests arising out of nondonative transfers still fall under the provisions of the SCUSRAP.

The plain language used by the General Assembly could not be any clearer that nonvested property interests arising out of nondonative transfers, while falling under the

provisions of the SCUSRAP, are not subject to any time vesting requirements and remain valid under the provisions of the SCUSRAP despite the lack of any vesting requirement. Further, the General Assembly used explicit language evincing its intent that the common law would no longer exist as to the rule against perpetuities and would instead be replaced by Chapter 6 of Title 27 of the South Carolina Code. See S.C. CODE ANN. § 27-6-80 (“This chapter supersedes the common law rule against perpetuities.”).

Under the language employed 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 nonvested 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 nonvested interests, including nondonative transfers, which remain valid without regard to the vesting requirements of Section 27-6-20.

The arguments Best sets forth in response are unavailing. First, Best contends the use of the word “supersede” by the General Assembly in Section 27-6-80 of the SCUSRAP does not signal any intent of the General Assembly to abolish the common law as to the rule against perpetuities because the General Assembly could have used words such as “abrogate” and “repeal” as it had done in other statutes. Yet, in the very same paragraph of its brief, Best recognizes that the word “supersede” means to “repeal by taking the place of.” See Brief of Respondent, p. 13 (citing *Black’s Law Dictionary* 1479 (8th ed. 2004)). Therefore, by using the word “supersede,” the General Assembly did express its intent to abolish the common law rule against perpetuities through the enactment of the SCUSRAP.

Second, Best's reliance upon the case of Malad, Inc. v. Miller, 199 P.3d 623 (Ariz. Ct. App. 2008) as an example of a jurisdiction which finds that the common law remains in effect for nondonative, commercial transfers does not support Best's argument, but rather reinforces Spring Valley's position when Arizona's adopted version of theUSRAP is given a close look. Arizona's version of theUSRAP is found in Title 14, Chapter 2, Article 9 of the Arizona Revised Statutes. See ARIZ. REV. STAT. ANN. § 14-2901 *et seq.* Similar to South Carolina's SCUSRAP, Arizona's version sets forth vesting time requirements in Section 14-2901 of its statutory code.

Unlike South Carolina's SCUSRAP, Arizona's statute sets forth certain exclusions and provides: "**This article** does not apply to: 1. A nonvested property interest . . . arising out of a nondonative transfer[.]" ARIZ. REV. STAT. ANN. § 14-2904 (emphasis added). Note that under Arizona's statute, nondonative transfers are exempted from the entire article embodying Arizona's version of theUSRAP. Therefore, in Arizona, nondonative transfers are exempt from the entirety of the statutory scheme, unlike in South Carolina where nondonative transfers are not exempt from the entirety of Chapter 6 constituting the SCUSRAP, but only from the vesting requirements set forth in S.C. CODE ANN. § 27-6-20. See S.C. CODE ANN. § 27-6-50 ("Section 27-6-20 [setting forth the vesting requirements] does not apply to: (1) a nonvested property interest . . . arising out of a nondonative transfer[.]" In South Carolina, nonvested property interests arising out of nondonative transfers continue to fall under the SCUSRAP statutory scheme.

In addition, Arizona's legislature did not supersede the common law against perpetuities. Arizona Revised Statutes § 14-2906 provides "[t]his article applies notwithstanding common law

rules against perpetuities or § 33-261.” Arizona Revised Statutes § 33-261 then provides “[t]he common law rule known as the rule against perpetuities shall hereafter be applicable to all property of every kind and nature and estates and other interests therein, whether personal, real or mixed, legal or equitable by way of trust or otherwise.”

Accordingly, under Arizona statutory law, nonvested interests arising out of nondonative transfers are expressly exempt from the entire article embodying its version of the USRAP and subject to the common law rule against perpetuities which the Arizona legislature explicitly decided to retain. Arizona’s statutory scheme is in marked contrast to South Carolina’s SCUSRAP which governs nonvested interests arising out of nondonative transfers and specifically supersedes the common law rule against perpetuities. Had the General Assembly intended for nondonative transfers to remain subject to the common law against perpetuities, it could have used the language employed by Arizona’s legislature, but it did not.

Best further contends that when the General Assembly recently revised the SCUSRAP on May 8, 2025 to change the “wait-and-see” period from 90 years to 360 years, its purported decision to not change the wording of Section 27-6-80 from “[t]his chapter supersedes the common law rule against perpetuities” to “this chapter abolishes the common law rule against perpetuities” as the North Carolina legislature has done indicates the General Assembly’s clear intent to preserve the common law rule. Best argues that by not amending this provision, the General Assembly evidenced its agreement with the Court of Appeals’ Opinion in this case.

As an initial matter, the language employed by the General Assembly in the existing statute already indicates its clear intent override the common law rule against perpetuities. The definitions of “supersede” and “abolish” that Best cites to in its Brief show there is no true

difference in the legal meaning of the terms. See Brief of Respondent, p. 13 (“The word ‘supersede’ means ‘to annul, make void, or repeal by taking the place of[.]’ *Black’s Law Dictionary* 1479 (8th ed. 2004).”) (“[T]he word ‘abolish’ means ‘to annul, eliminate or destroy[.]’ *Id.*.”); see also Opinion No. 6070 (Ct. App. July 10, 2024) (observing the term “supersede” is defined in Black's Law Dictionary as “obliterate, set aside, annul, replace, ... [t]o set aside.” *Supersede, Black's Law Dictionary* (6th ed. 1990)).

Additionally, while in certain cases there may be a presumption that the General Assembly intended to adopt a judicial construction of a statute when such statute “has been construed by a court of last resort” and the General Assembly has made no significant changes in phraseology, this presumption does not apply in this case. At the time the General Assembly was considering and adopting an amendment to a separate provision of the SCUSRAP, this case was pending before this Court which granted certiorari to review the Court of Appeals’ Opinion on April 2, 2025. There has not yet been a final decision by the court of last resort in this case, and therefore, no such presumption of legislative acquiescence applies. See Layton v. Flowers, 243 S.C. 421, 423-24, 134 S.E.2d 247, 247-48 (1964).

Finally, while Best asserts that the application of the common law rule of perpetuities to nondonative transfers serves the public policy of free alienation of property, the General Assembly has made a different public policy choice in its enactment of the SCUSRAP. Once the General Assembly has made a public policy decision, the courts have no authority to invalidate that decision. See ArrowPointe Fed. Credit Union v. Bailey, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) (“Determinations of public policy are chiefly within the province of the legislature, whose authority on these matters we must respect.”) (internal citation omitted); Nationwide Ins.

Co. of Am. v. Knight, 433 S.C. 371, 376, 858 S.E.2d 633, 635 (2021) (observing “the General Assembly establishes the public policy . . . and enacts statutes to let the public and the courts know what that policy is”); Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989) (“It is the responsibility of this Court to construe statutes; we have no power to legislate.”); S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (“Once the Legislature has made that choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.”).

Where the text of a statute is “plain and unambiguous, and conveys a clear and definite meaning,” there is nothing for a court to do except to apply the plain meaning. Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001) (quoting Paschal v. State Election Comm'n, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)). The Court of Appeals erred in not following this fundamental principle to give effect to the unambiguous text of the SCUSRAP. Instead of effectuating the intent of the General Assembly, the Court of Appeals overstepped its role and defeated the express intent of the General Assembly. The Purchase Option at issue in this case is valid under the provisions of the SCUSRAP in accord with the intent of the General Assembly. Accordingly, Spring Valley therefore respectfully requests this Court to give effect to the unambiguous language of the SCUSRAP to find the Purchase Option valid and enforceable.

II. Best is not entitled to summary judgment as a matter of law as to whether Spring Valley waived its right to exercise the Purchase Option where the issue of waiver presents a question of fact.

Neither the Trial Court nor the Court of Appeals issued any ruling on whether Spring Valley waived its right to exercise the Purchase Option. Further, whether or not a waiver has occurred in a given factual setting is a question of fact for the finder of fact. Bishop v. Benson,

297 S.C. 14, 18, 374 S.E.2d 517, 518 (Ct. App. 1988). The closing under the Purchase Option did not occur because not all details of the deal were finalized, including the responsibility for the payment of attorneys' fees. [R.pp. 70-72.] Likewise, it remains a question for the factfinder as to whether the option was accepted "unequivocally, unconditionally and without reservation." See Lindler v. Adcock, 250 S.C. 383, 386, 158 S.E.2d 192, 194 (1967). At a minimum, genuine issues of material fact exist which preclude the grant of summary judgment for Best. Spring Valley requests this Court to find the Purchase Option enforceable for the reasons set forth herein and remand for further proceedings on Spring Valley's claim for specific performance or, in the alternative, actual damages for breach of contract.

CONCLUSION

For the reasons set forth herein and in the Brief of Petitioner, Petitioner Spring Valley respectfully requests this Court to reverse the Court of Appeals' Opinion and the Trial Court's grant of summary judgment to Best and hold that the Purchase Option is enforceable.

Respectfully submitted,

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