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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

S. Ct. Appellate Case No. _____ (not yet assigned)
(Ct. App. Case No. 2022-000947)

Lisa Cruz,..……..…….....…...Respondent,

v.

Heyward Bouknight and Kathy Bouknight……...…….……Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INTRODUCTION

One in five South Carolina families lives in a manufactured home. https://mhisc.com/home-buyer-info/. This case concerns whether a manufactured home that has never had wheels, axles, a tongue, or anything else necessary for it to be trailed is a "trailer" under the terms of the real property covenants at issue. The special referee ruled that it is. The Court of Appeals affirmed.

The special referee's decision, along with that of the Court of Appeals in affirming it, runs counter both to the law and to reason. If the law is allowed to be what the Court of Appeals believes it to be, the law will have failed to take into account what is apparent to any reasonable thinker: that covenants prohibiting trailers only prohibit things that are trailers.

CERTIFICATE OF COUNSEL

The Court of Appeals issued its opinion in this case on January 28, 2026. Counsel for the Petitioners certifies that the petition for rehearing was served and filed on February 11, 2026. The petition for rehearing was finally ruled on by the Court of Appeals by an order filed on March 16, 2026.

This petition for a writ of certiorari is timely served and filed on April 15, 2026.

QUESTIONS PRESENTED

1) Did the Court of Appeals err in upholding the grant of summary judgment to the Respondent? Subsidiary questions include, but are not necessarily limited to:

   a. Whether the Petitioners' home, which has never been equipped to be trailed behind a motor vehicle, is a trailer; and

b. Whether the special referee and the Court of Appeals correctly applied South Carolina law on covenant interpretation.

STATEMENT OF THE CASE

A panel of the Court of Appeals affirmed the decision of a special referee that the home of the Petitioners, Heyward and Kathy Bouknight ("the Bouknights"), must be removed from their property on the grounds that it is a trailer and, thus, violates real property covenants that prohibit trailers from being used as residences on the land in question. (R. pp. 1-18.)

The Respondent, Lisa Cruz (hereinafter "Cruz"), brought this action seeking injunctive relief requiring the Bouknights to remove their home from their property, with Cruz contending that the Bouknights are violating restrictive covenants through their use of their house, a manufactured home, as a residence. (R. pp. 1-2, 29-40.) The covenants, executed and recorded in 1954, state that "[n]o trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent[,]" at property subject of the covenants. (R. pp. 34, 132.) The Bouknights answered and denied that they are violating the covenants. (R. pp. 41-43.)

The case was initially referred by consent to the Master-in-Equity for Lexington County. (R. pp. 20-22.) After the master determined he had a conflict of interest, he recused himself, and the case was referred to a special referee. (R. pp. 23-28.)

The Bouknights moved for summary judgment, and Cruz also moved for summary judgment. (R. pp. 44-137.) The special referee held a hearing on the motions, requested proposed orders from the parties' counsel, and, after some time, issued an order that granted Cruz's motion and denied the Bouknights'. (R. pp. 1-18, p. 171 ln. 4-7.)

The special referee found that this case "concerns a prefabricated house [that] was delivered by tractor-trailer, truck-bed or similar over-the-road vehicle to the Bouknights' lot[.]" (R. p. 3.) He determined "there is no genuine issue of material fact in this case as to whether the Bouknights' manufactured home was intended to be and is covered by the Brookgreen Terrace subdivision's ban on using 'trailers' on lots in the subdivision[.]" (R. p. 18.) His order directed the Bouknights "to, at their own expense and within 60 days of issuance of this Order, to remove their manufactured home or trailer from their lot in the Brookgreen Terrace subdivision." (R. p. 18.)

The special referee ruled that South Carolina statutes and cases "suggest that the terms 'manufactured home', 'mobile home', 'house trailer' and 'trailer' are used and treated interchangeably" and that "the essential characteristics of a mobile home, trailer, and manufactured home are the same, as is evident from the prior as well as current statutory definitions." (R. p. 11.) He wrote that "it is clear that the South Carolina Legislature and courts in South Carolina and elsewhere do not offer any material distinction between 'manufactured home', mobile homes, and 'trailers', such that a 'manufactured home' would escape coverage of a subdivision restrictive covenant that bans 'trailers'." (R. pp. 11-12.) The special referee stated that decisions in and out of this state "clearly, plainly, and unmistakably hold that manufactured homes, mobile homes, and trailers are interchangeable and synonymous, for purposed of applying and enforcing subdivision restrictive covenants that ban 'trailers'." (R. p. 12.) He found that "[t]here can be no question that when the Brookgreen Terrace subdivision restrictive covenants were authored, the developer intended that the term 'trailer' would cover other types of synonymous prefabricated housing, such as manufactured or mobile homes, like [the Bouknights']." (R. p. 12.)

The Bouknights moved to reconsider, and the special referee held a hearing on the motion to reconsider. (R. pp. 138-53, 173-90.) The special referee denied the motion to reconsider. (R. p. 19.)

The Bouknights sought review by the Court of Appeals. In affirming the special referee, the Court of Appeals looked in its opinion to usages of the word *trailer* in the mid-20th century that themselves illustrate the term refers to an object equipped to be hauled behind a motor vehicle on streets and highways. E.g., "mobile home," Oxford English Dictionary, https://doi.org/10.1093/OED/5739007532 (citing that, in 1954, the New York Herald Tribune Book Review mentioned "[b]ooks pertaining to trailer houses – or mobile homes – published within the last five years" and in 1940, H.G. Wells' book *New World Order* stated, "[i]n such large open countries as the United States there has been a considerable development of the mobile home in recent years. *People haul a trailer-home behind their cars* and become seasonal nomads") (emphasis added by this petition's author). The Court of Appeals characterized the Bouknights' argument differently from what it was, with the panel writing that the Bouknights "argue their home is not a mobile home or a trailer because manufactured homes are not intended to be transported along the roads." The Court of Appeals relied heavily on that court's opinion in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), for the proposition that, as a matter of law, a manufactured home is a mobile home and a mobile home is a trailer, so the Bouknights' manufactured home must be a trailer, despite it never having been equipped to be trailed behind anything. Further, the opinion reads as though all Cruz had to do to win was show that *some* definition of *trailer* exists that embraces the subject house, even if there are others that do not.

The Bouknights petitioned for rehearing, which the Court of Appeals denied.

ARGUMENT

At issue here are restrictive covenants, executed and recorded in 1954, which state that "[n]o trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent[,]" at property subject of the covenants. (R. pp. 34, 132.) The panel of the Court of Appeals declined to engage in the analysis of that covenant provision that the law required. The required analysis of the covenant provision is that it be interpreted most strongly in favor of the free use of the property – in other words, in favor of the Bouknights' position. Stretching the definition of *trailer* to include a structure that has never been equipped to be trailed does not comport with the South Carolina law's existing requirements about how real property covenants are interpreted. South Carolina law supplies precise definitions that place the subject house outside the meaning of *trailer*, and the record shows the subject structure is not and never has been towable.

I. Stretching to include this house within the definition of trailer contravenes precedent that requires a narrow interpretation of restrictive covenants.

"A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citations omitted). "Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of the property and against restrictions." Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (internal quotation marks omitted). "It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should

be strictly construed and all doubts resolved in favor of free use of the property." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

That is the primary principle of covenant interpretation under South Carolina law. Unfortunately, the Court of Appeals' opinion fails to uphold the law in this respect.

Under well-settled South Carolina law, "where the language of the restrictions [in real property covenants] is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property." Id. When more than one logical interpretation of a restriction is possible, a court must adopt the interpretation that is the least restrictive. Taylor, 332 S.C. at 4; see Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750, 758 (Ct. App. 2005).

This Court's words in its precedent, which binds the Court of Appeals, are that the least restrictive logical interpretation of restrictive covenants "*will* be adopted" – not *can be*, not *may be*. Taylor, 332 S.C. at 4 (emphasis added). It is not optional. Id. This Court's precedent requires that the least restrictive reasonable reading of the word *trailer* in these covenants be the one used by any court evaluating it. Id. And, if there is nothing else that is obvious here, it is obvious from the numerous definitions found by the parties that there exists a reasonable reading of *trailer* in these covenants that does not have it include a manufactured home that was never equipped to be trailed.

If one could reasonably construe the term "trailer" to embrace the idea of a manufactured home but one could also reasonably construe the term trailer *not* to include a manufactured home (which we know, from the definitions found by the parties and from simple logic, is a possible reasonable construction), the "settled rule" in South Carolina required the special referee and this court to adopt the construction

"which least restricts the use of the property." Id. Here, that means a construction of *trailer* that does not include the Bouknights' manufactured home, because there are recognized definitions of *trailer*, including specifically by South Carolina statute, that do not embrace the structure at hand and, thus, restrict the use of the property less than the definition employed by the special referee and now by the Court of Appeals. Taylor, 332 S.C. at 4; S.C. Code Ann. § 56-19-10(34).

The special referee and the Court of Appeals were *required* to employ the construction of *trailer* "which least restricts the use of the property." Taylor, 332 S.C. at 4. Neither of those courts had the option – well, the lawful option – to shoo that interpretation away. Id. This Court's decisions bind the Court of Appeals as precedent. S.C. Const. Art. V, § 9.

The special referee and the Court of Appeals have issued decisions that contravene this Court's imperative. That is not allowed. Id.

II. Trailers are things that are designed to be trailed, *equipped* to be hauled on roads behind a motorized vehicle. The house involved in this case was never so equipped and has never met the definition of trailer.

The Bouknights' briefing pointed out record testimony that the home lacked wheels, axles, and a tongue – not just now, but at the time it was brought to the real property – and therefore was not equipped to be towed at any known time. That is the *only* evidence in the record about whether this house has ever been capable of being trailed. The sole and uncontradicted content of the record on this point is Kathy Bouknight's testimony to the effect that the Bouknights' house has *not* been equipped with wheels, axles, a tongue, or any other parts necessary for it to be towed. (R. p. 78 ln. 12 through p. 79 ln. 7.)

The deciding panel of the Court of Appeals strangely looked to usages of the word *trailer* in the mid-20th century, strangely because those usages illustrate the term referred at that time to an object equipped to be hauled behind a motor vehicle on streets and highways. E.g., "mobile home," Oxford English Dictionary, https://doi.org/10.1093/OED/5739007532 (citing that, in 1954, the New York Herald Tribune Book Review mentioned "[b]ooks pertaining to trailer houses – or mobile homes – published within the last five years" and in 1940, H.G. Wells' book *New World Order* stated, "[i]n such large open countries as the United States there has been a considerable development of the mobile home in recent years. *People haul a trailer-home behind their cars* and become seasonal nomads") (emphasis added by this petition's author). The logic underpinning the Court of Appeals' decision is faulty. That court's reasoning seems to be that a mobile home is a trailer and a manufactured home is a mobile home, so this manufactured home is a trailer – even though this manufactured home has never met the definition of a trailer.

The Court of Appeals has also mischaracterized the Bouknights' argument on what the least restrictive reasonable construction of the word *trailer* is. The opinion at issue states that the Bouknights "argue their home is not a mobile home or a trailer because manufactured homes are not intended to be transported along the roads." That characterization is a straw man. See State v. Smith, 298 P.3d 1138 (Kan. App. 2013) ("straw man argument is where the arguer wishes to respond to an argument of his or her choosing and not one that is actually presented"). *Any* object (except perhaps the very largest) is capable of being *transported* on streets or highways. The Bouknights' argument is and was that, consistently with dictionary sources, South Carolina statutes, and this state's decisional law, a *trailer* is something that is made to be *towed* (i.e.,

hauled, drawn, trailed) down streets and highways. Under South Carolina statutory law, "'[t]railer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being *drawn* by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle." S.C. Code Ann. § 56-19-10(34) (emphasis added).

> "House trailer" means:
>
> (a) a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is *equipped* for use ***as*** *a conveyance* on streets and highways; or
>
> (b) a trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subitem (a) of this item, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for another commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

S.C. Code Ann. § 56-19-10(10) (emphasis added).

The Court of Appeals relied heavily on Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), for the proposition that, as a matter of law, a manufactured home is a mobile home and a mobile home is a trailer, so the Bouknights' manufactured home must be a trailer. But a look at the words of Heape belies that notion. The Court of Appeals in Heape concluded that the mobile home in that case met the definition of trailer, which the court defined as "a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile." Id. at 345. The Heape court did so *because the mobile home there was designed to be hauled by a tractor, truck, or automobile*. Id.

To the extent that Heape actually does stand for the proposition that something that is not capable of being trailed is a trailer, it is an absurdity that cries out for correction by this Court. But, as the Bouknights noted in their brief and as explained above, the Bouknights do not see Heape as actually standing for such a proposition. It is the Court of Appeals that has misinterpreted Heape.

But, thankfully, this Court must not bow to any reading of Heape. This Court's opinions bind the Court of Appeals as precedent, not the other way around. S.C. Const. Art. V, § 9. The Court of Appeals' reading of Heape is absurd, and this Court need not be led down such an illogical path. See id.

Since there exist recognized, context-reasonable definitions of *trailer* that do not embrace the structure at issue, covenant interpretation law supplies the answer: the covenants do not prohibit this structure. See Taylor, 332 S.C. at 4. It really is as simple as that. Id. The only reason the Court of Appeals could have reached its conclusion to affirm is by deciding that it does not have to follow the law, does not have to adhere to this Court's precedent, and does not have to interpret real property covenants in the least restrictive reasonable way.

That warrants correction. See S.C. Const. Art. V, § 9.

III. The Court of Appeals' opinion misapprehends the parties' burdens and the summary judgment standard by treating the absence of proof as supporting Cruz.

Cruz brought this case against the Bouknights, not the other way around. The Bouknights are defending Cruz's claim. It was not incumbent on the Bouknights to prove anything at all. It was, rather, incumbent upon Cruz to prove (definitively, at the summary judgment stage) that there exists no reasonable interpretation of the word

trailer in the covenants other than one that prohibits the Bouknights from using their manufactured home as a residence.

The party bearing the burden of proof must prove, with evidence, each material allegation that the opposing party does not admit. See Williams v. Metro. Life Ins. Co., 202 S.C. 384, 25 S.E.2d 243, 246 (1943) (every essential fact must be pled and proven); Baugh & Sons Co. v. Graham, 150 S.C. 398, 401, 148 S.E. 220 (1926) (plaintiff bears burden of proof in civil case). Restrictive covenants are contracts. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987); Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014); Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 913 (Ct. App. 2006); Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994). A claim that a party has violated a restrictive covenant is a claim that the party has breached the contract embodied in the covenants. See Kinard, 754 S.E.2d at 893; Queen's Grant, 628 S.E.2d at 913. In a breach of contract case, the plaintiff bears the burden of proof to establish each necessary element of the case. McCord v. Laurens Cnty. Health Care Sys., 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020).

Cruz failed to establish that the *only* reasonable way to read the record and the law is that this covenant provision applies to the house in question. That is the burden she bore. See Taylor, 332 S.C. at 4. It is improper to uphold summary judgment in a plaintiff's favor when the plaintiff has failed to show that the only way to see the record – here, the *only* reasonable interpretation of *trailer* – is that the plaintiff must prevail. The burden is on the movant seeking summary judgment to demonstrate the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.

Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023). Cruz did not meet that burden.

The subject opinion reads like all Cruz had to do to win was show that *some* definition of *trailer* exists that embraces the subject house, even if there are others that do not. As a matter of law, that thinking is wrong. Taylor, 332 S.C. at 4. Rather, because some definitions of *trailer*, reasonable in context, place this house outside their scope, the law provides that Cruz had to lose her motion and, thus, that the special referee erred reversibly in granting it. Precedent's mandate that "where the language of the restrictions [in real property covenants] is equally capable of two or more different constructions that construction *will be adopted* which least restricts the use of the property" requires Cruz to lose and the Bouknights to win. Id. (emphasis added).

Because other context-reasonable interpretations of *trailer* exist, including ones more reasonable than the special referee's, it was incumbent on the Court of Appeals to reverse the special referee's decision. The Bouknights did not have to prove the non-existence of ways to construe the word *trailer* against them. See Taylor, 332 S.C. at 4; Williams, 25 S.E.2d at 246 (1943); Baugh & Sons, 150 S.C. at 401. The Bouknights did not have to prove anything. Williams, 25 S.E.2d at 246 (1943); Baugh & Sons, 150 S.C. at 401. In providing the court with various dictionary and legal definitions of *trailer* that were narrower than the sweeping embrace advocated by Cruz, the Bouknights went well beyond what the law required them to do. In so doing, they also demonstrated the impossibility of Cruz's success – if the law is correctly applied. See Taylor, 332 S.C. at 4.

IV. Certiorari is warranted and advisable.

As noted above, the Court of Appeals' decision runs counter to this Court's precedent. It also, though, points out that clarification of Heape may be needed to ensure that judges and litigants understand what it does and does not hold. Further, as the parties have noted, there is a split among other jurisdictions about interpretation of the terms *trailer, mobile home,* and *manufactured home* in this context. "What Is 'Mobile Home,' 'House Trailer,' 'Trailer House,' or 'Trailer' Within Meaning of Restrictive Covenant" 83 A.L.R.5th 651 (2000 & Supp.). This split appears fairly even among the states. See id. Some jurisdictions interpret "trailer" broadly, and some do not adopt a broad interpretation that would put a manufactured home within the scope of what a "trailer" is. Id. Cruz provided the special referee with examples of cases from other jurisdictions interpreting the term "trailer" broadly enough to embrace a manufactured home. E.g., White v. McGowen, 364 Ark. 520, 222 S.W.3d 187 (2006); Beacon Hills Homeowners Ass'n, Inc. v. Palmer Properties, Inc., 911 S.W.2d 736 (Tenn. Ct. App. 1995). The Bouknights provided examples of such cases taking the contrary view, that a manufactured home is not a trailer. E.g., Hutchison v. Hill, 3 P.3d 242 (Wyo. 2000); Howell v. Hawk, 750 N.E.2d 452 (Ind. Ct. App. 2001).

In light of all that, this is a question of exceptional importance, more so than it may appear at first blush. At the heart of this case is an issue that, given the contemporary ubiquity of manufactured homes that have never been equipped to be trailed, is likely to be decided differently by this state's various trial courts and the Court of Appeals until a published opinion of this Court definitively addresses it. That uncertainty bucks against one of the primary purposes of law: that the law tells a person what is and is not prohibited.

CONCLUSION

The law says again and again that the Bouknights are entitled to win this case, but the special referee and the Court of Appeals have refused to uphold the law. The issues present here have an impact that is far-reaching, especially since about 20 percent of South Carolina families live in a manufactured home like the Bouknights'. https://mhisc.com/home-buyer-info/. That home is not a trailer. It has never had the things that would make it a trailer. The only chance at justice for the Bouknights and anything like legal certainty about what covenants like this do and do not prohibit is for this Court to grant certiorari and provide an answer, consistently with precedent, that does conform to South Carolina covenant interpretation law. E.g., Taylor, 332 S.C. at 4.

WHEREFORE, the Petitioners pray for this Court to issue a writ of certiorari to review the Court of Appeals' opinion and decision in this case.

Respectfully submitted,

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