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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

Ct. App. Case No. 2023-001082
Ct. App. Op. No. 6139, filed February 25, 2026

TOWN OF SULLIVAN'S ISLAND,

Respondent,

vs.

NATHAN BLUESTEIN and
THEODORE ALBENESIUS, III,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI

This declaratory judgment action arises out of a Settlement Agreement reached in separate litigation that has already been before this Court (the "Original Deed Enforcement Action"). After this Court had affirmed the grant of summary judgment to the Town, the matter proceeded to review by the Supreme Court which resulted in a reversal and a corresponding remand to the trial court for further proceedings. Bluestein v. Town of Sullivan's Island, 424 S.C. 362, 818 S.E.2d 239 (Ct. App. 2018), *rev'd* 429 S.C. 458, 839 S.E.2d 879 (2020). On remand, the parties negotiated a settlement which was memorialized in a written Settlement Agreement, authorized by a resolution from the Town Council, and approved by a Circuit Court Judge. However, little more than a year later, after an election changed the composition of the Town Council, the Town reneged on its agreement, and commenced this action seeking to invalidate the very Settlement Agreement

that the Town had negotiated, approved, and executed, and that the Circuit Court had adopted and approved to resolve the Original Deed Enforcement Action. In this action, the Circuit Court granted summary judgment to the Town, holding, as a matter of law, that the Settlement Agreement is invalid and unenforceable. By opinion, issued February 25, 2026, the Court of Appeals affirmed, holding that the Settlement Agreement was invalid and unenforceable because "the subject matter of the settlement agreement concerns the Town's governmental function to maintain land it owns in furtherance of public health and safety."

Pursuant to Rule 242, SCACR, the Petitioners respectfully petition this Court to grant a writ of certiorari to review the decision of the Court of Appeals because this appeal presents a novel question of law regarding the scope of authority of the Town to settle litigation regarding its obligations under a land deed. In addition, this appeal presents other special and important reasons regarding the scope of authority of a municipality to enter into binding litigation settlements, and a concern for finality in court-approved litigation settlements.

CERTIFICATION BY COUNSEL

The Court of Appeals issued its opinion on filed February 25, 2026. The Petitioners timely filed a Petition for Rehearing on March 11, 2026, which was denied by order filed March 26, 2026.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals err in affirming the Circuit Court's decision that the Settlement Agreement, as authorized by the Town Council and approved by the court, is invalid and unenforceable because the subject of the settlement does not involve the Town's legislative functions or governmental powers?

Or, as otherwise stated,

Did the Court of Appeals err in affirming the Circuit Court's ruling that the Settlement Agreement is invalid and unenforceable because:

A. The subject matter of the Settlement Agreement at its core, primarily involves the Town's business or proprietary functions as owner of the Accreted Land legally bound to comply with its maintenance responsibilities under the covenants in the 1991 Deed; and

B. The court-approved Settlement Agreement is a fair and reasonable and necessary or advantageous business agreement to meet the Town's obligations to maintain the vegetation on the Accreted Land.

Other Issues Presented on Appeal

II. Did the Circuit Court err in refusing to enforce the Severability Clause of the Settlement Agreement to excise only such provisions that purportedly bind a future Town Council in regards to a legislative function or governmental power?

III. Did the Circuit Court err in refusing to nullify the corresponding Release and reinstate the Original Deed Enforcement Action after invalidating the Settlement Agreement?

STATEMENT OF THE CASE

This declaratory judgment action arises out of a Settlement Agreement reached in separate litigation - Nathan Bluestein, Ettaleah Bluestein, M.D., Theodore Albenesius, III, and Karen Albenesius, v. Town of Sullivan's Island and Sullivan's Island Town Council, Case No. 2010-CP-10-5449 (the "Original Deed Enforcement Action"). In that suit, Nathan Bluestein and Theodore Albenesius, III[1] ("Property Owners") brought an action against the Town to enforce the provisions of a 1991 Deed conveying beachfront accreted land (the "Accreted Land") issued to the Town of

[1] The alignment of the Defendants changed due to death and divorce during the course of the litigation.

Sullivan's Island. Although the undisputed facts regarding the 1991 Deed of the Accreted Land Deed, are not directly relevant to the current action, more details can be found in the Appellate Courts opinions and the briefs in this appeal. Briefly, for context here, the key point material in this appeal is that the 1991 Deed contains a specific covenant regarding obligations for the trimming and pruning of vegetation on the Accreted Land and provides property owners with a right to enforce the same.

The Original Deed Enforcement Action

In the Original Deed Enforcement Action, the Master-in-Equity granted summary judgment to the Town on all claims, and thereafter, the action proceeded through a lengthy appeal before the Court of Appeals and then the Supreme Court, until ultimately, the grant of summary judgment was reversed and the Original Deed Enforcement Action was remanded to the trial court for further proceedings. Bluestein v. Town of Sullivan's Island, 424 S.C. 362, 818 S.E.2d 239 (Ct. App. 2018), *rev'd* 429 S.C. 458, 839 S.E.2d 879 (2020). On remand, the parties negotiated a settlement which was memorialized in a written Settlement Agreement, authorized by a resolution from the Town Council, and approved by the Honorable Jennifer B. McCoy, Circuit Court Judge, in October 2020. Judge McCoy also approved one amendment to the Settlement Agreement in April 2021.

The Settlement Agreement was presented to the Town Council, and a resolution approving and adopting the same was passed on October 2, 2020:

> Making Specific Findings of Fact, Authorizing Settlement of Bluestein v. Sullivan's Island on the general parameters set forth below, and Authorizing Staff to Take All Actions Necessary and Proper to Implement the Described settlement including procurement actions in accordance with Town policy, the development of detailed plans and applications, and the submittal of applications necessary to effectuate this settlement. [Amd. ROA 214.]

The Settlement Agreement then was executed by the individual Property Owners, and the Town's Attorney on behalf of the Town Council on October 7, 2020. [Amd. ROA 223.]

Thereafter, the Parties took further steps of memorializing the Settlement Agreement by submitting a consent motion to the Circuit Court seeking judicial approval of the Settlement Agreement. The Settlement Agreement was approved by the Honorable Jennifer B. McCoy, Circuit Court Judge, by Order dated October 15, 2020, which found that the Settlement Agreement "is proper and in the best interest of all Parties" and further authorized the Town to consummate the settlement per the Settlement Agreement. [Amd. ROA 221.] Of note, there was no appeal from that order.

The Terms of the Settlement Agreement

The compromise between the Property Owners and the Town reached in the Original Deed Enforcement Action thoughtfully and rationally addressed the Town's rights and obligations in regards to the unchecked vegetation growth throughout the Accreted Land—growth that has resulted in a marine forest and that has created a variety of problems ranging from depriving the Property Owners of their ocean views and breezes and diminishing their property values to creating dangerous nuisances including fire hazards, mosquitos, raccoons, snakes, and coyotes. As part of the settlement negotiation process, the 1991 Deed's Grantor, the Trust, was consulted and an engineering firm retained to conduct a tree survey to identify (on a tree-by-tree basis) which select vegetation would be trimmed so as to reasonably achieve the stated requirements of the 1991 Deed. This survey is attached to and incorporated in the Settlement Agreement

During that process, the Town identified multiple problems created by the overgrowth, including difficulty applying anti-mosquito treatments, an increased prevalence of pests, unhealthy stagnant conditions from impeded airflow, wildfire risks as well obstructions to ocean views. The

Parties concluded that: "The only way to address excessive vegetation growth and density is selective thinning," and a plan was proposed (as later amended) that presented "a selective thinning plan carefully tailored to address these stated concerns while maximizing retained ecological, educational and scientific goals." [Amd. ROA 225.] As expressly stated, the Town Council expressly found that the work plan adopted by the Settlement Agreement "balances the competing needs of beach front and inland island residents and the ecological and natural interests on the one hand and human needs and safety on the other." [Amd. ROA 223.]

The Settlement Agreement's work plan contemplates an initial trimming and thinning to be conducted in several stages. The work plan sets specific details for this initial trimming and thinning within a "Transition Zone" running 100 ft. seaward of private property lines adjacent to the Accreted Land as well as three unique "Zones" within the remaining portion of the Accreted Land between the "Transition Zone" and the shore line.[2] Beyond this initial trimming and thinning work, the Settlement Agreement does not prescribe or mandate a permanent or indefinite work plan for future management activities beyond providing that, "going forward" a naturalist would be consulted to review the condition of the Accreted Land on a recurring basis for consideration in making any changes that might be necessary to maintain appropriate levels of density and diversity. The Settlement Agreement suggests, but does not require, that this consultation occur every five (5) years.

While funding only for the initial work in the Transition Zone will be from the Town, work in three far larger Zones encompassing the vast majority of the Accreted Land is conditioned on receipt, on a block-by-block basis, of adequate donations or grants. More specifically, the work

[2] The precise locations of the "Transition Zone", "Zone 1", "Zone 2", and "Zone 3" are clearly marked on the survey of the Accreted Land prepared by Thomas & Hutton that is attached to and incorporated in the Settlement Agreement itself. [Amd. ROA 234-245.]

plan provides that thinning of the 2500 Block of Atlantic (where the Defendants own property) was to proceed with all deliberate speed after formal settlement approval by Council. Other homeowners are given a one-year period to provide funds to the Town to cover the expenses of trimming on the Accreted Lane adjacent to their block. Thus, while the physical work required to perform the Settlement Agreement's scope of work in the three designated Zones within the Accreted Land is to be performed by a landscaping or vegetation management contractor selected in the Town's discretion, in accordance with the Town's usual procurement process, it is not to be funded by taxpayer monies.

The Settlement Agreement also acknowledged that the work could not be conducted without permitting required through DHEC's Office of Ocean and Coastal Resource Management (OCRM). The Settlement Agreement contemplates the importance of consultation with OCRM and the Grantor, the Trust, for the Town to develop its implementation plan and permit application, and the necessity of engaging an engineer and/or technical consultant to develop an appropriate, detailed plan specifying methods and objectives, and to make appropriate regulatory applications. The Parties further agreed to cooperate in good faith to obtain any required permits.

Following the original approval of the Settlement Agreement by the Town and the Circuit Court, the engineering firm retained by the Town to conduct a tree survey identified an issue regarding regulatory applications that needed to be submitted to certain State and/or Federal agencies in order to implement the work plan. The retained engineering firm proposed a revised work plan, the Town and the Property Owners reached an agreement for a work plan to replace the scope of work described in the original Settlement Agreement, which was adopted and approved as an amendment to the Settlement Agreement by order of Judge McCoy on April 12, 2021. [Amd. ROA 246.] Again, of note, there was no appeal from that order.

The Town's Refusal to Honor the Settlement Agreement and Legal Action to Invalidate It

Less than a month after obtaining Judge McCoy's approval of the amendment to the Settlement Agreement, the Town broke its promise to cooperate in good faith, when the Town Council (now comprised of several newly elected members) voted to initiate legal proceedings to invalidate the Settlement Agreement. Thereafter, only sixteen (16) months after the Settlement Agreement was approved and only ten (10) months after its amendment was approved, the Town commenced this declaratory judgment action, seeking to invalidate the very Settlement Agreement that the Town had negotiated, approved, and executed and that the Circuit Court had twice adopted and approved to resolve the Original Deed Enforcement Action.

Although the Town does not in this action appear to question the authority of its prior Town Council to enter into the 1991 transaction that resulted in the Deed by which it now holds ownership of the Accreted Land, the Town is asserting that the Town Council (presiding in 2020) somehow lacked the authority to settle litigation relating to its obligations under the 1991 Deed. Effectively, at the whim of the current Town Council, the settlement is somehow an improper "legislative" constraint on the authority of the Town Council while the original land transfer was a proper "proprietary" action.

This new effort has been pursued, ostensibly, on the ground that provisions of the Settlement Agreement improperly restrict the legislative/governmental powers and propriety functions of the successor Town Council. [Amd. ROA 31.] The Property Owners filed an answer with counterclaims for breach of contract, specific performance, and promissory estoppel. [Amd. ROA 79.] The Town filed a reply to the counterclaims, and then promptly filed a motion for summary judgment. [Amd. ROA 93. Amd. ROA 101.]

On September 22, 2022, the Town's motion for summary judgment came before the same Circuit Judge who had previously approved and adopted the Settlement Agreement, the Honorable Jennifer B. McCoy. [Amd. ROA 330.] On January 30, 2023, Judge McCoy entered an order granting summary judgment to the Town and holding, as a matter of law, that:

> [T]he Settlement Agreement is invalid and unenforceable as a matter of law because it involves the legislative/governmental powers of the Town and purports to bind the current and future town councils. However, even if the Settlement Agreement could somehow be said to involve only proprietary/business functions, it is still invalid and unenforceable because it is unreasonable as a matter of law.

[Amd. ROA 12.]

The Property Owners filed a motion to alter or amend, asking Judge McCoy to reconsider her rulings and enter judgment upholding and enforcing the Settlement Agreement she had approved. In addition, the Property Owners asked Judge McCoy to address the issue raised as to enforcement of the severability provision of the Settlement Agreement, and to address the impact of her ruling on the Original Deed Enforcement Action. [Amd. ROA 311.] In a Form 4 Order filed on June 5, 2023, Judge McCoy summarily denied the Rule 59(e) motion without addressing the issues raised. [Amd. ROA 28.] The Property Owners filed and served a Notice of Appeal on July 5, 2023. [Amd. ROA 377.] The Court of Appeals affirmed by opinion issued February 25, 2026, and denied the subsequent petition for rehearing by order filed March 26, 2026.

ARGUMENT

Standard of Review

"Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). "In South Carolina jurisprudence, settlement agreements are viewed as contracts." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009).

"Whether a contract is against public policy or is otherwise illegal or unenforceable is generally a question of law for the court." Milliken & Co. v. Morin, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012) (quoting 17B C.J.S. Contracts § 1030). Here, there are no genuine issues of material facts as to validity of the Settlement Agreement because the relevant litigation history relating to the settlement of the Original Deed Enforcement Action is established by the pleadings as well as court records, and the Settlement Agreement itself is unambiguous. Therefore, the questions regarding the validity and enforceability of the Settlement Agreement are questions of law over which this Court has de novo review. Milliken, id. (citing Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

I. The Court of Appeals erred in affirming the Circuit Court order invalidating the Settlement Agreement between the Town and the Defendant Property Owners that resolved pending litigation regarding enforcement of the 1991 Deed.

Applicable Law regarding Authority of the Town to Enter a Binding Settlement Agreement

As a threshold matter, it is important to note what is not at issue in the Town's effort to invalidate the Settlement Agreement. It is indisputable that the Settlement Agreement fully complies with Rule 43(k), SCRCP—it is in writing and signed by the parties and/or their attorneys. There is no challenge to the legality or propriety of the process by which the Settlement Agreement was approved by the Town Council sitting in October 2020. Nor is there any challenge to the legality or propriety of the process by which Judge McCoy approved the Settlement Agreement or its amendment. The sole issue now raised by the Town is whether the duly elected members of the Town Council sitting in 2020 had the legal authority to enter the Settlement Agreement that will bind the current elected and future Town Councils.

Under general prevailing law, the Town has the power to contract, subject to certain limitations on the Town's authority, if the duration of the contract extends beyond the term of the elected Council members, in which case, the subject matter of the contract determines the validity:

> The general rule is that, if the contract involves the exercise of the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. However, if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils.

Piedmont Pub. Serv. Dist. v. Cowart (Cowart I) 319 S.C. 124, 459 S.E.2d 876, 880 (Ct. App. 1995) (citing Newman v. McCullough, 212 S.C. 17, 46 S.E.2d 252 (1948)), *aff'd,* (Cowart II) 324 S.C. 239, 478 S.E.2d 836 (1996).

In this action, Judge McCoy held, as a matter of law, that "the Settlement Agreement is invalid and unenforceable as a matter of law because it involves the legislative/governmental powers of the Town and purports to bind the current and future town councils." [Amd. ROA 12.] Judge McCoy held, in the alternative, that "even if the Settlement Agreement could somehow be said to involve only proprietary/business functions, it is still invalid and unenforceable because it is unreasonable as a matter of law." The Court of Appeals has affirmed the Circuit Court, holding that the Settlement Agreement is invalid and unenforceable because "the subject matter of the settlement agreement concerns the Town's governmental function to maintain land it owns in furtherance of public health and safety."

There is no dispute that certain legal principles on the general question of the legally permissible scope of municipal contract authority can be found in Cowart as well as City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth., 325 S.C. 174, 480 S.E.2d 728 (1997); and G. Curtis Martin Investment Trust v. Clay, 274 S.C. 608, 266 S.E.2d 82 (1980). However,

the Court of Appeals has overlooked or misapprehended, and misapplied the rulings in those cases to the facts in this case. First, none of those opinions squarely address the question of whether the Town had authority to enter into an agreement to settle pending litigation regarding enforcement of covenants under a land deed. Further, the holdings in Cowart and related precedent do not support a legal conclusion that the Settlement Agreement, which resolves the Town's obligations to maintain vegetation on the Accreted Land in compliance with the standards required by the covenants in the 1991 Deed, involves the Town's governmental powers. Rather, the facts, under the available precedent, evidence that the Settlement Agreement involves the Town's proprietary function as a landowner, and the sitting Town Council properly acted within its authority to enter into a fair and reasonable and advantageous agreement to settle the decade-old litigation.

Further, the invalidation of the duly-authorized and court-approved Settlement Agreement merely because of a political realignment of the Town Council members would be a travesty of justice and sets a dangerous precedent for instability in contractual and litigation negotiations with this Town, other municipalities, and all other governmental entities. Thus, the Property Owners also submit that this appeal presents special and important issues regarding the scope of authority of a municipality to enter into binding litigation settlements, and a particular concern for finality in court-approved litigation settlements.

A. The Settlement Agreement involves the Town's proprietary function as owners of the Accreted Land under the 1991 Deed which contains legally binding maintenance responsibilities.

Under the legal principles as stated in Cowart, the key issue here as to whether or not the Settlement Agreement is invalid and unenforceable depends on whether the subject matter of the Agreement involves legislative functions or governmental powers. If, however, the subject matter of the Agreement involves the Town's business or proprietary functions, it will be binding on a

successor Town Council so long as it is "fair and reasonable and necessary or advantageous." Thus, the Court first must identify the subject matter of the Settlement Agreement to determine whether it is binding against a successor Town Council. While the legal principle seems straightforward, the application is not so simple because state law does not provide comprehensive definitions of what constitutes a municipality's legislative functions or governmental powers as contrasted with a municipality's business or proprietary powers which can intertwine and overlap. As the Court of Appeals noted in Cowart I, "the difference between proprietary and governmental functions is often difficult to determine." 459 S.E.2d at 881.

While there is South Carolina appellate case law that provides a source of some examples and guidance for determining whether a municipal contract involves a government or a proprietary function, none of those opinions have addressed any issue about whether a settlement of pending litigation regarding enforcement of a deed involves either a governmental or a proprietary power. Two of the key cases, Piedmont Pub. Serv. Dist. v. Cowart and Newman v. McCullough, dealt with employment contracts and the Courts held that "appointment or removal of a public officer is a governmental function that cannot be impaired by an employment contract extending beyond the terms of the members of the local governing body." Cowart II, 478 S.E.2d at 837 (citing Newman, 46 S.E.2d at 255). Neither of those opinions on apposite to the settlement of litigation arising from the 1991 Deed by which the Town owns the Accredited Land and the associated maintenance responsibilities.[3]

[3]Likewise, the South Carolina Supreme Court's decision in Knowles v. City of Aiken, 305 S.C. 219, 220, 407 S.E.2d 639, 640 (1991), and the federal district court's order in Woodale Partnership v. City of Charleston, No. 2:07-CV-2025-MBS, 2010 WL 11661386, at *3 (D.S.C. Sept. 17, 2010), as cited and relied upon by the Circuit Court are zoning cases that are inapposite and do not support the legal conclusion that the Settlement Agreement is invalid. This action is not a zoning matter challenging the Town's enforcement of any zoning ordinance on the Property Owners' land. This

In G. Curtis Martin Investment Trust v. Clay, 274 S.C. 608, 266 S.E.2d 82 (1980), the issue before the Court was whether an agreement, by which a sewer district purchased a privately-owned sewer system under terms that granted the prior owner the right to approve or disapprove application for the use of the sewer system by certain types of customers, was legally enforceable and binding on the district. The Court held the delegation of power to the prior owner was unlawful and against public policy because the power to act on applications for sewer service could not be contracted away. Comparably, here, the Settlement Agreement does not delegate any power to the Property Owners to approve or disapprove applications for permits to trim on the Accreted Land. Notably, the Settlement Agreement acknowledges the fact it is the OCRM that will control the permitting for such work, and obligates the Town to cooperate in good faith in making the necessary permit applications.

The City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Authority case arose from a contract entered into between a legislatively-created water authority and the municipalities of Beaufort and Port Royal whereby municipalities had agreed to purchase water from the Authority. The contracts contained "Contested Clauses" which prohibited the Authority from selling water to other entities without consent from the municipalities. The Court invalidated those clauses, holding that provision of water service to residents and non-residents, or at least the decision whom to serve, is a governmental function. 480 S.E.2d at 732 (citing G. Curtis Martin Investment Trust v. Clay, supra (regarding sewer services). This decision rests on a settled holding that provision of water service is a governmental function. There is no comparable settled holding that a town's maintenance obligations under a deed by which it acquired and holds ownership of the land is a

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action, the Original Deed Enforcement Action, and even the 1991 Deed itself, involve contractual obligations for maintenance of the vegetation on the Town's own land.

governmental function. Rather, here, the subject matter is the Town's proprietary obligations in regards to maintenance of the Accreted Land owned by the Town under the covenants in the 1991 Deed.

These existing precedents do not support the legal conclusion, as affirmed by the Court of Appeals, that the Settlement Agreement involves the legislative functions or governmental powers of the Town. To the contrary, the agreement to settle the Original Deed Enforcement Action to resolve a decade-old dispute regarding the Town's responsibilities to maintain the vegetation on the Accreted Land, at its core, primarily involves the Town's business or proprietary functions as owner of the Accreted Land legally bound to comply with its maintenance responsibilities under the covenants in the 1991 Deed.[4]

The Town, as the owner of the Accreted Land, negotiated a settlement of the then pending Original Deed Enforcement Action. After that action proceeded through the Court of Appeals and the Supreme Court, and returned to the Circuit Court on remand, the Town negotiated a settlement agreement to end the litigation that had by that time been dragging on for a decade. The Settlement duly proceeded through the process of authorization/approval by the Town Council and was presented to a Circuit Court Judge for judicial approval. Judge McCoy expressly found that "such settlement is proper and in the best interest of all Parties."

While the Court of Appeals stated that it recognized that the Town is the owner of the Accreted Land and therefore holds a proprietary interest, the Court effectively rejected that fact and seized upon terminology and phrasing in the settlement documents and S.C. Code § 5-7-30 to recast the Agreement as involving the public health and safety of the general public. This

[4] So too was the Town's decision to enter into the land contract which resulted in the 1991 Deed itself

reasoning strains the decision in Cowart I and the related precedent and overlooks or misapprehends that "[t]he true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired." 459 S.E.2d at 881. Public policy does not demand that the Town should hold unrestrained power to ignore its maintenance obligations under a deed by which it obtained ownership of the land. Nor does public policy demand that the Town be allowed to maneuver the court system to avoid its obligations by spending decades in litigation before finally negotiating a settlement only to immediately turn around and renege on the court-approved settlement.

The Town undertook certain maintenance obligations in the 1991 Deed by which it obtained ownership of the Accreted Land. As owner of that land, the Town entered into a legal, binding settlement agreement with specified maintenance obligations. The invalidation of the duly-authorized and court-approved Settlement Agreement merely because of a political realignment of the Town Council members would be a travesty of justice and set a dangerous precedent for instability in contractual and litigation negotiations with this Town, other municipalities, and all other governmental entities.

B. The court-approved Settlement Agreement is valid as a fair and reasonable and necessary or advantageous business agreement to meet the Town's obligations to maintain the vegetation on the Accreted Land, and resolve pending litigation.

On a separate point, the Circuit Court held that "even if the Settlement Agreement could somehow be said to involve only proprietary/business functions, it is still invalid and unenforceable because it is unreasonable as a matter of law." [Amd. ROA 12.] The Property Owners have raised this issue and argued that the Settlement Agreement is a fair and reasonable and necessary or advantageous business agreement to meet the Town's obligations to maintain the vegetation on the Accreted Land. The Court of Appeals declined to address this issue; however,

the Property Owners request that this Court consider and address the reasonableness issue as necessary to fully address the enforceability of the Settlement Agreement.

In the interest of avoiding repetition, the Property Owners incorporate the arguments as presented in their Final Brief and Final Reply Brief as if fully restated herein. However, to briefly restate, the reasonableness issue should be easily answered because the parties so stipulated and Judge McCoy so found in her October 7, 2020, order approving the Settlement Agreement:

> UPON Motion of all Parties, and it appearing that the said Parties deem the offer of settlement acceptable, advantageous, and to the best interest of all Parties and
>
> IT FURTHER APPEARING in the discretion of this Court that such settlement is proper and in the best interest of all Parties, ... [Amd. ROA 221.]

In addition, examination of the Settlement Agreement in the context of the status of the Original Deed Enforcement Action shows that the agreement was both fair and reasonable as well as advantageous from several perspectives. Settlement Agreement produced a thoroughly vetted, comprehensive work plan for trimming and thinning to deal with the overgrowth of vegetation on the Accreted Land, and it balanced all competing interests and environmental concerns.

Viewing the posture of the dispute from a litigation costs perspective, the Town already had spent ten years and considerable funds litigating the Original Deed Enforcement Action. By October 2020, the Town faced the prospect of incurring additional legal expenses for more litigation and the possibility that it would be burdened with significant expenses of compensating the Property Owners for their damages and/or remediating the maritime forest to return the vegetation on the Accreted Land to the conditions existing in February 1991. [See ROA 225.] It certainly was advantageous at that time for the Town to settle the Original Deed Enforcement Action and avoid further lengthy and costly litigation and to reach a compromise with a work plan

for finally remediating the overgrown vegetation without having to pay the Property Owners claims for millions of dollars in damages for the diminution in their property values.

II. The Severability Clause of the Settlement Agreement should be enforced to excise only such provisions that purportedly bind a future Town Council in regard to a legislative function or governmental power.

The Settlement Agreement contains a Severability Clause which states, in pertinent part, "[s]hould any portion, word, clause, phrase, sentence or paragraph of this Settlement Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected." [Amd. ROA 231.] On appeal, the Property Owners raised the issue of the Circuit Court's error in refusing to enforce this clause. The Court of Appeals declined to address this issue. In conjunction with this Petition to review the Court of Appeals' decision, the Property Owners also would request that this Court consider and address this issue without a remand, in the best interest of judicial economy.

"The entirety of severability of a contract depends primarily upon the intent of the parties rather than upon the divisibility of the subject." Beach Co. v. Twillman, Ltd., 351 S.C. 56, 566 S.E.2d 863, 867 (2002)[5] (citing Columbia Architectural Group Inc.v. Barker, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980)). A severable contract is one that by its nature and purpose is susceptible of division, having two or more parts, that are not necessarily dependent on each other.

In the interest of avoiding repetition, the Property Owners incorporate the arguments on this issue as presented in their Final Brief and Final Reply Brief as if fully restated herein. However, to briefly restate, the unambiguous terms of the Settlement Agreement clearly provide that it is severable and that the parties intended it to be severable. Thus, if the Court invalidates

[5] Abrogated on other grounds in Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck, 440 S.C. 409, 892 S.E.2d 280 (2023).

any portion of the Settlement Agreement, then the Court should enforce the plain and unambiguous terms of the same and reject only the aspects of the contract which it finds operate to improperly constrain the legislative function of future Town Councils.

More particularly, the Settlement Agreement prescribes a detailed plan for an initial scope of work that is tailored for certain zones within the Accreted Land. After the completion of this work, the only prospective action contemplated by the Settlement Agreement is the parties' agreement to maintain similar conditions going forward which ostensibly leaves future Town Councils with some discretion. However, if this provision regarding future maintenance of the vegetation were to be determined an impermissible constraint on some governmental function of successor Town Councils, then the rest of the Settlement Agreement should be preserved and enforced so that these Property Owners can demand that the initial thinning and trimming work on their block can proceed to restore the vegetation to some semblance of the conditions as existed in 1991.

III. The Unaddressed Status of the Original Deed Enforcement Action

As part of the Settlement Agreement, the Property Owner's executed a release and dismissed the Original Deed Enforcement Action. The Circuit Court's order failed to address the ramifications of invaliding the Settlement Agreement on the status of the Original Deed Enforcement Action. The Court of Appeals refused to address this issue on the ground that it was "not preserved for appeal because Property Owners did not raise this issue to the circuit court." In so holding, the Court of Appeals overlooked or misapprehended the posture of the proceeding and the arguments asserted by the Property Owners in the circuit court.

To clarify the point, it was the Town who commenced this separate, independent action – apart from the Original Deed Enforcement Action – seeking to invalidate the court-approved Settlement Agreement, and then moved for summary judgment. In opposing the motion, the

Property Owners raised the question of the implications on the Original Deed Enforcement Action: "If the Town's position as to the validity of the Settlement Agreement is correct, then the releases contained in the Settlement Agreement were without consideration and would be equally invalid. Defendants are prepared to re-open the Original Lawsuit and proceed with trial on their original claims at the earliest opportunity." [Amd. ROA 170 n. 8.]

When the Circuit Court granted summary judgment to the Town in the January 30, 2023, order, the Property Owners filed a motion for reconsideration in which they raised the point that the Court had not addressed the consequences of invalidating the Settlement Agreement or the steps the parties would need to take to resume the Original Deed Enforcement Action. [Amd. ROA 313.]

> Even if the Court is not inclined to alter or amend its Order, it should provide direction to the parties as to the effect the Order has in the Original Lawsuit.
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> ***
>
> Even if the Court is not inclined to grant Defendant's Motion to Alter or Amend pursuant to Rule 59(e), it should nevertheless provide direction to the parties as to the impact of its January 30th Order on the Original Lawsuit and Defendants' respectfully request that the Order by amended to reflect the same. [Amd. ROA 319-320.]

The Circuit Court, in denying the motion for reconsideration, sidestepped the issue as premature and outside the scope because the Original Deed Enforcement Action was "a prior, different lawsuit." [Amd. ROA 326-328.] Accordingly, the Property Owners properly preserved the issue for review on appeal and they petition this Court to address the issue in the interest of justice and judicial economy if the Circuit Court' ruling invalidating the Settlement Agreement is affirmed.

The Original Deed Enforcement Action was commenced in 2010 and proceeded through years of litigation and appeals which resulted in a remand in 2020. The Property Owners negotiated with the Town in good faith to reach a settlement that was duly authorized by the Town

Council and approved by the Circuit Court. Yet, here once again the parties are before the Court on yet another appeal when the Town has convinced the same Circuit Court to invalidate the Settlement Agreement.

The Property Owners respectfully submit that the Town cannot be allowed to avoid its obligations under the 1991 Deed and simultaneously evade all liability for the claims for breach of the Deed by repudiating the Settlement Agreement. The Releases and Stipulations of Dismissal were integral to the Settlement Agreement and the resolution of the Original Deed Enforcement Action. If the Settlement Agreement is deemed invalid in its entirety, the Property Owners are entitled to resume pursuing all their claims in the Original Deed Enforcement Action in accordance with the Supreme Court's prior decision.

As to the appropriate steps necessary to restore litigation when a settlement agreement is vacated, guidance can be found in the Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 92, 419 S.E.2d 841, 841 (Ct. App. 1992), wherein, after vacating a settlement agreement, the trial court restored the case to the trial docket to allow the case to proceed on the merit. If the Court affirms, the Property Owners request that the Court address the restoration of the Original Deed Enforcement Action with hopes to avoid yet another round of litigation and appeals over this point.

CONCLUSION

WHEREFORE, based on the foregoing together with the issues raised and argued in their final briefs, the Property Owners respectfully ask the Court to grant this petition to review the decision of the Court of Appeals affirming the Circuit Court's order invalidating the entire Settlement Agreement. The evidence in the Record and the applicable law shows that the Settlement Agreement is enforceable; and in the alternative, if any part of the Settlement

Agreement is held invalid, the Severability Clause of the Settlement Agreement should be enforced rather than invalidating the entire Agreement. Ultimately, in the event that the Court might find that the Settlement Agreement is invalid, then the Property Owners should be allowed reinstatement of the Original Deed Enforcement Action so they can proceed with their claims under the 1991 Deed in accordance with the Supreme Court's prior decision.

Respectfully submitted,

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Attorneys for the Petitioners
Nathan Bluestein and Theodore Albenesius, III

April 27, 2026

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Apr 27 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

Ct. App. Case No. 2023-001082
Ct. App. Op. No. 6139, filed February 25, 2026

TOWN OF SULLIVAN'S ISLAND,

Respondent,

vs.

NATHAN BLUESTEIN and
THEODORE ALBENESIUS, III,

Petitioners.

CERTIFICATE OF SERVICE

The undersigned certifies that on this **27th** day of **April, 2026**, a copy of the Petition for a Writ of Certiorari on behalf of Nathan Bluestein and Theodore Albenesius, III was served by emailing a copy to Counsel for the Respondent at their AIS addresses listed below, per the attached email:

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RECEIVED
Apr 27 2026
SC Court of Appeals

April 27, 2026

Via E-Filing and U.S. Mail
The Honorable Patricia A. Howard
Clerk, South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Re: Town of Sullivan's Island v. Nathan Bluestein and Theodore Albenesius, III
Appeal from Charleston County, Case No. 2022-CP-10-00846
Appellate Case No. 2023-001082
Ct. App. Op. No. 6139, filed February 25, 2026
HLF File No. 805.001

Dear Ms. Howard:

Today we have electronically filed and served a Petition for a Writ of Certiorari on behalf of Nathan Bluestein and Theodore Albenesius, III in the above referenced case. Enclosed please find a check for the $250 filing fee. We have electronically served all other Counsel of Record as indicated by our Certificate of Service which we electronically filed. In addition, we are filing the Petition with the Court of Appeals.

Kind regards,

Yours truly,

/s/ James B. Hood

James B. Hood

JBH/spc
Enclosure(s)
cc: William W. Wilkins, Esquire/Clarence R. Turner, IV, Esquire [***Via E-Mail***]
Alexandra H. Austin, Esquire [***Via E-Mail***]
Jenny Abbott Kitchings, Clerk of Court of Appeals [***Via E-Mail***]