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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Ct. App. Op. No. 6139, filed February 25, 2026
App. No. 2026-001038

TOWN OF SULLIVAN'S ISLAND,

Respondent,

vs.

NATHAN BLUESTEIN and
THEODORE ALBENESIUS, III,

Petitioners.

REPLY TO RESPONDENT'S RETURN
On PETITION FOR A WRIT OF CERTIORARI

CLARIFICATION IN REPLY

THE COURT OF APPEALS ERRED IN AFFIRMING THE CIRCUIT COURT'S RULING THAT THE SETTLEMENT AGREEMENT IS INVALID AND UNENFORCEABLE BECAUSE 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.

> **REASONABLENESS OF DURATION: The initial plan for thinning the overgrown maritime forest as defined in the Settlement Agreement is not perpetual, and any plans for future trimming of the vegetation to maintain appropriate level of density and diversity is open to periodic reassessment (such as every five years).**

One component of the analysis found in Cowart is whether the court-approved Settlement Agreement with the Town is fair and reasonable and necessary or advantageous to the municipality. 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). The Court of Appeals did not address this point.

As previously presented in the Final Brief of Appellants and the pending Petition, the Petitioners/Property Owners have argued and shown that 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. The Town has maintained that the Settlement Agreement is invalid as unreasonable because it is of perpetual duration.

The Petitioners have acknowledged that under the analysis as stated in Cowart I, *id*. at 882, the duration of an agreement can be a relevant issue for determining fairness and reasonableness. On this point, the Town inexplicably argues that the Property Owners do not dispute the perpetual duration or argue that the perpetual duration is reasonable. [Respondent's Brief p. 29; Return to Petition, p. 14..] However, the hearing transcript shows that that the Property Owners addressed the perpetual duration argument raised by the Town with reference to the different time frames of

the initial thinning plan and the future maintenance trimming plans.[1] [ROA 345;Tr. 16.] The Property Owners have also pressed the argument on appeal that "the Settlement Agreement should not be considered invalid as an unfair or unreasonable perpetual burden on Town." [Appellants' Brief p. 23. See also Reply Brief, pp. 8-10.]

As explained, the Settlement Agreement does not impose a "set-in-stone" plan intended to control the thinning and trimming of the vegetation for all times in perpetuity. Rather, the Settlement Agreement creates staged plans with different time frames. First, there is a specific plan for work to thin the maritime forest which has grown during the many years that the Town has refused to perform or allow trimming including the thirteen (13) years since the Property Owners brought their original suit. The initial stage for selective thinning of the Accreted Land on the 2500 Block of Atlantic (which is the block where the houses owned by these Property Owners are located) was supposed to have proceeded "with all deliberate speed" after the Settlement Agreement was formally approved and the owners' funding was in place. The second stage for selective thinning was supposed to have allowed other property owners a one-year time period (from the settlement of the underlying action) to opt in to the thinning plan and provide funding. [ROA 196; MIO Ex. 2.] The provisions in the Agreement for these initial stages of thinning to achieve control over the decade of overgrowth allowed by the Town's refusal to honor its obligations under the 1991 Deed are not, by any viewpoint, perpetual. It also should be beyond argument that the time frames of "all deliberate speed" and a one-year opt-in are reasonable in duration, particularly, in comparison to the 10+ years that the Town limited trimming and allowed the overgrown maritime forest to develop.

[1] The covenants at issue in the 1991 Deed contain a finite period of 50 years (with options for extension). We are now 30+ years into that period, but for much of that time the Town has been avoiding it responsibilities for trimming and pruning the vegetation.

After the initial stage of thinning, the Settlement Agreement does not contain a pre-defined, set plan for maintaining the vegetation "going forward." Rather, the Settlement Agreement provides flexibility to structure a plan for maintenance trimming to meet changing conditions on a periodic basis (such as every five years) with all parties obligated to cooperate and act in good faith. The Property Owners maintain that this provision for flexibility "going forward" does not amount to an unreasonable perpetual duration. However, the Property Owners also argued, in the alternative, that the court had the ability and the obligation under the severability clause in the Settlement Agreement to at least enforce the plan for the initial stage of thinning and sever provision for any future maintenance trimming "going forward." [ROA 345; Tr. 16/12-17.] The overgrown maritime forest presents serious dangers which need to be remediated now in accordance with the agreed upon plan, and if necessary, the property owners can haggle with the Town in the future about future maintenance trimming and pruning after the initial agreed-upon work was completed.

CONCLUSION

WHEREFORE, based on the foregoing together with all the issues raised and argued in their prior filings, 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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June 8, 2026