

THE STATE OF SOUTH CAROLINA
In The 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

RECEIVED

Jul 30 2026

SC Court of Appeals

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.

APPELLANTS' PETITION FOR REHEARING

Appellants hereby petition this Honorable Court for rehearing pursuant to Rule 221 of the South Carolina Appellate Court Rules. In its Unpublished Opinion, filed on July 15, 2026, the Court affirmed the Circuit Court's order denying Appellants' motion to strike Respondents' jury

demand. Appellants respectfully submit that the Court overlooked or misapprehended the following points:

I. A PERSONAL REPRESENTATIVE IS BOUND BY THE CONTRACTS OF THE DECEDENT INCLUDING WAIVERS.

The Court found that the Lease Agreement did not apply to Respondent Devan Chokshi because the Lease Agreement excludes “any binding language for the heirs, successors, or assigns of [Hazare].” The Court misapprehended Respondent Devan Chokshi’s status. It is immaterial whether Respondent Devan Chokshi is an heir, successor, or assign of Hazare. Respondent Devan Chokshi asserted these claims as the personal representative of the Estate of Decedent Freni Hazare and the Court’s ruling conflated the two concepts. South Carolina law makes clear that “a personal representative of a decedent . . . has the same standing to sue and be sued . . . as his decedent had immediately prior to death.” S.C. Code Ann. § 62-3-703(c). Thus, because Respondent Devan Chokshi sues in a representative capacity, he assumes the same capacity that Decedent Freni Hazare had immediately prior to her death and must be bound by the same limitations that Hazare would have had in bringing suit against Appellants.

a. THE COURT’S HOLDING MISAPPREHENDS THE FUNDAMENTAL DIFFERENCE BETWEEN A PERSONAL REPRESENTATIVE AND A GUARANTOR.

Like the Circuit Court, the Court based its ruling on a case concerning guarantors of a party to a commercial lease agreement. *See N. Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992). In *N. Charleston Joint Venture*, the Supreme Court held that a guarantor was not bound by a lease because the lease’s terms were applicable only to the landlord and tenant. That case is wholly inapposite because the comparison of a personal representative to a guarantor is the same as comparing apples to oranges. Whereas a personal representative stands in the shoes of the decedent, a guarantor is “separate and distinct”

from the original debtor. *See Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994); *see also CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014). Both the Supreme Court and this Court have recognized:

The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral. The fact that both contracts are written on the same paper or instrument does not affect the independence or separateness of one from the other.

Id. (citing 38 AM.Jur.2d, *Guaranty*, § 4). Importantly, because a guarantor’s obligation is separate from the debtor’s obligation, a guarantor is not entitled to assert the same defenses that are available to the debtor. *CoastalStates Bank*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014). This is, of course, not the case for a personal representative.

Unlike a guarantor, the personal representative of an estate is not separate and distinct from the decedent. Rather, the personal representative inherits the full capacity of the decedent as that person had immediately prior to death. S.C. Code Ann. § 62-3-703. The personal representative is empowered to “prosecute or defend claims,” on behalf of the estate. S.C. Code Ann. § 62-3-715(20). In so doing, the personal representative necessarily is entitled to any claims or defenses to claims that were available to the decedent. Nearly 100 years ago, our Supreme Court explained the role of a personal representative in *Thomason v. Hudgens*, stating, “[a]s the personal ‘representative of the deceased in regard to his personal estate, he (the administrator) has the same property in the goods of the intestate as the intestate himself had when living, **and the same remedies to recover them’ or to prevent their unlawful appropriation by others.**” 161 S.C. 450, 159 S.E. 807, 813 (1931) (emphasis added).

The overarching point that the Court has overlooked is that Respondents have sued in a representative capacity on behalf of the estates of two decedents. They did not inherit their claims as heirs, assigns, or beneficiaries of the Decedents. They are statutorily one and the same with the Decedents. Indeed, Respondents have alleged survival claims under S.C. Code Ann. § 15-5-90. Survival claims belong to the estate, and a personal representative brings such claims not for themselves but “on behalf of an estate.” *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018) (emphasis added). Respondents seek to avoid the obligations of the Decedents while simultaneously claiming their rights in contradiction of South Carolina law.

b. THE COURT OVERLOOKED SOUTH CAROLINA AUTHORITY HOLDING THAT A BAR TO RECOVERY PASSES TO THE ESTATE

The Court’s ruling overlooks longstanding South Carolina caselaw holding that any bar to the decedent’s recovery passes to the decedent’s estate. Favorably citing *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988), the Supreme Court has confirmed that a personal representative’s right to assert claims against a third party is measured by the rights that the decedent possessed at death. *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010). Specifically, the Supreme Court affirmed Judge Anderson’s holding that “a valid release, or other similar acts on [the decedent’s part]” *Id.*, at 349, 699 S.E.2d 146. The terms “waiver” and “release” both mean the act of giving up a right. *State v. Tucker*, 376 S.C. 412 n. 3, 418, 656 S.E.2d 403, 406 n.3 (Ct. App. 2008) (defining waiver); *Brannon v. Palmetto Bank*, 371 S.C. 357, 363, 638 S.E.2d 105, 108 (Ct. App. 2006) (defining release). It cannot be said that a waiver of one’s right to trial by jury does not fall within the scope of those acts that pass to one’s estate when South Carolina law already holds that a complete release of all claims whatsoever passes to the estate at death.

c. THE COURT OVERLOOKED THE PERSUASIVE AUTHORITY OF *COX V. DUKE ENERGY, INC.*

While the Court based its ruling on *N. Charleston Joint Venture*, it overlooked the persuasive authority of *Cox v. Duke Energy, Inc.*, which is substantially more similar to the facts of this matter and further supports the principles already recognized by South Carolina case law. *See Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017). In *Cox*, a pilot was arrested after flying over a nuclear power facility and subsequently brought claims against the facility and the arresting officers. The pilot passed away during litigation, and a personal representative was substituted in to maintain the claims. The defendants moved for summary judgment on the basis that the pilot had signed a release agreement stating that he would take no action against law enforcement officials. The personal representative sought to avoid summary judgment based on this agreement by arguing that the personal representative did not sign the agreement, and it did not specify that it applied to the pilot's heirs and assigns. Rejecting this argument, Judge Bruce Hendricks held that "personal representatives are bound by various waivers signed by or attributable to their decedents." *Cox*, at 542 (citing *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011)). In granting summary judgment, Judge Hendricks correctly held the personal representative to the same standard as the pilot would have been held had he not passed away. This is exactly what the Probate Code instructs and what the Court overlooked in issuing its ruling.

d. THE COURT'S HOLDING GIVES THE PERSONAL REPRESENTATIVE RIGHTS GREATER THAN THE DECEDENT.

The Court further misapprehended the practical impact of affirming the Circuit Court's denial. In holding that Respondents have a right to trial by jury, the Court granted Respondents rights as personal representatives greater than those the Decedents would have had in life. Our Supreme Court has previously held that "while a personal representative stands in the shoes of the

decedent, the personal representative's shoes are no bigger than the decedent's." *Duncan v. Little*, 384 S.C. 420, 427, 682 S.E.2d 788, 791 (2009). In *Duncan*, the Supreme Court held that a bank breached its lease agreement for a safe deposit box when it allowed a personal representative to access a decedent's safe deposit box by drilling the lock. The decedent co-leased the safe deposit box with a third party and the lease agreement required that drilling be performed in the presence of all co-lessees. Because the decedent would not have had the right to drill the lock outside the presence of his co-lessee, the Supreme Court held that the personal representative did not have that right either.

Here, the Court's ruling runs directly in contradiction to the Supreme Court's holding in *Duncan*. In *Duncan*, a non-signatory to a lease agreement for a safe deposit box was bound by its restrictions, but the Court here has freed Respondent from the restrictions that would have applied to Decedent. To better illustrate this issue, the Court should consider the following question: If this were not a case involving a death and instead it were a personal injury claim by a living Freni Hazare against Appellants, would the Court enforce the Jury Waiver Provision? The Circuit Court held that the Jury Waiver Provision was valid and the Court did not disturb that ruling in its Opinion. The Court agrees that Hazare was bound by the Lease Agreement as a tenant and the fact that the tenant is now deceased and it is the Personal Representative of her estate who seeks to enforce her claims and rights should not alter the Court's ruling.

II. A PERSON WHO INVOKES A CONTRACT TO THEIR BENEFIT IS BOUND BY ITS BURDEN.

The Court further found that the Lease Agreement applied only to Decedent Freni Hazare and Appellants and, therefore, held that neither the Estate of Dhruv Chokshi nor Personal Representative Vatsal Chokshi were bound by the Lease Agreement. In so holding, the Court overlooked the nature of Respondent Vatsal Chokshi's claims and the fact that he **invoked** the

Lease Agreement to his benefit in his pleadings. Respondents filed the underlying action claiming violations of the South Carolina Residential Landlord and Tenant Act. Because such claims exist only between landlords and tenants, and because they cannot survive in the absence of a landlord-tenant relationship, Respondent Vatsal Chokshi must be estopped from avoiding the Jury Waiver Provision.

Respondents have alleged violations of the South Carolina Residential Landlord and Tenant Act. This Court has previously held that the Act “creates a cause of action for a tenant of residential property against the landlord . . .” *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009) (citing *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct.App.1989)). Given that the Act creates rights in derogation of common law, this Court is required to strictly construe the statutes contained within the Act. *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). Under the Act, a “tenant” is “a person entitled under a rental agreement to occupy a unit to the exclusion of others.” S.C. Code Ann. § 27-40-210. A person may be a “tenant” in other contexts even without a lease agreement, but for purposes of claims brought under the Act, a person must establish tenancy pursuant to a rental agreement. S.C. Code Ann. § 27-40-110 (“This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement . . .”)

This implication is exemplified by Respondents’ specific allegations that Appellants willfully violated the Act and Respondents’ claim for attorney’s fees pursuant to S.C. Code Ann. § 27-40-610(b). Respondents may only recover on these claims if they establish a tenancy relationship through a lease agreement. *See Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997) (“Attorney’s fees are not recoverable unless authorized by contract or statute.”) Without such a relationship, Respondents’ claims would fail as a matter of law. *See Wilson v.*

Willis, 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019) (estoppel may apply when a claim cannot stand independently of the contract). Respondents, therefore, have directly and specifically invoked the benefit of the Lease Agreement. South Carolina law is clear that with the benefit comes the burden of a contract and Respondent Vatsal Chokshi must be bound by the Lease Agreement and its terms, including the Jury Waiver Provision.

III. THE COURT’S OPINION DOES NOT ADDRESS APPELLANTS’ ARGUMENT THAT THE JURY WAIVER PROVISION APPLIES TO THE ENTIRE CASE.

Appellants raised in their appeal an argument that the Jury Waiver Provision applies to the case in its entirety, but the Court did not address this issue in its Opinion. The plain language of the Lease Agreement and the Jury Waiver Provision states that “a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.” (R., p. 135). It has long been held that “when a contract is clear and unambiguous, the language alone determines its force and effect.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016). The court’s function is to enforce a contract as written, and the court cannot rewrite the contract or substitute its own construction. *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 294 S.C. 158, 160, 363 S.E.2d 235, 236 (Ct. App. 1987). The Court must enforce the plain language of the Lease Agreement and apply the Jury Waiver Provision to the lawsuit as a whole.

CONCLUSION

The Court’s Opinion misapprehends the fundamental nature of a personal representative and prior case law governing the capacity of a personal representative to sue. A personal representative cannot have any rights greater than those the Decedents would have had in life. Further, because Respondents’ claims directly invoke and rely upon the South Carolina Residential

Landlord and Tenant Act, Respondents cannot avoid the burden of the Lease Agreement and must be bound by its terms, including the Jury Waiver Provision.

Dated this 30th day of July, 2026.

WALL TEMPLETON & HALDRUP, P.A.

s/ Ford H. Thrift
Morgan S. Templeton (15456)
Ford H. Thrift (103294)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jul 30 2026
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; The Beach Co.,; Beach
Investment Fund, L.P.; Beach Real Estate
Funds, LLC; Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 103; and Corporations XYZ
103; SRNG, LLC; Asset Living Southeast,
LLC, F/K/A/ JMG Realty, LLC; Shook
Associates Architects, F/K/A/ Shook &
Associates, and David Shook,

Defendants.

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

CERTIFICATE OF SERVICE

I certify that on this 30th day of July, 2026, I have served the **Appellant's Petition for Rehearing** upon Counsel via electronic mail only, on July 30, 2026, addressed to their attorneys of record, Jason S. Stevens, 81 Vincent Drive Mt. Pleasant, South Carolina 29464, Christopher J.

Gramiccioni, Kingston Coventry Law, 825 Lowcountry Blvd., Suite 106, Mount Pleasant, SC 29464, Harold L. Lichten (Pro Hac Vice) Shannon Liss-Riordan (Pro Hac Vice), Olena Savytska (Pro Hac Vice), Lichten & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston, Massachusetts 02116, Attorneys for 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 and upon all other counsel of record at the addresses listed below.

Dated this 30th day of July, 2026.

WALL TEMPLETON & HALDRUP, P.A.

s/ Ford H. Thrift

Morgan S. Templeton (SC Bar #15456)

Ford H. Thrift (SC Bar #103294)

145 King Street, Suite. 300

Post Office Box 1200

Charleston, South Carolina 29402

Telephone: 843-329-9500

**Attorneys for BIF Summerville Station, LLC,
and PAC-Summerville, LLC**

Other Counsel of Record (continued):

Christina Agnes Bisset

J. Christopher Clark

Dominic A. Starr

McAngus Goudelock & Courie LLC

2411 North Oak Street, Suite 401

Myrtle Beach, SC 29577-3173

**Attorneys for Lincoln BP Management Inc
and Lincoln Property Company National LLC**

Jordan N. Teich

Emily C. Sheets

Copeland, Stair, Valz & Lovell, LLP

40 Calhoun Street, Suite 400

Charleston, SC 29401

**Attorneys for Shook Associates, f/k/a
Shook & Associates and David Shook**



Wall Templeton
ATTORNEYS

Ford H. Thrift
Ford.Thrift@WallTempleton.com
Telephone: 843.329.9500 Ext. 201
Facsimile: 843.329.9501

July 30, 2026

RECEIVED

Jul 30 2026

SC Court of Appeals

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Devan Chokshi v. BIF Summerville Station, LLC, et al*
Case No: 2023-CP-18-00836
App No.: 2024-001811

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy of the Appellant's Petition for Rehearing. Also enclosed herewith is one (1) copy of the Certificate of Service of Appellant's Petition for Rehearing on all counsel of record with the enclosed.

Please file the original and return the filed-stamped copy. Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.



Ford H. Thrift

FHT/sjs

enclosures

cc: All Counsel of Record (w/ *enclosures, via electronic mail only*)