

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
The Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2022-CP-24-01036

Court of Appeals Case No. 2024-000924
Unpublished Opinion No. 2026-UP-311 (S.C. Ct. App. filed June 24, 2026)

Sudie Dell Davis and Roosevelt Davis, Petitioners.

v.

Nancy S. Inman, Lisa Tolbert, and
Vernell Humphries, Respondents

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that Petitioners' Petition for Rehearing was filed in the South Carolina Court of Appeals on July 6, 2026, and that the Court of Appeals finally decided the Petition for Rehearing by Order filed August 24, 2026, denying rehearing.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming summary judgment where Respondents, as the moving parties, failed to demonstrate the absence of a genuine issue of material fact concerning an express exception contained in the restrictive covenant, contrary to this Court's decisions establishing that the moving party bears the initial burden under Rule 56?

2. Did the Court of Appeals err in holding that Paragraph 9 of the restrictive covenants unambiguously prohibits Petitioners' residence, without giving operative effect to the express exception for a house trailer located on the “real portion of the said lot,” contrary to this Court's rules requiring contractual provisions to be given effect and restrictive covenants to be strictly construed in favor of the free use of property?

STATEMENT OF THE CASE

This case concerns the enforcement of restrictive covenants against Petitioners Sudie Dell Davis and Roosevelt Davis, owners of Lot 7 in Callison Estates, Phase I, in Greenwood County, South Carolina.

Respondents, Nancy S. Inman, Lisa Tolbert, and Vernell Humphries commenced this action alleging that Petitioners violated restrictive covenants applicable to the Callison Estates subdivision by placing a manufactured residence on Lot 7. (R. pp. 22-23.)¹ Petitioners denied the

¹ Pursuant to footnote 2 of Rule 242(e), SCAR and this Court's Order dated April 30, 2024, this Petition is filed without an Appendix. Citations to the record on appeal are designated 'R. p.' or 'R. pp.' and refer to the page(s) of the Record on Appeal transmitted from the Circuit Court

allegations and asserted counterclaims for declaratory judgment, civil conspiracy, and trespass, together with affirmative defenses including estoppel, waiver, and laches. (R. pp. 38-41.)

The restrictive covenants (“Restrictions”) were recorded in the Greenwood County land records in Deed Book 259, at pages 185-188, Book 267, at pages 435-438, and Book 267, at pages 439-440. (R. pp. 47-48, 53-62.)

Two provisions of the Restrictions, Paragraph 2 and Paragraph 9, are material to this petition. They provide:

2. All residences erected or located on any lot in [the Callison Estates] Subdivision shall have at least sixteen hundred (1,600) square feet, exclusive of patios, carports, garages and porches.

...

9. No commercial vehicles, camper trailers, or house trailers shall be parked or stored on any lot except in the carport or garage or real portion of the said lot.

(R. pp. 53-54.)

The Restrictions do not define the phrases “house trailer” or “real portion of the said lot.”

It is undisputed that Petitioners caused a new olive ScotBilt model 2860 032 manufactured residence, serial number SBHGA12113913AB (the “Residence”), to be placed on Lot 7. The Residence was made by a manufacturer, has a hitch, and originally had axles and wheels, which were removed.

Respondents contended that the residence was a “house trailer” under Paragraph 9 and that it was not located on the “real portion” of the lot. They also contended that it was less than 1,600 square feet, in violation of Paragraph 2.

Respondents moved for summary judgment. (R. p. 77.) Respondents presented no evidence concerning the meaning of the phrase “real portion of the said lot,” the location constituting the “real portion,” or the intent of the parties who created the Restrictions concerning that phrase.

Petitioners submitted the affidavit of real estate agent Larry Morton, who stated that the phrase “real portion of the lot” could be interpreted to mean “anywhere on a lot.” (R. p. 108.) The circuit court nevertheless granted summary judgment.

With respect to Paragraph 9, as to whether the Residence was on the “real portion of the lot,” Judge Griffith held:

Paragraph 9 of the 1977 restrictions expressly prohibits the placement of “house trailers” upon the restricted property, unless the house trailer is in a carport or garage or on the real portion of the lot. This 2022 olive ScotBilt model 2860 032 with serial number SBHGA12113913AB manufactured home is not in a carport or garage. The Defendants offered only a conclusory opinion of what the “real portion of the lot” means without support or citation. This conclusory opinion does not create a genuine issue of fact, and any inference from this lack of specificity is not reasonable in the Court’s analysis.

(R. p. 6).

The Circuit Court further reasoned:

To interpret [the phrase “real portion of the lot”], restriction number 9 must be read as a whole, and with all the restrictions, to gain the intent of the parties.... The Defendants have not given the Court a reasonable interpretation in light of the initial, bright-line prohibition of mobile homes. But, even if they did, while Court should resolve doubts in favor of free use, but this rule is firstly “*subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument.*” [citation omitted]... The Defendant’s position would frustrate the obvious meaning of the restriction, and would, in effect, have the exception subsume the rule in number 9, to prohibit house trailers. The Court cannot envision a circumstance in which a developer would take the time to write a bright-line rule to prohibit mobile homes, just to provide an

exception to nullify the rule to allow them. This creates an absurd result. Employing all the rules of statutory construction to the facts of this case, the number 9 of the restrictions prohibits manufactured homes on lot 7. To find the restrictions allowed mobile homes when number 9 clearly states no house trailers (which are mobile homes) on any lot would defeat the plain and unmistakable intent of the parties (to prohibit mobile homes in the subdivision) when reading of the restrictions as a whole.

A finding number 9 allows mobile homes is not reasonable under the facts before me. I find number 9 of the restrictions is not ambiguous...

(R. pp. 9-10).

Respondents also alleged that the Residence violated Paragraph 2 because it contained less than 1,600 square feet. Respondents supported that contention with the manufacturer's certificate of origin and plans, which listed the two sections of the Residence as 780 square feet each. Petitioners submitted contrary evidence, including the affidavit of Greenwood City/County Planning Director Carol Coleman, who stated that she had inspected the Residence at Lot 7 and determined that it contained 1,680 square feet. (R. p. 101.) Coleman attached measurements from her site visit supporting that determination. (R. pp. 103-104.) Petitioners also submitted an affidavit stating that the Residence exceeded 1,600 square feet. (R. p. 107.)

The circuit court rejected Petitioners' evidence concerning the square footage and relied instead on the manufacturer's stated dimensions in granting summary judgment. (R. pp. 6-7.) The court also questioned, during the hearing, whether a county official might have an interest in reporting a larger square footage for tax purposes. (R. p. 132 lines 3-7.) The Court of Appeals did not reach Petitioners' arguments concerning the square footage because it held that its resolution of Paragraph 9 was dispositive. Opinion, p. 2; see *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

The circuit court ordered Petitioners to remove the residence from their property at their own expense. (R. pp. 1-15.) The court also dismissed Petitioners' counterclaims. Petitioners' motion for reconsideration was denied on May 23, 2024. (R. p. 17.)

Petitioners appealed. Respondents filed no opposition brief in the appeal.

The Court of Appeals issued Unpublished Opinion No. 2026-UP-311 on June 24, 2026, affirming pursuant to Rule 220(b), SCACR. *Opinion*, Appellate Case No. 2024-000924 (S.C. Ct. App. Jun. 24, 2026). The Court of Appeals characterized the restrictive covenant's "prohibition on house trailers" as "unambiguous," and that Petitioners' argument that the phrase "real portion of said lot" permitted a house trailer on any portion of their lot was unreasonable because it would "negate the prohibition against house trailers." Opinion p. 2. The Court of Appeals did not address Petitioners' arguments concerning the square footage of the residence or the circuit court's credibility determinations. Instead, relying on *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999), the Court declined to address those remaining arguments because its disposition of Paragraph 9 of the Restrictions was dispositive.

Petitioners timely petitioned for rehearing on July 6, 2026. The Petition for Rehearing specifically argued that the Court of Appeals had overlooked or misapprehended the law governing the moving party's initial burden on summary judgment and had overlooked or misapprehended the law requiring contractual provisions to be given effect and restrictive covenants to be strictly construed in favor of free use of property. Respondents did not file a response to Petitioners' Petition for Rehearing.

The Court of Appeals denied rehearing by Order filed August 24, 2026, stating that it was unable to discover that any material fact or principle of law had been overlooked or disregarded.

Order Denying Petition for Rehearing, Appellate Case No. 2024-000924 (S.C. Ct. App. Aug. 24, 2026). Petitioners now seek review by this Court pursuant to Rule 242, SCACR.

ARGUMENT

I. THE COURT OF APPEALS' DECISION WARRANTS REVIEW BECAUSE IT CONFLICTS WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT GOVERNING THE MOVING PARTY'S INITIAL BURDEN ON SUMMARY JUDGMENT.

Rule 242(b), SCACR, provides that certiorari is discretionary and will be granted only for “special and important reasons,” including but not limited to a conflict between the Court of Appeals’ decision and a prior decision of the Supreme Court. This case presents such reasons because the Court of Appeals' decision misapplies established South Carolina law, including this Court’s rulings, governing the moving party's burden under Rule 56. The Court of Appeals improperly permitted summary judgment without requiring the moving party seeking enforcement of a restrictive covenant to establish every component of its claim.

The court’s fundamental error was in placing the burden of production on the wrong party. Respondents, (Plaintiffs below), sought summary judgment on their claim that Petitioners violated Paragraph 9. As the moving parties, Respondents bore the initial burden of establishing both the absence of a triable issue of material fact as to each element of their claim. See *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). This Court has repeatedly held that the moving party bears that initial burden. *Id.*; see also *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007).

This Court has made clear that in the absence of contrary South Carolina authority, South Carolina courts “must look back to the common law, for the principles of the law there stated are of force in this State, until there has been some repeal or modification thereof by the law-making body.” *O'Hagan v. Fraternal Aid Union*, 144 S.C. 84, 88, 141 S.E. 893, 894-95 (1928). Under

the common law rule, a Plaintiff seeking to enforce a contractual clause containing an integrated exception bears the burden to allege and prove that their claim is both within the general contract clause and outside of the exception, but if the exception is in a separate, subsequent clause, the burden of proving the applicability of the exception falls on the Defendant. See, e.g. *Highlands Ins. Co. v. Aerovox Inc.*, 424 Mass. 226, 230, 676 N.E.2d 801, 804 (1997); *Vaughan v. Mayo Milling Co.*, 127 Va. 148, 156, 102 S.E. 597, 599-600 (1920); *Bankers & Shippers Ins. Co. v. Blackwell*, 255 Ala. 360, 367, 51 So. 2d 498, 503 (1951); *Phila. Life Ins. Co. v. Farnsley's Adm'r*, 162 Ky. 27, 29, 171 S.W. 1004, 1005 (1915). South Carolina authorities have not repealed or modified this rule and it therefore remains in effect in this state.

Here, Paragraph 9 contains both the duty Respondents seek to enforce, (the prohibition on parking or storing house trailers), and the exception, (“*except in the carport or garage or real portion of the said lot*”). (R. pp. 53-54, emphasis supplied.) Thus, under the common law rule, Respondents bore the burden to establish the inapplicability of the exception. Even assuming that Petitioners' residence is a “house trailer,” Respondents still had to establish that the residence was *not* located in one of the locations expressly permitted by the provision. The phrase “real portion of the said lot” is not incidental to Respondents' claim: it is part of the operative language of Paragraph 9.

The proper inquiry was whether Respondents established, based on the record, that no reasonable interpretation of “real portion of the said lot” could encompass the location of Petitioners' residence. They did not do so. Respondents presented *no* evidence establishing what “real portion” means. They presented no evidence concerning what area of Lot 7 constitutes its “real portion,” nor did they present any evidence establishing that Petitioners' residence was outside whatever area the phrase encompasses.

The circuit court also failed to identify the meaning it attributed to “real portion.” Without identifying what the phrase meant, the Court could not logically determine that Petitioners' residence was outside that portion as a matter of law. Instead, the court treated the exception as having no meaningful application. (R. pp. 9-10.)

The Court of Appeals adopted the circuit court’s reasoning in substance. It held that Petitioners had “failed as a matter of law to establish a genuine issue of material fact as to whether provision nine ... permitted” any placement of the residence on the lot. Opinion, p. 2. That was the wrong question at the summary-judgment stage. It reversed the Rule 56 inquiry. Petitioners were not required initially to prove that their interpretation of Paragraph 9 was correct, when Respondents had not yet met their burden to establish that their own claim was entitled to judgment as a matter of law. If the moving party's evidence does not establish the absence of a genuine issue concerning an essential component of its claim, summary judgment must be denied. *Standard Fire* expressly holds that “[a] party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials.” 301 S.C. at 422, 392 S.E.2d at 462.

This presents a special and important reason for review because it concerns the application of a fundamental and recurring procedural rule in cases concerning restrictive covenants. The decision below risks permitting a moving party to obtain summary judgment by attacking a nonmovant’s interpretation of the language of a restriction rather than by first establishing its own entitlement to judgment.

This Court should grant review under Rule 242(b), SCACR, to clarify that, where a restrictive covenant contains an express exception and the moving party seeks summary

judgment based upon an alleged violation, the moving party must establish the absence of a genuine issue concerning the applicability of that exception before the burden shifts to the nonmoving party.

II. THE COURT OF APPEALS' CONSTRUCTION OF PARAGRAPH 9 OF THE RESTRICTIONS WARRANTS REVIEW BECAUSE IT CONFLICTS WITH PRIOR DECISIONS OF THE SOUTH CAROLINA SUPREME COURT GOVERNING THE INTERPRETATION OF RESTRICTIVE COVENANTS.

South Carolina law provides that words of a restricted covenant must be given the “common, ordinary, meaning attributed to them at the time of their execution.” *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998). At the same time, this Court has long held 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*, 332 S.C. at 4-5, 498 S.E.2d at 863-64, citing *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951); see also *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001).

This Court has also established the general rule that “an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.” *Stevens Aviation, Inc. v. DynCorp Int'l LLC.*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) (citations omitted). The Court of Appeals' construction of Paragraph 9 fails to account for those principles.

Paragraph 9 does not simply provide that “house trailers” are prohibited. It states that they may not be parked or stored on a lot “*except* in the carport or garage or real portion of the said lot.” (R. pp. 53-54, emphasis supplied.) The word “except” necessarily indicates that what follows is an exception to the preceding prohibition. The phrase “real portion of the said lot” therefore must have some operative meaning. Neither Respondents nor the courts below identified that meaning.

The circuit court instead concluded that Petitioners' interpretation would frustrate the supposed purpose of the restriction and that permitting a house trailer under the exception would produce an “absurd result.” (R. pp. 9-10.)

The Court of Appeals similarly held that Petitioners' interpretation was unreasonable because it would “negate the prohibition against house trailers.” Opinion, p. 2. This reasoning assumes that the exception for house trailers on the “real portion” of the lot is legally meaningless. That is not a reasonable construction of the language actually used by the parties. If the intended meaning were that no house trailer could ever be located on any portion of the lot, the drafters could have simply prohibited house trailers from being parked or stored on the lot. They did not do so. They included an express exception.

The question should be what “real portion of the said lot” means, not whether the exception can be disregarded because the court believes the drafters generally intended to prohibit house trailers.

The Court of Appeals did not identify a definition of “real portion,” did not identify its ordinary meaning at the time the Restrictions were adopted, did not identify any evidence of the drafters' intent concerning that phrase, and did not determine what portion of Lot 7 constitutes the “real portion.” Instead, the Court treated Petitioners' interpretation as unreasonable because it would undermine the supposed “prohibition.” That construction effectively makes the exception surplusage. An interpretation giving meaning to all parts of a contract is preferred to one rendering provisions meaningless or superfluous. See *Stevens Aviation*, 407 S.C. at 417, 756 S.E.2d at 153.

The restrictive covenant context makes the Court of Appeals' ruling a particularly stark deviation from Supreme Court precedent. See *Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*,

415 S.C. 72, 83, 781 S.E.2d 115, 121 (Ct. App. 2015) (“The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land.”); see also *Rhodes v. Palmetto Pathway Homes, Inc.*, 303 S.C. 308, 311, 400 S.E.2d 484, 485 (1991); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987). To advance this policy, this Court has specifically instructed “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*, 332 S.C. at 4-5, 498 S.E.2d at 863-64, citing *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951); see also *Spur*, 415 S.C. at 83, 781 S.E.2d at 121; *Gambrell v. Schriver*, 312 S.C. 354, 357, 440 S.E.2d 393, 395 (Ct. App. 1994)(“Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed.”)

“It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.... A restriction on the use of property must be created in express terms or by plain and unmistakable implication,” *Taylor*, 332 S.C. at 4-5, 498 S.E.2d at 863-64 (cleaned up); see also *S.C. Dep't of Nat. Res.*, 345 S.C. at 622, 550 S.E.2d at 302. The Court of Appeals' construction instead resolved the uncertainty in favor of the restriction. This is not a case in which the language expressly and unmistakably prohibits the use at issue. The language expressly creates an exception, but the meaning of the exception was never established.

Petitioners do not contend that the phrase “real portion of the said lot” necessarily means that a house trailer may be placed anywhere on the lot. Rather, Petitioners contend that the phrase must be given some meaning and that Respondents cannot obtain summary judgment while leaving the meaning and application of the phrase unresolved.

The Court of Appeals' decision also creates an unusual result: the court held that the restriction was unambiguous while declining to identify what one of its central terms means. Whether terms in a covenant are ambiguous or not must be construed in light of the covenant as a whole. See S.C. Dep't of Nat. Res., 345 S.C. at 623, 550 S.E.2d at 303 (Word which might be considered ambiguous read alone was unambiguous in the context of the covenant as a whole). The Court of Appeals treated the prohibition against house trailers as unambiguous, but Paragraph 9 does not consist solely of that prohibition; it contains an express exception. A restrictive covenant cannot reasonably be construed when its operative terms are undefined. At a minimum, the unexplained phrase “real portion of the said lot,” coupled with the absence of evidence concerning its meaning or intended application, demonstrates why summary judgment was inappropriate.

This Court's review is warranted because the case presents an opportunity to clarify the proper method of construing restrictive covenants containing undefined exceptions and to reaffirm that courts may not render contractual language meaningless merely because another provision reflects a broader restriction.

The issue also has practical importance. Restrictive covenants “‘run with the land,’ meaning that they are enforceable by and against later grantees.” *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). Here, the construction adopted below resulted in an order requiring Petitioners to remove their residence from their own property at their own expense. (R. p. 13.) A loosening of the presumption in favor of interpreting restrictive covenants to allow for the free use of land could have broad and far-reaching implications for South Carolina property owners.

Special and important reasons therefore exist for this Court to exercise its discretionary jurisdiction and review the Court of Appeals' decision.

CONCLUSION

Petitioners respectfully request that this Court grant the Petition for a Writ of Certiorari, issue the writ, and review Unpublished Opinion No. 2026-UP-311 of the South Carolina Court of Appeals.

Following review, Petitioners respectfully request that this Court reverse the Court of Appeals' decision affirming summary judgment and remand this matter for further proceedings consistent with this Court's opinion.

Respectfully submitted,

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