

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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, 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,

Defendants.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that Appellants filed a petition for rehearing with the Court of Appeals and the Court of Appeals ruled on the petition with finality on August 31, 2026. (App. 249).

QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals' holding that an otherwise valid jury trial waiver is not binding upon a personal representative of an estate conflicts with this Court's holdings in *Duncan v. Little*, 384 S.C. 420, 427, 682 S.E.2d 788, 791 (2009) and *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 699 S.E.2d 143 (2010).
- II. Whether the Court of Appeals' holding that a person who invokes the benefit of a contract may nonetheless avoid its burdens by asserting nonsignatory status conflicts with this Court's holdings in *Kingman v. Nationwide Mut. Ins. Co.*, 243 S.C. 405, 134 S.E.2d 217 (1964), and *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019).
- III. Whether the Court of Appeals erred in refusing to apply the Lease Agreement's jury waiver provision to the action in its entirety despite language that the provision applies to "any lawsuit" based on statute or common law or related to the Lease Agreement.

STATEMENT OF THE CASE

This appeal arises from a wrongful death case initially filed by the Respondents Devan Chokshi and Vatsal Chokshi ("Respondents") as Personal Representatives of the Estates of Freni Hazare and Dhruv Chokshi ("Decedents") in May 2023. Decedents tragically passed away in a September 29, 2022, fire at the Summerville Station Apartments in Summerville, South Carolina. Respondents allege *inter alia* a cause of action against BIF-Summerville Station, LLC, and PAC-Summerville, LLC ("Appellants") for violations of the South Carolina Residential Landlord

Tenant Act (“SCRLTA”) (*See* App. 72-102); (App. 20, 28-30).

Prior to the fire, Decedent Freni Hazare entered into a written lease with Appellants for the lease of Unit B-16 at the Summerville Station apartment complex (the “Lease Agreement”). (App. 132-68). The Lease Agreement states, in relevant part:

Waiver of Jury Trial. To minimize legal expenses and, to the extent allowed by law, you and we agree 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.

(App. 137 at § 39). On February 6, 2024, Appellants filed a motion to strike Respondents’ jury demand based upon the Lease Agreement and its jury waiver provision. (App. 16-18). Respondents opposed the motion on the grounds that (1) neither Respondent is a signatory to the Lease Agreement, (2) no other party is a signatory to the Lease Agreement, (3) Respondents’ claims do not rely upon the Lease Agreement, and (4) the scope of the Lease Agreement does not encompass wrongful death claims. On May 28, 2024, the Circuit Court denied the motion and entered a Form 4 Order holding:

Dhruv Chokshi was not a party to the lease agreement upon which the motion is based. Accordingly, his personal representative, Vatsal Chokshi, cannot be deemed to have waived the right to a jury trial. While Freni Hazare did sign the lease agreement, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Frenzi Hazare. Therefore, Devan Choshi, as personal representative of Freni Hazare, is likewise not a party to the lease agreement.

(App. 3). On June 7, 2024, Appellants filed a Motion to Alter or Amend the Court’s Order pursuant to Rule 59(e), SCRPC. (App. 33-42). Appellants sought reconsideration on the grounds that “(1) the Jury Waiver Provision is enforceable at least as to Decedent Freni Hazare; (2) Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, is bound by the Jury Waiver Provision; (3) the Jury Waiver Provision applies to the instant lawsuit in its entirety; and (4) Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, invoked

the Jury Waiver Provision by alleging claims under the South Carolina Residential Landlord and Tenant Act.” (*Id.*). On October 4, 2024, the Circuit Court amended its prior Order and held, in relevant part:

The Court’s prior order as to Dhruv Chokshi and Vatsal Chokshi remains unchanged. The Court’s prior order with regard to Devan Chokshi and Freni Hazare is hereby amended as follows: While Freni Hazare did sign the lease agreement which contains a facially valid jury trial waiver, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Freni Hazare. Conversely, paragraph 1 of the lease agreement specifically provides that the lease agreement applies to the successors’ in interest or assigns of the owners. Had the drafter of the agreement intended the agreement to survive the death of Ms. Hazare, it certainly could have included language to that effect. See, *Kelly v. McCombs*, 2019 WL 4052491 (S.C. Ct. App. 2019). Therefore, Devan Chokshi, as personal representative of Freni Hazare, is not a party to the lease agreement. The motion to strike jury demand remains denied. See, *North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992) (holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

(App. 6-7).

On October 24, 2024, Appellants timely filed their Notice of Appeal from the Circuit Court’s Order. The Court of Appeals affirmed the Circuit Court in an unpublished opinion filed July 15, 2026. (App. 234-35). In relevant part, the Court of Appeals held:

Reading the plain language of the Lease Agreement, we find the jury trial waiver did not apply to Respondents. By its own express terms, the waiver provision provides that "you" and "we" agree to a bench trial. Reading the Lease Agreement as a whole, it is apparent that "you" refers solely to [Decedent Freni] Hazare and "we" refers to [Appellants] or any of their successors or assigns. The contract notably excludes any binding language for the heirs, successors, or assigns of the tenant. Thus, the circuit court properly denied Appellants' motion to strike.

(App. 236). Appellants timely filed a Petition for Rehearing on July 30, 2026. (App. 237-45).

The Court of Appeals denied the petition on August 31, 2026. (App. 249-50). This petition for writ of certiorari follows.

ARGUMENT

I. THE COURT OF APPEALS' HOLDING IS IN DIRECT CONFLICT WITH *DUNCAN* AND *ESTATE OF STOKES* BECAUSE IT GIVES THE PERSONAL REPRESENTATIVE GREATER RIGHTS THAN THE DECEDENT HAD.

The Court of Appeals' decision allows Respondents to pursue a jury trial against Appellants despite recognizing that the Lease Agreement contained an otherwise valid jury waiver provision that would have at least barred Decedent Freni Hazare from pursuing a jury trial had she lived. This directly conflicts with this Court's opinions in *Duncan* and *Estate of Stokes*, as well as myriad cases dating back centuries¹, which hold that a personal representative's rights cannot be greater than the rights the decedent had prior to death. The Circuit Court recognized that the Lease Agreement "contains a facially valid jury waiver" that ostensibly applied to all parties to the Lease Agreement, and the Court of Appeals did not disturb that ruling. (App. 6; 234-36). Instead, the Court of Appeals held that the Lease Agreement applied only to Decedent Freni Hazare and not Respondents because it makes no mention of them in its terms. (App. 236 ("it is apparent that 'you' refers solely to Hazare . . .")). The Court of Appeals held that the Lease Agreement "notably excludes any binding language for the heirs, successors, or assigns of [Hazare]" but did not make any mention of Respondents' status as personal representatives or case law governing the same.

a. A personal representative cannot have rights greater than the decedent and a personal representative is bound by waivers executed by the decedent.

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). The concept has long been described as "standing in the shoes" of the decedent. While the metaphor has been used in varying contexts, this Court has consistently held

¹ *E.g., Milhous v. Sally*, 43 S.C. 318, 21 S.E. 268, 271 (1895) (heirs standing in the shoes of a decedent "can have no higher rights than their ancestors."); *Simmons v. Stevens*, 118 S.C. 342, 110 S.E. 798, 800 (1922) (an executor should not be treated "with more consideration than his deceased.").

that a personal representative who stands in the shoes of another cannot have rights greater than those of the decedent. In *Duncan v. Little*, this Court aptly noted that “while a personal representative stands in the shoes of the decedent, the personal representative's shoes are no bigger than the decedent's.” 384 S.C. at 427, 682 S.E.2d at 791 (2009). In that case, the decedent co-leased a safe deposit box with a third party prior to his death. The personal representative sought to access the safe deposit box and arranged for it to be drilled without providing notice to the living co-lessee. The lease agreement required that drilling be performed in the presence of all co-lessees. This Court held that because the decedent would not have had the right to drill the lock outside the presence of his co-lessee, the personal representative did not have that right either.

The following year, this Court reaffirmed its “steadfast” adherence to “the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued.” *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010). There, personal representatives asserted malpractice claims against a physician for failure to properly diagnose and treat the decedent for cancer that ultimately led to his death. The trial court held that the three-year statute of limitations ran prior to decedent’s death and dismissed his personal representative’s claim against the physician. Affirming the dismissal, this Court noted that “the controlling question, therefore, is whether the deceased, if he had not died, could have maintained the action.” *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010) (citing *Price v. Richmond & Danville R.R. Co.*, 33 S.C. 556, 560, 12 S.E. 413, 413-14 (1890) (emphasis in *Est. of Stokes*)). The Court also cited favorably the opinion of Judge Anderson in *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988), and noted that he correctly ruled that “anything that would have defeated the decedent's recovery had

he survived the accident ‘such as contributory negligence, a valid release, or similar acts on his part,’ would defeat the right of recovery in behalf of his family in case of his death. *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. at 349, 699 S.E.2d at 146 (emphasis added). The Court then held that because the decedent was time-barred from asserting the claims against his physician, so too were his personal representatives.

As this Court has held that a valid release is binding on the decedent’s estate and personal representative, it follows that this Court would hold that a waiver of the right to a jury trial is also binding. The terms “waiver” and “release” both mean the act of giving up a right. *State v. Tucker*, 376 S.C. 412, 418 n.3, 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). Federal case law supports this conclusion as well. In *Cox v. Duke Energy, Inc.*, Judge Hendricks held that the personal representative of a deceased pilot could not maintain causes of action against law enforcement officials where the pilot had signed a release agreement stating that he would take no action against law enforcement officials. 176 F. Supp. 3d 530 (D.S.C. 2016), *aff’d*, 876 F.3d 625 (4th Cir. 2017). Judge Hendricks relied upon the prior decision of Judge Currie in *THI of S.C. at Columbia, LLC v. Wiggins*, in which she held that a personal representative was “bound in her capacity . . . if [decedent] would have been bound immediately prior to his death.” 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011).

The Court of Appeals’ decision does not address any of the above cases, and its holding directly conflicts with them and our statutes governing the role of a personal representative. Specifically, S.C. Code Ann. § 62-3-703(c) provides that a personal representative “has the same standing to sue and be sued” as the decedent had immediately prior to death. By holding that Respondents may pursue a jury trial notwithstanding Decedent Hazare’s contractual waiver of that

right, the Court of Appeals effectively afforded the Estate rights different from, and greater than, those possessed by Decedent Hazare herself. Had Decedent Hazare survived the fire and pursued the same causes of action asserted in this case, she would have been bound by the jury waiver provision. Someone with the “same standing to sue and be sued” necessarily must also be bound by that waiver, yet the Court of Appeals held otherwise.

b. The Court of Appeals erred by relying upon cases addressing fundamentally different relationships and not considering any cases governing the function of a personal representative.

Citing *North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992), the Court of Appeals effectively ruled that a personal representative will not be bound by an agreement unless the agreement contains express language to that effect. In that case, this Court held that guarantors of a party to a commercial lease agreement had not waived their rights to a jury trial because they were not a party to the lease containing those terms. While this Court’s reasoning in that case was correct for the facts at issue then, its holding does not apply to the case at hand because of the fundamental difference between the guarantor/debtor relationship and the personal representative/decedent relationship. This Court has held that 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). A guarantor does not stand in the shoes of the debtor and cannot assert the same defenses as a debtor. *CoastalStates Bank*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014).

Likewise, the Court of Appeals’ decision conflates the concept of a personal representative with that of heirs, successors, and assigns, but merely relying upon the lack of language binding those classes of person to the agreement is an error of law because a personal representative is a

legally distinct concept. An examination of the function of a personal representative demonstrates the significance of this error. A personal representative is an “executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.” S.C. Code Ann. § 62-1-201(33). “Under the modern Probate Code, the personal representative is the central figure responsible for the orderly management of a decedent’s estate.” *Fisher ex rel. Shaw-Baker v. Huckabee*, 415 S.C. 171, 179, 781 S.E.2d 156, 160 (Ct. App. 2015), *aff’d as modified*, 422 S.C. 234, 811 S.E.2d 739 (2018). The personal representative “has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate.” S.C. Code Ann. § 62-3-703(a). Indeed, Justice Cardozo once noted that the historical nature of a personal representative is “to carry forward the persona” of the decedent. *Hulburd v. Comm’r of Internal Revenue*, 296 U.S. 300, 309, 56 S. Ct. 197, 201, 80 L. Ed. 242 (1935). In so doing, the personal representative is empowered to “prosecute or defend claims” on behalf of the estate. S.C. Code Ann. § 62-3-715(20). That is exactly what Respondents are doing in the case at issue by asserting wrongful death and survival claims. *See Fisher*, 422 S.C. at 238, 811 S.E.2d at 741 (noting that survival claims belong to the estate and that a personal representative brings such claims not for the representative personally but “on behalf of an estate”). Conversely, heirs and successors are generally those who stand to inherit property from a decedent. S.C. Code Ann. § 61-1-201(20) & (47). While a person can be both an heir and a personal representative, the Probate Code treats these roles as distinct things. Respondents did not inherit their claims but instead assert them on behalf of Decedents.

II. RESPONDENTS INVOKED THE LEASE AGREEMENT BY ASSERTING CLAIMS UNDER THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT AND A PERSON WHO INVOKES A CONTRACT TO THEIR BENEFIT IS BOUND BY ITS BURDEN.

The Court of Appeals also erred in finding that the Lease Agreement applied only to Decedent Freni Hazare and not Decedent Dhruv Chokshi. The Court of Appeals held that only Hazare was listed in the Lease Agreement and, therefore, Chokshi was not included in the definition of “you.” (App. 236). This fails to consider Respondents’ clear invocation of the Lease Agreement and runs contrary to this Court’s holdings on the law of third-party beneficiaries and direct-benefits estoppel. In *Kingman v. Nationwide Mut. Ins. Co.*, this Court held:

where a third party elects to avail herself of a contract entered into between others for her benefit, she makes the contract her own, and must bear the burden as well as reap the benefits that properly belong to her as a party to the contract. Her rights depend upon and are measured by the terms of the contract.

243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964). Likewise, this Court has applied the doctrine of direct-benefits estoppel when a nonsignatory “has consistently maintained that other provisions of the same contract should be enforced to benefit him.” *Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). Under either principle of law, reversal is warranted because Respondents have asserted claims that require the existence of a rental agreement, and no other contract exists.

Respondents filed the underlying action claiming violations of the South Carolina Residential Landlord and Tenant Act. (App. 99). The SCRLTA “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)) (emphasis added). Under the Act, a “tenant” is “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210 (emphasis added). The Act further notes that its specific scope “applies to, regulates, and

determines rights, obligations, and remedies under a rental agreement . . .” S.C. Code Ann. § 27-40-110. Respondents have directly alleged that Decedent Dhruv Chokshi was a tenant residing at the Summerville Station apartment complex. (App. 73 at ¶¶1, 3). Respondents have never alleged that an oral contract exists or existed for Dhruv Chokshi’s residence at the Summerville Station apartment complex, and the only written rental agreement that has been identified is the Lease Agreement.

Under the law of third-party beneficiaries, a person who seeks the benefits of a contract made for their benefit must also accept its burdens. *Kingman*, 243 S.C. at 412, 134 S.E.2d at 221. A third-party beneficiary is one whom the contracting parties intended to directly benefit. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). For unknown reasons, Decedent Hazare did not include her son as an occupant on the Lease Agreement, but the sole function of the Lease Agreement is to obtain housing for Decedents, and it cannot be said that Decedent Chokshi did not receive a benefit under the Lease Agreement. Moreover, as Decedents’ personal representative, Respondents directly claim the protections that the Lease Agreement provided to the household.

Even if Decedent Chokshi was not an intended third-party beneficiary, the doctrine of direct-benefits estoppel independently binds Decedent to the jury-waiver provision. That doctrine prevents a nonsignatory who "has consistently maintained that other provisions of the same contract should be enforced to benefit him" from avoiding the provisions he finds unfavorable. *Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019). Respondents have consistently invoked the SCRLTA and a landlord-tenant relationship between Decedent Chokshi and Appellants. Respondents allege that Decedent Chokshi was among the "tenants residing in the Summerville Station complex." (App. 73 at ¶ 3). Respondents also allege that Defendants owed

him duties "as Decedent Chokshi's landlord, owner and manager of the dwelling in which the Decedent CHOKSHI lived." (App. 91 at ¶ 75; App. 97 at ¶ 83) (capitalization altered from original). These claims directly invoke the SCRLTA, and the SCRLTA applies only to "rights, obligations, and remedies under a rental agreement." S.C. Code Ann. § 27-40-110. Respondents cannot rely on the Lease Agreement to establish Defendants' duties to Dhruv Chokshi while disclaiming the Lease Agreement's jury-waiver provision.

South Carolina courts have applied the doctrine to bind nonsignatories to arbitration agreements. *See Wilson*, 426 S.C. at 338–40, 827 S.E.2d at 174–75; *Dixon v. Pattee*, 442 S.C. 233, 257, 898 S.E.2d 158, 170 (Ct. App. 2023). An arbitration agreement goes further than a jury waiver. Arbitration removes the dispute from the courts entirely and a party who agrees to arbitration foregoes the rights to a jury, judge, and most rights of appellate review. In the case of a jury waiver, a party still has access to a judge and appellate review. Thus, this Court should apply the doctrine to Respondents and find that Decedent Dhruv Chokshi and his personal representative are bound by the Lease Agreement and its jury waiver provision.

III. THE JURY WAIVER PROVISION APPLIES TO THE ENTIRE CASE.

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.” (App. 137). It has long been held that “when the contract’s language 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 of Appeals erred by disregarding the plain language of the Lease Agreement.

CONCLUSION

The Court of Appeals' ruling that neither Respondent is bound by the terms of the Lease Agreement runs contrary to this Court's prior rulings on the fundamental nature of a personal representative and the law of estoppel. The Court of Appeals' decision permits Respondents to avail themselves of the rights and remedies that the Decedents had waived during their lifetimes and permits Respondents to obtain contractual benefits without the corresponding burdens. Appellants respectfully request that this Court issue a writ of certiorari to consider all questions presented and consider this appeal fully on its merits.

Dated this 30th day of September, 2026. WALL TEMPLETON & HALDRUP, P.A.

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