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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2026-002158

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 Petitioners.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that the Jury Waiver Provision contained in the Lease Agreement does not apply to Respondents Devan Chokshi and Vatsal Chokshi because they are not parties or signatories to the Lease Agreement.
2. Whether this Court should review an estoppel argument that *Wilson v. Willis* forecloses, because Respondents' claims arise from statutory and common law duties rather than the lease, or a third-party beneficiary theory that Petitioners did not present to the Court of Appeals or raise in the petition for rehearing.
3. Whether any question about the scope of the jury waiver arises, where the Court of Appeals properly held that the waiver does not apply to Respondents at all.

STATEMENT OF THE CASE

On September 29, 2022, a fire engulfed Building B of the Summerville Station Apartments, a 212-unit complex in Summerville, and killed two of its residents, Freni Hazare and her fifteen-year-old son, Dhruv Chokshi. (App. 77-78, 86, 88; R. 75-76, 84, 86). Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, and Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi ("Respondents"), brought this action against the owners of the complex, BIF-Summerville Station, LLC and PAC-Summerville, LLC ("Petitioners"), and others. (App. 70-102; R. 68-100). The complaint asserts survival claims on behalf of each estate, wrongful death claims for the statutory beneficiaries, claims under the South Carolina Residential Landlord and Tenant Act ("SCRLTA"), and related claims, and demands a jury. *Id.* It pleads no breach of the lease and seeks nothing under it. *Id.*

Ms. Hazare called 911 from the apartment and, the complaint alleges, "can be heard wailing in pain while burning alive for several minutes." (App. 88; R. 86). Dhruv placed a separate call.

He can be heard screaming "Mom! Mom!" and, "repeatedly coughing and struggling to speak," telling the dispatcher, "Too much smoke in here – Please!" The dispatcher told him to go to the window in his bedroom. He is then heard screaming, "I can't open my window!" (App. 88; R. 86). The complaint alleges that windows and sliding doors at Summerville Station had been painted shut and screwed shut, that the owners and their property manager had been alerted to these conditions by residents, that the property manager's own employees admitted the smoke detectors were a "known problem" before the fire, that one of the two fire extinguishers in Building B had been stolen and not replaced, and that the building had no sprinklers. (App. 82-84, 89-90; R. 80-82, 87-88).

Ms. Hazare had signed a National Apartment Association form lease for Unit B-16 on July 7, 2022. (App. 132-38; R. 130-36). Dhruv Chokshi did not sign the lease and is not listed in it as a resident or an occupant. Section 2 of the lease, which provides a space to "list all other occupants not signing the Lease Contract," is blank. (App. 132; R. 130). Section 39 of the lease provides:

> 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; R. 135) ("Jury Waiver Provision").

Section 1 of the lease identifies the parties: "This Lease Contract (sometimes referred to as the 'lease') is between you the resident(s) (list all people signing the Lease Contract)" and "us, the owner." It provides that "[t]he terms 'you' and 'your' refer to all residents listed above" and that "[t]he terms 'we,' 'us,' and 'our' refer to the owner listed above (or any of owner's successors' in interest or assigns)." (App. 132; R. 130). Freni Hazare is the only resident listed. *Id.* Section 38.D provides that "[t]his Lease Contract binds subsequent owners." (App. 137; R. 135). Ms. Hazare also signed a Photo, Video, and Statement Release Addendum, which is "hereby incorporated into

and made a part of such Lease Contract" and whose release of liability provides: "This consent and release shall be binding upon you and your heirs, legal representatives and assigns." (App. 162; R. 160). The Jury Waiver Provision contains no such language.

Petitioners moved to strike the jury demand, arguing that Respondents were bound by the Jury Waiver Provision. (App. 16-18; R. 14-16). Respondents opposed the motion, arguing among other grounds that a jury waiver binds only the parties to it, that Ms. Hazare was the only person who signed the lease, that Dhruv, a fifteen-year-old, is named nowhere in it, and that Respondents' claims arise under the SCRLTA and the common law, not the lease, so estoppel is not implicated. (App. 19-32; R. 17-30). The circuit court heard argument on May 6, 2024 (App. 103-31; R. 101-29), and denied the motion on May 28, 2024, ruling that "Dhruv Chokshi was not a party to the lease agreement upon which the motion is based," that "his personal representative, Vatsal Chokshi, cannot be deemed to have waived the right to a jury trial," and that the lease "is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns" of Ms. Hazare. (App. 3; R. 1).

Petitioners moved to alter or amend the May 28, 2024 order. (App. 33-42; R. 31-40). On October 4, 2024, the circuit court denied that motion, leaving its ruling as to Dhruv and Vatsal Chokshi unchanged and amending its order as to Devan Chokshi and Ms. Hazare to explain:

> 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; R. 4-5).

Petitioners appealed on October 24, 2024. On July 15, 2026, the Court of Appeals affirmed in an unpublished per curiam opinion. *Chokshi v. BIF-Summerville Station, LLC*, Op. No. 2026-UP-364 (S.C. Ct. App. filed July 15, 2026) (App. 234-36). After setting out section 1 of the lease, 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 Hazare and "we" refers to BIF, PAC, 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. *See N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638 (holding a jury trial waiver clause contained within a lease agreement did not bind tenant's guarantors because "the waiver clause, by its express terms, is applicable only to Landlord and Tenant" and the guarantors were not parties to the lease contract); *see also Penland Auto., LLC v. Dealer Fin. Holdings, LLC*, No. 2023-001053, 2026 WL 191737 (S.C. Ct. App. Jan. 21, 2026) (holding the jury waiver provision from an initial 2016 financing agreement did not apply in a 2020 agreement between the parties when the subsequent agreement lacked express intent to incorporate all of the prior terms of the 2016 agreement); *Keels*, 315 S.C. at 342, 433 S.E.2d at 904 ("The right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication.").

(App. 236).

Petitioners filed a petition for rehearing on July 30, 2026 (App. 237-48), which the Court of Appeals denied on August 31, 2026 (App. 249-50). Petitioners filed their petition for a writ of certiorari on September 30, 2026.

ARGUMENT

The South Carolina Constitution provides that "[t]he right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14. "Trial by jury is a substantial right and any waiver thereof must be strictly construed." *Broome v. Watts*, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995) (quoting *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)).

The petition should be denied because the Court of Appeals correctly held that Devan Chokshi and Vatsal Chokshi, as non-parties and non-signatories, are not bound by the Jury Waiver Provision.

A writ of certiorari "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Petitioners invoke only one of the considerations listed in the rule, a claimed conflict "with a prior decision of the Supreme Court." Rule 242(b)(3), SCACR. There is none. The decision below is an unpublished opinion with no precedential value, Rule 268(d)(2), SCACR, that construed one form lease according to its plain language and applied this Court's settled rule of strict construction. Petitioners do not contend that the Court of Appeals misread the lease's definition of "you" and "we." They contend that principles of estate law should override what the lease says. That

argument conflicts with no decision of this Court, and the authorities Petitioners cite do not address the question the Court of Appeals decided.[1]

I. The Court of Appeals Correctly Determined that Respondents Are Not Bound by the Jury Waiver Provision Because They Are Not Parties or Signatories to the Lease Agreement, and That Holding Conflicts with No Decision of This Court.

A. The Court of Appeals' decision accords with binding South Carolina precedent.

A jury waiver binds only those who are parties to it. The Court of Appeals, applying this Court's decision in *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638, concluded that Respondents, who did not sign the Lease Agreement, are not bound by the Jury Waiver Provision contained in it. (App. 236).

Petitioners' attempt to distinguish this matter from *N. Charleston Joint Venture* is unavailing. In *N. Charleston Joint Venture*, a landlord sued its tenant for past-due rent and joined tenant's guarantors to the lawsuit. 307 S.C. at 534, 416 S.E.2d at 638. The tenant and the guarantors counterclaimed and requested a jury trial. *Id.* As was the case here, the landlord invoked the jury waiver clause in the lease, and the trial court held that it bound the guarantors. *Id.* This Court agreed with the guarantors' contention that "Guarantors, not being parties to the waiver clause, are entitled to a jury trial." *Id.* at 535, 416 S.E.2d at 638. The Court stated:

> Trial by jury is a substantial right and any waiver thereof must be strictly construed. Here, the waiver clause, by its express terms, is applicable only to Landlord and Tenant. Although the guaranty was incorporated by reference into the lease contract, Guarantors were not parties to the lease nor were they named in the waiver clause.

Id. (citation omitted).

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[1] Respondents also argued in the Court of Appeals that the motion to strike was untimely under Rule 12(g), SCRCP. (App. 219-21). The Court of Appeals did not reach that ground, and Respondents preserve it as an additional sustaining ground should this Court grant review.

Petitioners seek to differentiate this case by focusing on the differences between a personal representative and a guarantor. This argument overlooks the principle this Court applied: because trial by jury is a substantial right, a waiver of it binds only those who are parties to the waiver clause or named in it. *Id.* The guarantors in *N. Charleston Joint Venture* were not bound even though "the guaranty was incorporated by reference into the lease contract." *Id.* The decision turned on their status as non-parties to the waiver clause, not on their status as guarantors.[2] This Court applied the same principle in *Anderson Bros. Bank v. Adams*, holding that "boilerplate language, inserted by Bank, at the end of a mortgage signed only by Debtors, is not binding upon Guarantors." 305 S.C. 25, 28, 406 S.E.2d 173, 175 (1991). And in *Broome*, the Court refused to let a jury waiver by the named defendant bind the party that actually had to defend the case, because "Watts could not give up a right to a jury trial which was properly possessed by USAA." 319 S.C. at 340-41, 461 S.E.2d at 48.

The Court of Appeals correctly concluded that Ms. Hazare alone was a signatory to the Lease Agreement, and that Respondents were therefore not bound by the Jury Waiver Provision. (App. 236). This conclusion is reinforced by the plain language of the Agreement. As the Court of Appeals noted, "[w]hile jury trial waivers are strictly construed, they are nevertheless construed according to their 'plain, ordinary and popular meaning.'" (App. 235) (citation omitted). By the plain language of the Lease Agreement, the Jury Waiver provision does not apply to Respondents.

Section 1 of the Lease Agreement clearly defines the parties bound by the agreement, stating that "The terms 'you' and 'your' refer to all residents listed above," which includes only

[2] The central holding of *N. Charleston Joint Venture*, that a jury waiver binds only those who are parties to it, has since been reaffirmed by this Court. *Broome v. Watts*, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995).

Freni Hazare. (App. 132; R. 130). However, Ms. Hazare is now deceased and is not a party to this lawsuit. Ms. Hazare's adult son, Devan Chokshi, who sues as her personal representative, never signed the Lease Agreement containing the Jury Waiver provision. (App. 74, 138; R. 72, 136).

The Lease Agreement also demonstrates through its asymmetrical language that the drafter knew how to bind non-signatories when it intended to. While Section 1 extends "we" to "any of owner's successors' in interest or assigns," and Section 38.D provides that "[t]his Lease Contract binds subsequent owners," the lease contains no similar provision extending "you" to the tenant's heirs, representatives, or estate. (App. 132, 137; R. 130, 135). That asymmetry cannot be dismissed as accidental in a thoroughly drafted form contract. Nor did the drafter simply fail to think about the tenant's heirs and representatives. The Photo, Video, and Statement Release Addendum, signed by Ms. Hazare and "incorporated into and made a part of" the lease, states that its release "shall be binding upon you and your heirs, legal representatives and assigns." (App. 162; R. 160). When the drafter intended a provision to bind Ms. Hazare's legal representatives, it said so. It did not say so in the Jury Waiver Provision. The drafter knew how to bind successors but chose not to do so for the tenant's representatives. The maxim *expressio unius est exclusio alterius* "is defined as: 'When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.'" *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876 (2000) (quoting *Little v. Town of Conway*, 171 S.C. 27, 171 S.E. 447, 448 (1933)); *see also Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C. 113, 119, 463 S.E.2d 600, 604 (1995) (describing *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984), as applying the "rule that enumeration of particular things excludes idea of something else not mentioned").

Further, the Jury Waiver itself provides that "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; R. 135). The terms "you and we" are explicitly defined in Section 1 as referring only to the named resident (Freni Hazare) and the property owner, reinforcing that the waiver was intended to bind only the actual parties to the agreement. (App. 132; R. 130).

Additionally, Section 32 of the Lease Contract explicitly states: "Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us." (App. 136; R. 134). This provision further confirms that the agreement is strictly between the named parties. When read together with the definitions in Section 1, this language establishes that the contract – including the Jury Waiver – was personal to the signatories and not intended to bind the non-signatory personal representatives of a deceased tenant.

Thus, the Court of Appeals correctly held that the outcome of this case is governed by *N. Charleston Joint Venture*. The only names on the Lease Agreement are (1) Freni Hazare, (2) BIF-Summerville Station, LLC, and (3) PAC-Summerville, LLC. (App. 132; R. 130). The Respondents in this case – Vatsal Chokshi and Devan Chokshi – are not parties to the Lease Agreement. As this Court has made clear, non-parties like Respondents are not bound by jury waivers because "[t]rial by jury is a substantial right and any waiver thereof must be strictly construed." *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.

B. The authorities offered by Petitioners are inapposite.

Petitioners argue that *N. Charleston Joint Venture* does not apply and that this Court should instead look to case law concerning the rights of personal representatives. This argument confuses

the issues. In *Estate of Stokes*, *Quattlebaum*, and *Cox*, the court concluded that the personal representative could not recover because the decedent would have been barred from recovering in life; in *Duncan*, this Court held that a personal representative exercising a contractual right of access to a safe deposit box had no greater right than the decedent. *See Duncan v. Little*, 384 S.C. 420, 427, 682 S.E.2d 788, 791 (2009) ("The more targeted question is whether the statutory powers granted to a personal representative permit greater powers than the decedent had when living. We answer the question no."); *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010) (holding that a wrongful death claim lies in the estate "only when the decedent possessed the right of recovery at his death," so a claim time-barred before death cannot be revived); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939 (D.S.C. 1988) (same); *Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530, 542 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017) (holding that a release signed by the decedent barred the substituted personal representative from pursuing the same claims).

These cases do not help Petitioners. Had they survived the fire, Freni Hazare and Dhruv Chokshi could have brought this action against Petitioners. The action was timely filed, and neither decedent released any claim. The only question is whether Respondents may present their claims to a jury, and *N. Charleston Joint Venture* answers it. *Estate of Stokes* itself explains that the statutory condition that the decedent could have maintained the action "has reference to the circumstances attending the injury, and the nature of the wrongful act or omission which is made the basis of the action." 389 S.C. at 348, 699 S.E.2d at 145 (quoting *Scott v. Greenville Pharmacy, Inc.*, 212 S.C. 485, 489, 48 S.E.2d 324, 326 (1948)). Contributory negligence, a release, and the statute of limitations are defenses that defeat recovery. A jury waiver is not, and Petitioners' liability to each estate is the same whether the facts are found by a judge or a jury. Nothing in these

cases suggests that the condition on wrongful death recovery governs the factfinder or any other matter of procedure.

Section 62-3-703(c) of the Probate Code does not fill the gap. It gives a personal representative "the same standing to sue and be sued" as the decedent had. Standing is the capacity to bring the claim, and Petitioners do not contest it. The statute does not say that a personal representative is a party to every contract the decedent signed, and Petitioners cite no decision of this Court so holding. The two federal district court orders they cite are not decisions of this Court and do not involve jury waivers. In *Cox*, a plaintiff who had released his own claims died during the litigation, and the court held the release barred the substituted personal representative from pursuing those same claims. That result follows from *Stokes*, because a release defeats recovery. *Cox* also rejected the argument that the release did not reach the personal representative because it omitted heirs and assigns, but it did so under § 62-3-703, because the personal representative was asserting the decedent's own released claim. That holding says nothing about the wrongful death claims here, which were never the decedent's, and as to the survival claim it raises only the question *Broome* answers. In *THI of South Carolina at Columbia, LLC v. Wiggins*, No. 3:11-888-CMC (D.S.C. Sept. 13, 2011), the court compelled arbitration of an estate's claims because the decedent himself was bound by the agreement in life, as the named resident and intended beneficiary of the admission contract for his residential care, so his personal representative took his standing under § 62-3-703. The order applied the "heavy presumption of arbitrability," the opposite of the strict construction that governs jury waivers, and it says nothing about binding a person the contract never reached. Neither order addresses the question here.

Petitioners' underlying premise, that the Court of Appeals gave Respondents rights greater than Ms. Hazare had (Pet. 4-5, 7), also mistakes what the Court of Appeals decided. The Court of

Appeals did not hold that Ms. Hazare's waiver was invalid or that her estate may disregard a waiver that reaches it. It held that this waiver, read according to its terms, does not reach Respondents. Whether a particular clause reaches a particular litigant is a question of contract construction answered case by case, and the Court of Appeals answered it under this Court's rule of strict construction. That is not a conflict with this Court's precedent. It is an application of it. *Duncan*, on which Petitioners rely, says otherwise on the question the Court of Appeals actually decided: "[w]here a contract is unambiguous, the matter becomes one of law and the parties' intent as clearly set forth in their agreement must be given effect," and any ambiguity "would have to be construed against the Bank which drafted the agreement." 384 S.C. at 424-26, 682 S.E.2d at 790-91.

C. The wrongful death claims never belonged to Ms. Hazare, and Dhruv Chokshi never agreed to anything.

Petitioners' argument proceeds as if the only claims in this case were Ms. Hazare's own. They are not. The wrongful death claims are brought "for the benefit of" the statutory beneficiaries, here Devan Chokshi and Vatsal Chokshi, not for the estate. S.C. Code Ann. §§ 15-51-10, -20. As this Court put it in *Stokes*, "a new statutory right is created by § 15-51-10 in the personal representative of the decedent," 389 S.C. at 348, 699 S.E.2d at 146 (quoting *Quattlebaum*, 685 F. Supp. at 942), a right the decedent never held and could not have waived. The Act itself contemplates a jury: in "every such action the jury may give damages," and the damages go "to the parties respectively for whom and for whose benefit such action shall be brought." S.C. Code Ann. § 15-51-40. Respondents made this point in the circuit court (App. 113; R. 111) and in the Court of Appeals (App. 215), and Petitioners' answer was that the beneficiaries' damages are "just damages for the benefits of those folks." (App. 117; R. 115). *Broome* disposes of that answer: a named party "could not give up a right to a jury trial which was properly possessed by" someone

else. 319 S.C. at 340-41, 461 S.E.2d at 48. Ms. Hazare could not waive the jury right of the statutory beneficiaries on claims the statute gives to them, not to her.

The point is strongest as to Dhruv Chokshi. He was fifteen. He signed nothing, is listed nowhere on the lease, and, as a minor, could not have bound himself irrevocably even if he had tried. *See Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) (a minor's contract "was voidable at his election"). His estate's survival claim is for what he endured in that apartment: hearing his mother die, and then being unable to open a window the complaint alleges had been painted or screwed shut. (App. 74, 88-90; R. 72, 86-88). That claim, and his father's wrongful death claim, have no connection to Ms. Hazare's signature. Petitioners' only theory for reaching those claims is the estoppel argument addressed in Part II.

That leaves the survival claim of Ms. Hazare's estate. Devan Chokshi brings it with the standing she had, S.C. Code Ann. § 62-3-703(c), and Petitioners say that is enough to bind him to her waiver. *Broome* says it is not. USAA stood in Watts' shoes to defend the claim against her, and this Court still held that she "could not give up a right to a jury trial which was properly possessed by USAA." 319 S.C. at 340-41, 461 S.E.2d at 48. *N. Charleston Joint Venture* is the same: the guarantors' liability existed only through the tenant's lease, and the guaranty was incorporated into it, yet because they "were not parties to the lease nor were they named in the waiver clause," they kept their jury right. 307 S.C. at 535, 416 S.E.2d at 638. Whether a waiver binds a litigant depends on what the contract says, and this one says "you and we." Section 1 limits "you" to the one resident listed and extends "we" to the owner's "successors in interest or assigns." The Photo, Video, and Statement Release Addendum, unlike the Jury Waiver Provision, makes its release "binding upon you and your heirs, legal representatives and assigns." The Court of Appeals

enforced those choices as written. That creates no rule of estate law. It applies *N. Charleston Joint Venture* to the lease Petitioners wrote.

D. Even if Respondents were bound by the Jury Waiver Provision, it does not reach these claims.

The Court of Appeals did not reach the scope of the Jury Waiver Provision, because it held the provision does not apply to Respondents at all. (App. 236). Petitioners' own brief below said that the waiver applies to "'any lawsuit' in which it can properly be invoked." (App. 187). The Court of Appeals held it cannot be invoked against Respondents, and no question of scope arises unless that holding is reversed. Whatever the breadth of the clause, it binds no one but the parties to the lease, and the Court of Appeals, having held that the waiver does not apply to Respondents, did not need to construe it.

Petitioners warn that, by holding that Respondents have a right to a trial by jury, the lower courts granted Respondents rights as personal representatives greater than those Ms. Hazare and Dhruv Chokshi would have had in life. This argument assumes, incorrectly, that the instant lawsuit—a wrongful death case—falls within the scope of the Jury Waiver Provision.

The Jury Waiver Provision applies to "any lawsuit based on statute common law, and/or related to this Lease Contract." (App. 137; R. 135). Petitioners read it as "any lawsuit" and stop there. (Pet. 11; App. 186-87). That reading leaves "related to this Lease Contract" with nothing to do. The aim of contract interpretation is to "ascertain and give legal effect to the parties' intentions as determined by the contract language," and courts are not to "rewrite or torture the meaning" of a contract. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132 (2003); *see also Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 600 (Ct. App. 2010)

("The language alone will determine the contract's force where such language is unambiguous.").[3] Where the language of a jury waiver is open to more than one reading, settled rules decide which one controls: the waiver is "strictly construed and not lightly inferred or extended by implication," *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993), and any ambiguity is construed against the party that drafted it, *Duncan*, 384 S.C. at 426, 682 S.E.2d at 791.

Respondents' claims are that the owners of a 212-unit complex let smoke detectors fail, windows seal shut, and an extinguisher go missing, and that two people died as a result. Those claims would exist if Ms. Hazare had never signed anything. Reading a form clause about "this Lease Contract" to take them from a jury is the extension by implication that *Keels* forbids. Respondents made this argument in the circuit court and the Court of Appeals (App. 28-31, 211-13), and it remains available as an additional sustaining ground. Moreover, Freni Hazare, as the sole signatory, could not have contemplated that the Jury Waiver Provision would be invoked against non-signatories in a lawsuit following her death.

Nor could any reading of the Jury Waiver Provision reach Respondents' claims against the defendants who are not parties to the lease. The motion to strike was brought by Petitioners BIF-Summerville Station, LLC and PAC-Summerville, LLC. The remaining defendants, Beach Investment Fund, L.P., Beach Real Estate Funds, LLC, and Beach Co. (collectively, the "Beach Defendants"), and Lincoln BP Management, Inc. and Lincoln Property Company National, LLC (collectively, the "Lincoln Defendants"), are not parties to the Lease Agreement and did not move to strike. (App. 27-28, 207-10; R. 25-26).

[3] Even where there is some ambiguity, jury waiver provisions are construed narrowly, with an eye to preserving the right to trial by jury. *See N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.

Under South Carolina law, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). Nothing in the Lease Agreement suggests it was intended to benefit any of these non-signatory defendants. The Jury Waiver Provision specifically notes that "you and we agree" to waive the right to a jury trial without indicating any third-party beneficiaries. (App. 137; R. 135). The pronouns "you and we" plainly refer to the contracting parties – Freni Hazare and the owner entities – not to any third parties such as the numerous defendants named in this lawsuit.

Even if this Court were to find that Devan Chokshi, as personal representative of Freni Hazare's estate, is somehow bound to the Jury Waiver Provision (which Respondents dispute for multiple reasons set forth herein), that finding would not extend to claims brought against defendants who were not parties to the lease agreement. The Jury Waiver provision applies only to disputes between "you and we" – Freni Hazare and the owner entities. It cannot reasonably be interpreted to waive the right to a jury trial in claims against entirely separate entities that have no connection to the lease agreement.

This case illustrates precisely why jury waivers are strictly construed and limited to the actual parties who agree to them. If Petitioners' position were accepted, a tenant signing a form lease with a jury waiver provision would unknowingly surrender their constitutional right to a jury trial not only against their landlord but against any number of third parties who might later be joined in litigation arising from the tenant's residency. Such an expansive reading of jury waiver provisions would render them unreasonably overbroad and contrary to the fundamental principle that "[t]rial by jury is a substantial right and any waiver thereof must be strictly construed." *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.

II. Respondents Did Not "Invoke" the Lease Agreement by Asserting Claims Under the SCRLTA, and Petitioners' Third-Party Beneficiary Theory Is Not Preserved.

Petitioners seek to invoke the doctrine of equitable estoppel to bind Respondent Vatsal Chokshi to a jury waiver provision in a lease that neither he nor his son signed. They argue that by bringing claims under the SCRLTA, Respondents "invoked" the Lease Agreement. (Pet. 9-11). This argument misunderstands the nature of the SCRLTA. Petitioners also argue, for the first time in this Court, that Dhruv Chokshi was an intended third-party beneficiary of the lease. That theory was not raised below, and it fails on the record in any event. Moreover, the application of equitable estoppel in this case to deprive a party of their constitutional rights would frustrate public policy.

A. Petitioners' third-party beneficiary theory is not preserved.

Petitioners now argue that Dhruv Chokshi was an intended third-party beneficiary of the lease under *Kingman v. Nationwide Mutual Insurance Co.*, 243 S.C. 405, 134 S.E.2d 217 (1964), and *Helms Realty*, so that he "makes the contract [his] own, and must bear the burden as well as reap the benefits" of it. (Pet. 9 (quoting *Kingman*, 243 S.C. at 412, 134 S.E.2d at 221)). That theory appears for the first time in the petition. In the Court of Appeals, Petitioners argued only equitable estoppel, relying on *Dixon v. Pattee* and *Hodge v. UniHealth*. (App. 187-89, 231-32). Their petition for rehearing argued estoppel through *Wilson v. Willis* and the SCRLTA definitions. (App. 242-43). Neither filing cites *Kingman* or argues that Dhruv was an intended beneficiary. *Kingman* appears once in the record, in Petitioners' Rule 59(e) motion, for the general proposition that a party who seeks a contract's benefits cannot avoid its burdens. (App. 41; R. 39). Rule 242(d)(1), SCACR, provides that "[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." The *Kingman* theory is not one of them. Nor is it a "subsidiary question fairly comprised" within the estoppel question Petitioners did raise. *Id.* Third-party beneficiary status turns on the contracting parties' intent at formation, *Helms Realty*, 363 S.C. at 340, 611 S.E.2d at 488; direct-

benefits estoppel turns on whether the nonsignatory has knowingly exploited the contract's benefits, *Wilson v. Willis*, 426 S.C. 326, 340-41, 827 S.E.2d 167, 175 (2019). They are different doctrines with different elements, and the Court of Appeals was never asked to apply the first.

B. Dhruv Chokshi was not an intended beneficiary of the lease, and his estate has not sued on it.

"A third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty*, 363 S.C. at 340, 611 S.E.2d at 488. The lease supplied a place to name anyone else who would live in the unit: "The apartment will be occupied only by you and (list all other occupants not signing the Lease Contract)." (App. 132; R. 130). The line is blank. Petitioners concede that "Decedent Hazare did not include her son as an occupant on the Lease Agreement." (Pet. 10). A form that names no occupant does not evidence an intent to directly benefit one. And *Kingman* involved a beneficiary who sued on the insurance policy to collect its benefits; this Court held that "where a third party elects to avail herself of a contract entered into between others for her benefit, she makes the contract her own." 243 S.C. at 412, 134 S.E.2d at 221. Dhruv's estate has not elected to avail itself of the lease. It has sued in tort and under a statute.

C. Respondents' SCRLTA claims arise from Petitioners' affirmative duties under the statute, not the Lease Agreement.

The tragic fire that caused the deaths of Freni Hazare and Dhruv Chokshi implicates Petitioners' broader duties under SCRLTA as property owners and managers, not merely their contractual obligations as landlords.[4] The South Carolina legislature has, through the SCRLTA,

[4] Courts distinguish between claims that arise from a contract and claims that arise from independent legal duties. "Contract law seeks to protect the expectancy interests of the parties. Tort law, on the other hand, seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47, 49 (2009), *abrogated in part on other grounds by Carroll v. Isle of Palms Pest Control, Inc.*, 918 S.E.2d 532 (S.C. 2025).

imposed independent, affirmative duties on landlords. *See Burbach v. Invs. Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (referencing the SCRLTA and explaining that "[w]hile landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants."). Those duties exist "regardless of the private arrangements parties have made between themselves." *Id.* Specifically, the SCRLTA places an affirmative duty on the landlord to "keep the premises in a fit and habitable condition." *See Nedrow v. Pruitt*, 336 S.C. 668, 675-76, 521 S.E.2d 755 (Ct. App. 1999) (citing *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989) and S.C. Code Ann. § 27–40–440 (1991)) ("In adopting the RLTA, the General Assembly expressly provided that the landlord has a duty to make all repairs and to do whatever is reasonably necessary to keep the premises in a fit and habitable condition."); *Watson*, 299 S.C. at 436, 385 S.E.2d at 374 ("the preamble to the Act expressly states that it was the intent of the Legislature to provide for the obligations and liabilities of the landlord").

What Respondents allege is that the smoke detectors did not work, that the windows and sliding doors had been painted and screwed shut, that a fire extinguisher was missing from Building B, and that the building had no sprinklers. (App. 82-84, 87, 89-90; R. 80-82, 85, 87-88). Those conditions go to the obligations the SCRLTA places on every landlord to comply with building and housing codes materially affecting health and safety and to keep the premises fit and habitable, S.C. Code Ann. § 27-40-440(a)(1)-(2), and to the duties the common law places on every owner of an occupied building, whether or not a lease was ever signed. The Act does not depend on a written lease: a "rental agreement" means "all agreements, written or oral," and 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(12), (15). It is Dhruv Chokshi's status as an occupant of the premises, not any connection to a written lease, that brings him within the Act's protections. *See* S.C. Code

Ann. § 27-40-210(2) (defining "building and housing codes" to "include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premise, or dwelling unit").

This Court held in *Wilson v. Willis* that "direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence," and adopted the rule that "when the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law," the doctrine "is not implicated even if the claim refers to or relates to the contract." 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019) (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)). The complaint pleads no breach of the lease and seeks nothing under it. (App. 70-102; R. 68-100). Petitioners say Respondents "cannot rely on the Lease Agreement to establish Defendants' duties to Dhruv Chokshi." (Pet. 11). Respondents do not. The duties they plead come from the statute and the common law. Because Respondents' claims do not arise from the Lease Agreement, the doctrine of equitable estoppel is inapplicable and cannot be used to bind Vatsal Chokshi to the Jury Waiver Provision.

D. The application of equitable estoppel against Respondent Vatsal Chokshi would contravene public policy.

Even if the Court concluded that Respondent Vatsal Chokshi's SCRLTA claims do arise from the Lease Agreement, equitable remedies in this case would remain inappropriate. Equitable doctrines cannot be used to deprive parties of constitutional rights, particularly when those rights belong to a deceased minor who never signed or agreed to any waiver.

Because the right of trial by jury is constitutionally guaranteed, S.C. Const. art. I, § 14, South Carolina courts have been unequivocal that jury waivers are to be construed strictly. *Broome*

v. Watts, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995). "It is well known that equity follows the law." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011) (quoting *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007)). "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." *Id.* (citing *Lonchar v. Thomas*, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Other courts have likewise refused to extend jury waivers beyond their signatories through equitable or agency theories. *See In re Credit Suisse First Bos. Mortg. Capital, L.L.C.*, 257 S.W.3d 486, 492 (Tex. App. 2008) ("We are unaware of any court, in Texas or elsewhere, that has applied direct-benefits estoppel to a jury waiver provision."); *Ex parte Carter*, 66 So. 3d 231, 239 (Ala. 2010) (refusing to extend a loan agreement's jury waiver to non-signatory defendants, because the court could not "rewrite the loan documents to give the jury-waiver provisions a broader effect when our standard of review requires strict construction of such provisions in deference to the constitutional guarantee of the right to trial by jury"). *Wilson* itself recognizes that even the presumption favoring arbitration "does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement," and that "a presumption against arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." 426 S.C. at 337-38, 827 S.E.2d at 173 (quoting *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App. 2011)) (emphasis omitted). If that is so where arbitration is favored, it is more plainly so for a jury waiver, where the right at stake is constitutional and there is no countervailing policy.

The cases Petitioners rely on ultimately support this position. In *Wilson*, this Court cautioned that "[e]quitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly," and found it significant that the signatories had not argued that the

agreement "by its express terms, was applicable to other parties." 426 S.C. at 345, 827 S.E.2d at 177. Here the lease by its express terms is not applicable to Dhruv Chokshi.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied. This Court's jurisprudence requires strict construction of jury trial waivers. Respondents Devan Chokshi and Vatsal Chokshi, as non-parties to the Lease Agreement, cannot be bound by its Jury Waiver Provision, and Dhruv Chokshi, fifteen years old, signed nothing and is named nowhere in the lease. The Court of Appeals gave the lease's words their plain meaning, applied this Court's rule that a jury waiver is strictly construed and not extended by implication, and properly affirmed. *Duncan* and *Estate of Stokes* concern what a personal representative may recover, not who is a party to a contract, and do not conflict with that holding. The third-party beneficiary theory was never presented below, and *Wilson v. Willis* forecloses the estoppel theory. The petition should be denied.

Respectfully submitted,

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