



Court of Appeals of South Carolina.
 SOIL REMEDIATION COMPANY and Yadkin Brick
 Company, Inc., Plaintiffs,
 v.
 NU-WAY ENVIRONMENTAL, INC., Defendant and
 Third-Party Plaintiff, Respondent,
 v.
 CAROLINA EASTMAN DIVISION, a Division of
 Eastman Kodak Company, Third-Party
 Defendant,
 Yeargin, Inc., Third-Party Defendant, Appellant.
No. 2267.

Heard Nov. 1, 1994.

Decided Dec. 12, 1994.

Rehearing Denied Jan. 26, 1995.

Certiorari Granted July 26, 1995.

In contractual dispute, third-party defendant moved to compel arbitration with third-party plaintiff. The Circuit Court, Richland County, [James E. Lockemy, J.](#), denied motion. Third-party defendant appealed. The Court of Appeals, [Goolsby, J.](#), held that arbitration notice in contract satisfied statutory requirement that arbitration notices be typed in underlined capital letters, even though notice was not underlined.

Reversed.

[Howell, C.J.](#), dissented in separate opinion.

West Headnotes

[1] Arbitration **6.2**

[33k6.2 Most Cited Cases](#)

Arbitration notice in contract satisfied statutory requirement that arbitration notices be typed in underlined capital letters, even though notice was not underlined and, thus, contract dispute was subject to arbitration; notice was printed in large, boldface, capital letters and court would not adhere to narrow interpretation of statute that "underline" means "to draw line under" since such interpretation could lead to absurd result that underlined notice typed in tiny letters would satisfy statute, while notice typed in bold, large,

capital letters would not. [Code 1976 § 15-48-10\(a\)](#).

[2] Statutes **181(1)**

[361k181\(1\) Most Cited Cases](#)

Primary or fundamental rule of statutory construction court must follow is to ascertain and give effect to legislature's intention or purpose as expressed in statute.

[3] Statutes **181(1)**

[361k181\(1\) Most Cited Cases](#)

Although there is no single, invariable rule for determining legislative intent, intention of legislature is to be ascertained primarily from language used in statute.

[4] Statutes **188**

[361k188 Most Cited Cases](#)

Unless there is something in statute requiring different interpretation, words used in statute must be given their ordinary meaning.

[5] Statutes **183**

[361k183 Most Cited Cases](#)

Where there is something about statute that makes it clear legislature did not intend letter of statute to prevail, court can consider spirit of enactment.

[6] Statutes **188**

[361k188 Most Cited Cases](#)

Court will reject ordinary meaning of words used in statute and apply rule of construction according to spirit of law when to accept ordinary meaning of such words would lead to result so plainly absurd that it could not possibly have been intended by legislature.

****254*275** [Stephen E. Hudson](#) and [R. Scott Tewes](#), both of Kilpatrick & Cody, of Atlanta, GA, for appellant.

[W. Thomas Lavender, Jr.](#), and [Russell T. Burke](#), both of Nexsen, Pruet, Jacobs & Pollard, Columbia, for respondent.

[GOOLSBY](#), Judge:

The dispositive issue in this appeal by Yeargin Inc. from an order denying its motion to compel Nu-Way Environmental, Inc. to arbitrate their contractual dispute concerns whether a notice of arbitration that appears at the top of the first page of the contract between the parties satisfies the requirements

of [South Carolina Code Ann. § 15-48-10\(a\) \(Supp.1993\)](#). We hold it does so and reverse.

The notice in question is printed, not typed, in all-capital, boldface letters and in a font size that is somewhat larger than the font used for the text of the contract. *Viz.*:

THIS SUBCONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO [SECTION 15-48-10 CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#).

The trial court held Yeargin and Nu-Way were not required to arbitrate their contractual dispute because the "heading [is] not underlined pursuant to [\[section\] 15-48-10](#)." [Section 15-48-10\(a\)](#) provides in pertinent part:

Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

[\[1\]](#) Nu-Way would have us follow a bright-line rule, arguing for a strict or literal construction of [section 15-48-10\(a\)](#). It suggests we interpret the word "underlined" simply to mean "to draw a line under." We decline to adhere to this narrow interpretation.

***276** [\[2\]\[3\]\[4\]](#) The primary or fundamental rule of statutory construction a court must follow is to ascertain and give effect to the legislature's intention or purpose as expressed in the statute. [Green v. Thornton, 265 S.C. 436, 219 S.E.2d 827 \(1975\)](#); [Alton Newton Evangelistic Ass'n, Inc. v. South Carolina Employment Sec. Comm'n, 284 S.C. 302, 326 S.E.2d 165 \(Ct.App.1985\)](#). Although there is no single, invariable rule for determining legislative intent, "the intention of the legislature is to be ascertained primarily from the language used in the statute..." 82 C.J.S. *Statutes* § 322(a), (b), at 571 (1953); see [McMillen Feed Mills, Inc., of South Carolina v. Mayer, 265 S.C. 500, 220 S.E.2d 221 \(1975\)](#) (the rules regarding statutory construction are subservient to the rule that legislative intent must prevail if that intent can be reasonably discovered in the language used, which language must be construed in light of the statute's intended purpose). Unless there is something in a statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning. [Hughes v.](#)

[Edwards, 265 S.C. 529, 220 S.E.2d 231 \(1975\)](#).

[\[5\]\[6\]](#) Where, however, there is something about the statute that makes it clear the legislature did not intend the letter of the statute to prevail, the court can consider the spirit of the enactment. 82 C.J.S. *Statutes* § 325 (1953); see [Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262 \(1984\)](#) ("A statute must be construed in light of its intended purpose, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute.") (citing [Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 \(1956\)](#)). "[T]he court will reject the ordinary meaning of words used in a statute" and apply the rule of construction according to the spirit of the law when to ****255** accept the ordinary meaning of such words "would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature." [South Carolina Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 \(1946\)](#) (citations omitted).

Nu-Way loses, irrespective of whether we employ a strict or a liberal construction.

Looking solely at the meaning of the word "underlined," the ordinary meaning of the term is not limited to "drawing a line ***277** under." "To underline" also means "to emphasize or cause to stand out," THE AMERICAN HERITAGE DICTIONARY 1318 (2d ed. 1982), or "to stress." WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1993 (2d ed. 1983). How better to cause a notice to stand out or to stress a notice than to print the notice in all-capital, boldface letters? The notice at issue here satisfies the literal requirements of [section 15-48-10\(a\)](#).

Assuming, however, that the word "underlined" can mean only "to draw a line under," then we would hold that this is one of those instances where adherence to the literal meaning of the words used in a statute would result in absurdity, thus defeating the legislature's intended purpose in enacting the statute.

A bright-line rule or a rule based on the literal meaning of the words used in [section 15-48-10\(a\)](#) would look only to whether the notice, which must appear on the first page of

the contract, was either "typed in underlined capital letters" or "rubber-stamped prominently."

A bright-line rule would not permit a notice to be *printed*, even computer printed, because [section 15-48-10\(a\)](#) uses the word "typed" and the word "typed" literally means "to write with a typewriter." THE AMERICAN HERITAGE DICTIONARY 1309 (2d ed. 1982).

A bright-line rule, which assumes "to underline" means only "to draw a line under," would invalidate a notice that was printed in underlined capital letters but would permit a notice that was "typed in underlined capital letters" so small that it could only be read with the aid of a powerful magnifying glass. A bright-line rule would invalidate a notice that was "typed in [double] underlined capital letters" but would permit a notice that was "typed in underlined capital letters" and employed a foreign language.

The following notices would flunk a bright-line rule, if "typed":

****256**

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).¹

This Contract Is Subject To Arbitration Pursuant To § 15-48-10 of the South Carolina Code of Laws (1976).²

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).³

The following notices would flunk a bright-line rule, if "printed":

[\[FN1\]](#), [\[FN2\]](#), [\[FN3\]](#), [\[FN4\]](#), [\[FN5\]](#)

[FN1](#). The notice has no line drawn under it.

[FN2](#). The notice has no line drawn under it and is not in all-capital letters.

[FN3](#). The notice has two lines drawn under it and

the rule does not expressly allow for double underlining.

[FN4](#). The notice, although it is in all-capital letters and has a line drawn under it, is printed, not typed.

[FN5](#). Aside from being printed, the notice has two lines instead of one drawn under it.

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).⁴

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).⁵

***278** The following notices, however, would pass the bright-line rule, if "typed":

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

****257** Indeed, any of these last three notices, if "typed," could be included anywhere on the first page of the contract and the notice would satisfy the bright-line rule. The notice need only be "prominently" displayed on the first page of the contract if it is "rubber-stamped." If the notice is "typed," it need not be "prominently" displayed.

In reaching the result that it did, the trial court elevated form over substance. The notice at issue here is prominently displayed at the very top of the contract. It cannot be easily overlooked, even by the most casual observer.

***279** The purpose of the notice requirement of [section 15-48-10\(a\)](#) is to alert the contracting parties that the contract requires arbitration of disputes arising under the contract. The notice questioned here clearly satisfies that purpose completely. Our holding regarding the sufficiency of the notice, moreover, is consistent with the public policy of favoring arbitration. [Trident Technical College v. Lucas & Stubbs, Ltd.](#), 286 S.C. 98, 333 S.E.2d 781 (1985), cert. denied, 474 U.S. 1060, 106 S.Ct. 803, 88 L.Ed.2d 779 (1986).

Because we have determined the notice appearing at the top of the contract between the parties satisfies the notice

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requirements of the South Carolina Uniform Arbitration Act, particularly [section 15-48-10\(a\)](#) thereof, Yeargin and Nu-Way must arbitrate their dispute. We do not reach the issue of whether the arbitration agreement is enforceable under federal law.

END OF DOCUMENT

REVERSED.

SHAW, J., concurs.

[HOWELL](#), C.J., dissents in a separate opinion.

[HOWELL](#), Chief Judge (dissenting):

I respectfully dissent. In construing statutes, words therein must be given their plain and ordinary meaning. [Parsons v. Uniroyal-Goodrich Tire Corp., --- S.C. ---, 438 S.E.2d 238 \(1993\)](#). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." [Miller v. Doe, 312 S.C. 444, ---, 441 S.E.2d 319, 321 \(1994\)](#).

By straining the imagination, even a "bright line test" can be made to seem hopelessly irreconcilable with practical application. Legislative intent should not fall victim to such an exercise. Obviously, the legislature intended to provide a uniform standard to alert contracting parties of an alternative forum to the traditional court system for resolving disputes. This statute is unambiguous. It requires an arbitration clause to be "typed in underlined capital letters, or rubber-stamped prominently." The plain meaning of "underline" is "to draw a line under." The plain meaning of "typed" in today's high technology environment includes documents produced by a word processor and printer. The arbitration clause at issue was *280 typed in capital letters but was not underlined, as required by the statute. While I agree that strict construction of this statute may lead to results not intended by contracting parties, it is a matter for the legislature to act upon. Thus, I would affirm the trial court's finding that the arbitration clause failed to meet the statute's requirements.

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