

court of appeals and reinstate that of the trial court.



**LIFE PARTNERS, INC. and
Milkie/Ferguson Investment,
Inc., Petitioners,**

v.

Michael ARNOLD, Janet Arnold, Steve South as Trustee And on Behalf of the South Living Trust, John S. Ferris, M.D., Christine Duncan, And All Others Similarly Situated, Respondents

Life Partners Holdings, Inc., Life Partners, Inc., Brian. D. Pardo, R. Scott Peden, Advance Trust & Life Escrow Services, L.T.A., and Purchase Escrow Services, LLC, Petitioners,

v.

State of Texas, Respondent

No. 14-0122, No. 14-0226

Supreme Court of Texas.

Argued January 15, 2015

Opinion Delivered May 8, 2015

Rehearing Denied September 11, 2015.

Background: Purchasers sued seller of interests in life settlement agreements, seeking rescission and damages based on claims that seller violated the Texas Securities Act by selling unregistered securities and materially misrepresenting to purchasers that they were not securities. The District Court, 14th Judicial District, Dallas County, Michael O'Neill, J., granted summary judgment in favor of seller. Purchasers appealed. The Dallas Court of Appeals, 416 S.W.3d 577, affirmed in part, reversed and rendered in part, and re-

versed and remanded in part. In a separate case, the state sued company for allegedly engaging in fraudulent activities in connection with the sale of securities, seeking injunctive and other relief. The District Court, 345th Judicial District, Travis County, Stephen Yelenosky, J., denied relief. The state appealed. The Austin Court of Appeals, 2014 WL 538821, reversed and remanded. In each case, company filed a petition for review, which the Supreme Court granted and consolidated for purposes of oral argument.

Holdings: The Supreme Court, Boyd, J., held that:

- (1) failure or success of purchasers and seller's enterprise was at least predominantly due to seller's entrepreneurial or managerial efforts, so as to support a conclusion that the life settlement agreements were "investment contracts" and thus "securities" under the Texas Securities Act, abrogating *Griffitts v. Life Partners, Inc.*, 2004 WL 1178418, and
- (2) the Supreme Court would decline to limit its holding to prospective application.

Affirmed.

1. Statutes \Leftrightarrow 1072, 1091

When construing and applying statutes, it is always the Supreme Court's goal to ascertain and give effect to the legislature's intent, which the Supreme Court draws from the plain meaning of the words chosen by the legislature when it is possible to do so.

2. Statutes \Leftrightarrow 1109, 1405

When statutory text is clear, the text is determinative of legislative intent unless the plain meaning of the statute's words would produce an absurd result, but when statutory text is susceptible of more than one reasonable interpretation, it is appro-

appropriate to look beyond its language for assistance in determining legislative intent.

3. Securities Regulation §252

When construing and applying the term “investment contract” for purposes of the Texas Securities Act, the Supreme Court must broadly construe the term to maximize the protection the Act is intended to provide to the investing public, must focus on the economic realities of the transaction at issue, and, if the economic realities establish that a transaction is an investment contract, must apply the statute regardless of any labels or terminology the parties may have used. Tex. Rev. Civ. Stat. art. 581-4(A).

4. Securities Regulation §256.1

Texas Securities Act’s definition of “securities” must be construed broadly to maximize the protection it provides to investors, while focusing on the economic realities of the transaction regardless of any labels or terminology the parties may have used. Tex. Rev. Civ. Stat. art. 581-4(A).

5. Securities Regulation §252

An “investment contract” for purposes of the Texas Securities Act means (1) a contract, transaction, or scheme through which a person pays money (2) to participate in a common venture or enterprise (3) with the expectation of receiving profits, (4) under circumstances in which the failure or success of the enterprise, and thus the person’s realization of the expected profits, is at least predominately due to the entrepreneurial or managerial, rather than merely ministerial or clerical, efforts of others, regardless of whether those efforts are made before or after the transaction. Tex. Rev. Civ. Stat. art. 581-4(A).

See publication Words and Phrases for other judicial constructions and definitions.

6. Securities Regulation §252

Failure or success of a common enterprise involving sales of interests in life settlement agreements, and thus purchasers’ realization of expected profits, was at least predominantly due to seller’s entrepreneurial or managerial efforts, so as to support a conclusion that the life settlement agreements were “investment contracts” and thus “securities” under the Texas Securities Act; pre-purchase efforts required seller to accurately evaluate an insured’s life expectancy and to set the correct purchase price to yield a profit based on the insured’s life expectancy, future premiums, and end value of the policy’s benefits, and after the purchase, seller had complete control over the investment and used its discretion and control to properly manage the investment and produce a profit; abrogating *Griffitts v. Life Partners, Inc.*, 2004 WL 1178418. Tex. Rev. Civ. Stat. art. 581-4(A).

See publication Words and Phrases for other judicial constructions and definitions.

7. Courts §100(1)

Texas Supreme Court would decline to limit to prospective application a holding that seller’s life settlement agreements were “investment contracts” and thus “securities” under the Texas Securities Act; the holding did not establish a new principle of law, retroactive application furthered the operation and enforcement of the act, the results imposed no inequities on seller, and, although seller argued that retroactive application would violate the state and federal constitutions, the holding merely interpreted and applied a very old law consistent with the manner in which other courts had interpreted and applied it for decades. Tex. Rev. Civ. Stat. art. 581-4(A).

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

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Christopher M. Staley, NASAA, Washington, DC, for Amicus Curiae North American Securities Administrators Association

G. Kevin Buchanan, Kevin Buchanan & Associates, PLLC, Dallas, Harriet O'Neill, Law Office of Harriet O'Neill, PC, Susan S. Vance, Wallace B. Jefferson, Douglas W. Alexander, Alexander Dubose Jefferson & Townsend LLP, Austin, Elizabeth L. Yingling, Laura J. O'Rourke, William R. Daugherty, Meghan Hausler, Baker & McKenzie LLP, Dallas, for Petitioners Life Partners Holdings, Inc., Life Partners, Inc., Brian D. Pardo and R. Scott Peden

Henry J. Ackels, Samuel H. Ackels, Ackels & Ackels, L.L.P., Dallas, for Petitioner Milkie/Ferguson Investment, Inc.

Keith L. Langston, Langston Law Firm, Longview, Robert T. Cain Jr., Alderman Cain & Neill PLLC, Scott C. Skelton, Skelton Slusher Barnhill Watkin Wells PLLC, Lufkin, for Respondents Michael Arnold, Janet Arnold, Steve South as Trustee on and on behalf of the South Living Trust, John S. Ferris, M.C., Christine Duncan, and all others similarly situated

Andy McSwain, Fulbright Winniford PC, Waco, for Petitioners Advanced Trust & Life Escrow Services LTA and Purchase Escrow Services

Kristofer S. Monson, Assistant Solicitor General, Lesli Gattis Ginn, Office of the Attorney General, Austin, for Respondent State of Texas

Justice Boyd delivered the opinion of the Court.

The primary issue in these two separate cases is whether a "life settlement agreement" or "viatical settlement agreement" is an "investment contract" and thus a "security" under the Texas Securities Act. We hold that the agreements at issue are investment contracts because they constitute transactions through which a person pays money to participate in a common enterprise with the expectation of receiving profits, under circumstances in which the failure or success of the enterprise and the person's realization of the expected profits is at least predominately due to the entrepreneurial or managerial efforts of others. We decline to give today's holding only prospective application, and we decline to consider the merits of the "relief defendants'" evidentiary arguments. In short, we affirm the courts of appeals' judgments in both cases.

I.

Background

In *Arnold v. Life Partners, Inc.*, Michael and Janet Arnold and others¹ (collectively, the Arnolds) filed a class action lawsuit in Dallas County, seeking rescission and damages based on claims that Life Partners, Inc. and others² (collectively, Life Partners) violated the Texas Securities Act by selling unregistered securities and materially misrepresenting to purchasers that they were not, in fact, securities. 416

1. The "others" include Steve South as Trustee and on behalf of South Living Trust, John S. Ferris, M.D., and Christine Duncan.

2. The "others" include Milkie/Ferguson Investment, Inc.

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