THE STATE OF SOUTH CAROLINA
In the SUPREME COURT

RECEIVED

JUN 0 3 2013

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-6574

NESHEN MITCHELL, individually and as the next friend of her minor child, HAKEEM T.M. . . . . PETITIONER

vs.

JUAN. P. MARUFFO d/b/a LIBERTY EXPRESS, ADRIAN MORALEZ, RET PARTNERSHIP, WILLIAM T. MCQUEENEY, CARL E. ROBERTS, KARL R. HENDERSON, and STEVEN PARHAM, ... Defendants

OF WHICH RET PARTNERSHIP, WILLIAM T. MCQUEENEY, CARL E. ROBERTS, KARL R. HENDERSON, and STEVEN PARHAM, are the . . . . . Respondents

---

RESPONDENTS' RETURN TO PETITION WRIT OF CERTIORARI

CLAWSON AND STAUBES, LLC
Samuel R. Clawson
Timothy A. Domin
Christina R. Fargnoli
126 Seven Farms, Ste. 200
Charleston, South Carolina 29492
(843) 577-2026 (o)
(843) 724-8036 (f)

TABLE OF CONTENTS

Questions Presented 1

Facts 1

Standard of Review 3

Argument 4

I. This Case Does Not Present Any "Special or Important Reasons" Under Rule 242 Which Warrant a Grant of Certiorari 4

II. The Law Espoused in Skinner v. S.C. Dep't of Transportation. is the Proper Standard as to Whether Respondents Owed a Legal Duty of Care to Appellants 5

III. The Prior Decisions Should be Affirmed Because the Courts Below Properly Concluded There was no "Artificial Condition" 8

IV. The Decisions Below Should be Affirmed Because the Courts Properly Concluded the Respondents Did Not "Cause or Create" an Artificial Condition 13

V. Neither South Carolina Landlord-Tenant Law Nor the Lease Agreement Create a Duty of Care Flowing from Respondents to Appellants 17

Conclusion 18

QUESTIONS PRESENTED

1. Whether this case presents any "special or important reasons" under Rule 242 that would warrant a grant of certiorari?

2. Did the courts below properly hold that a motor vehicle entering or exiting a private property is not an artificial condition of the type that would create liability on a landowner adjoining the public highway?

3. Did the courts below properly hold that an adjoining landowner is not liable for creating an "artificial condition" where the alleged condition was a truck backing onto the property and the truck driver was not an employee of the landowner, was not a tenant of the landowner, had no permission from the landowner, and the tenant had no permission from the landowner to have trucks on the property?

FACTS

This case arises from a collision that occurred on March 3, 2009. The collision occurred when the vehicle in which Appellant Hakeem T. Mitchell was an occupant collided with the side of a tractor trailer truck driven by Defendant Adrian Moralez and owned by Defendant Juan P. Maruffo d/b/a Liberty Express. (R. at 13-14). Appellants allege that, at the time of the collision, the tractor trailer truck was backed across both lanes of travel on U.S. Highway 17 South in Ravenel, South Carolina at night without adequate lighting on the truck. (R. at 13-14). Respondents RET Partnership, William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steven Parham ("Respondents") owned property abutting this portion of Highway 17 at 5858 Savannah Highway, Ravenel, South Carolina (the "Subject Property"). At the time of the accident, Defendant Moralez was purportedly attempting to back the tractor trailer truck onto the Subject Property. (R. at 13). It is undisputed that the collision did not occur on any portion of the Subject Property. (R. at 13-14, 101). It is also undisputed that Respondents neither owned nor controlled the public highway on which the accident occurred.

At all relevant times, the Subject Property contained a single family residential home located towards the front of the property and a larger warehouse-type building toward the back of the property. (Supp. R. at 5, 13, 21, 29). On January 30, 2009, Respondents leased the residential portion of the property to tenant J. Jose Valdez pursuant to a residential lease, which was governed by the South Carolina Residential Landlord Tenant Act. (R. at 394-98; Supp. R. at 5, 13, 21, 29). The lease did not include the warehouse at the back of the property. Id. Respondents used the warehouse for personal use to house their personal RV's, campers, and the like. (Supp. R. at 5, 13, 21, 29).

The Subject Property was not a "trucking terminal," as has been alleged by Appellants. Respondents did not permit tractor trailer trucks to be parked on the Subject Property because parking such trucks blocked their access to the warehouse on the rear portion of the property. (R. at 238-40). Respondents never gave permission to their tenant to drive or park truck tractors on the Subject Property. (R. at 228, 238-41, 244, 248; Supp R. at 5, 13, 21, 29, 82-84, 87-89, 94, 96-97, 99-102). Every single time Respondents saw a truck tractor on the Subject Property, they explicitly and expressly told Mr. Valdez this was not permitted and ordered him to move the truck. (R. at 238-41, 244; Supp R. at 5, 13, 21, 29, 82-84, 87-89, 99-102). Specifically, Respondent Parham twice saw a truck tractor on the Subject Property prior to this incident. Id. On each occasion, he ordered Mr. Valdez to remove the truck tractor and not park it on the property again. Id. These were the only two occasions that any of the Respondents ever observed truck tractors on the property. Id. Appellants' own expert, Jefferson C. Woodall, testified that the actions taken by Respondents in response to twice seeing truck tractors on the property were "appropriate" and "reasonable." (R. at 104, 105).

Defendant Moralez did not have express or implied permission from Respondents to drive a tractor trailer truck onto the Subject Property on the date of the accident or any other date. He was not a tenant under the lease. (R. at 394-98). Respondents did not know Defendant Moralez, have never met Defendant Moralez, and never gave him permission to enter the property and/or drive trucks on the property. (Supp. R. at 85, 92-93, 96, 100). Likewise, Defendant Moralez did not have express or implied permission from Respondents to back the truck tractor onto the Subject Property in such a way as would block Highway 17. Id. To this day, it is not known why Defendant Moralez was backing onto the property.

STANDARD OF REVIEW

"[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). "[T]he evidence and all inferences that can reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party." Moore v. Weinberg, 373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct. App. 2007). "Once the party moving for summary judgment meets the initial burden of showing the absence of a genuine issue as to any material fact, the nonmoving party may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 370 S.C. 138, 142, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 142, 634 S.E.2d at 17-18. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Id.

ARGUMENT

I. THIS CASE DOES NOT PRESENT ANY "SPECIAL OR IMPORTANT REASONS" UNDER RULE 242 WHICH WARRANT A GRANT OF CERTIORARI.

Rule 242 of the South Carolina Appellate Court Rules states, "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special or important reasons." Rule 242 provides the following as indicative of the types of reasons which the Court will consider:

> (1) Where there are novel questions of law. (2) Where there is a dissent in the decision of the Court of Appeals. (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court. (4) Where substantial constitutional issues are directly involved. (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

None of the above reasons apply to the case at hand. This case clearly does not involve constitutional issues or a federal question. The Court of Appeals' decision did not include a dissenting opinion, and our research has not revealed any prior Supreme Court decisions which are in conflict with the Court of Appeals decision at issue.

The only issue remaining is whether this case involves a novel question of law. The questions of law in this case are not unique, as this matter clearly involves the well-settled law espoused in Skinner v. S.C. Dep't of Transp.,383 S.C. 520, 681 S.E.2d 871 (2009) and related cases. See also Mahle v. Wilson, 283 S.C. 486, 323 S.E.2d 65 (Ct. App. 1984) (abutting property owners owed no duty where pedestrian was struck while attempting to cross highway from the property at issue); Ford v. S.C. Dep't of Transp., 328 S.C. 481, 492 S.E.2d 811 (Ct. App. 1997) (abutting property owners owed no duty to motorist injured when he struck a tree that had fallen from adjoining property across a public highway). As

stated above, this case concerns private landowners being sued for a motor vehicle accident that occurred on a public highway adjacent to their property. The plaintiffs allege that a tractor trailer truck backing on to private property located adjacent to the highway constituted an artificial condition on the highway, which was created by the landowners themselves. This is the precise issue addressed in Skinner, wherein the Court held, "South Carolina common law only imposes a duty for highway conditions where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers." Skinner, 681 S.E.2d at 873. The courts below rendered a decision in this case by applying the facts of this case to the law espoused in Skinner and related cases. Thus, there is no novel or unique question of law at issue. Additionally, there is no other special or compelling reason for the Court to grant certiorari.

II. THE LAW ESPOUSED IN SKINNER V. S.C.DEP'T OF TRANSPORTATION IS THE PROPER STANDARD AS TO WHETHER RESPONDENTS OWED A LEGAL DUTY OF CARE TO APPELLANTS.

"In order for liability to attach based on a theory of negligence, the parties must have a relationship recognized by law as providing the foundation for a duty to prevent an injury." McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 373 S.C. 43, 47-48, 644 S.E.2d 43, 46 (2007). "An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." Id. "Generally, there is no common law duty to act." Jensen v. Anderson County Dep't Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). Foreseeability of injury is not sufficient to support the imposition of a duty in tort. Foster v. Greenville County Med. Soc., 295 S.C. 190, 193, 367 S.E.2d 468, 470 (Ct. App. 1988) ("in the absence of a duty to prevent an injury, foreseeability of that injury is an insufficient basis on which to rest liability.").

Whether a duty exists is a question of law for the court. Huggins v. Citibank, N.A., 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). "If there is no duty, the defendant is entitled to judgment as a matter of law." Id.

It is well-settled South Carolina law that the owners of property abutting or adjoining a public highway owe no common law duty to motorists injured on the public highway, where the owners neither possess nor control the highway. Skinner v. S.C. Dep't of Transp., 383 S.C. 520, 681 S.E.2d 871 (2009) (abutting property owners owed no duty to person injured by driver who lost control when he veered onto roadway's shoulder); see also Mahle v. Wilson, 283 S.C. 486, 323 S.E.2d 65 (Ct. App. 1984) (abutting property owners owed no duty where pedestrian was struck while attempting to cross highway from the property at issue); Ford v. S.C. Dep't of Transp., 328 S.C. 481, 492 S.E.2d 811 (Ct. App. 1997) (abutting property owners owed no duty to motorist injured when he struck a tree that had fallen from adjoining property across a public highway). The law "only imposes a duty for highway conditions where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers." Skinner, 383 S.C. at 524, 681 S.E.2d at 873. This rule applies equally to both residential and commercial property, as it does not distinguish between the two. See Skinner, 383 S.C. 520, 681 S.E.2d 871 (residential and commercial property); Mahle, 283 S.C. 486, 323 S.E.2d 65 (commercial property); Ford, 328 S.C. 481, 492 S.E.2d 811 (residential property). Because it is undisputed that this accident occurred on the public highway and did not occur on any portion of the Subject Property, the rule espoused in Skinner and related cases concerning the duty of adjoining property owners is the proper standard under which to analyze this case and determine whether Respondents owed a legal duty

to Appellants.

Appellants' citations of and discussions of cases concerning premises liability and business invitees are both misleading and irrelevant. See, e.g., Dunbar v. Charleston & W.C. Ry. Co., 211 S.C. 209, 44 S.E.2d 314 (1947) (premises liability)[1]; Cook v. Lowe's Home Ctrs., Inc., 2006 WL 3098773 (D.S.C. Oct. 30, 2006) (standard for business invitees); Wintersteen v. Food Lion, Inc., 344 S.C. 32, 542 S.E.2d 728 (2001) (standard for business invitees); Restatement (Second) of Torts § 364 (1965) (not the law in South Carolina). Those cases involve injuries occurring on a premises owned by the defendant or on property over which the defendant has exercised some measure of control (i.e. by making repairs). In this case, there is no allegation Respondents owned or controlled the public highway where the accident occurred. Rather, the allegations concern Respondents' ownership and use of property adjoining the highway where the accident occurred, which brings this case squarely within Skinner. Case law concerning the standard of care owed by a landowner to a business invitee or a licensee is inapplicable. The standard to be applied to a business owner operating a business is vastly different from the care to be exercised by a landowner as to adjoining property.

It is undisputed that Respondents did not own or control the public highway, as Appellants have not made such allegations and there is no evidence in the record to support such allegations. Therefore, under Skinner, the only relevant inquiry for the Court

---

[1] To the extent the Court wishes to consider Dunbar v. Charleston & W.C. Ry. Co., 211 S.C. 209, 44 S.E.2d 314, which was cited by Appellants, the Court should note that the quote cited in Appellant's brief goes on to state, "the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question. Thereafter he is not accountable at the suit of one who may sustain injuries while on the property, at least when the cause of the injuries developed after the transfer of possession."

is whether Respondents caused or created an artificial condition on the public highway, which is dangerous to travelers. If they did not, they cannot be held liable because they owed no legal duty to Appellants. The many other issues raised by Appellants, such as notice and knowledge, are irrelevant because there is no exception under Skinner or related cases that gives rise to such an inquiry.

III. THE PRIOR DECISIONS SHOULD BE AFFIRMED BECAUSE THE COURTS BELOW PROPERLY CONCLUDED THERE WAS NO "ARTIFICIAL CONDITION."

This incident did not constitute an artificial condition. This was simply a failure to yield accident, whereby the driver of the car in which Appellant Hakeem was a passenger collided with the tractor trailer truck, which was blocking both lanes of traffic and being driven by Defendant Moralez.

Our courts have not defined the term "artificial condition" as used in Skinner, 383 S.C. at 525, 681 S.E.2d at 874, other than to state that "[b]oth smoke and a traffic jam are artificial conditions." Courts across the country have consistently held that a landowner has no duty to protect against the negligent acts of third parties public highways not within the landowner's control. For example, in Naumann v. Windsor Gypsum, 749 S.W.2d 189, 1988 Tex. App. LEXIS 1096 (Ct. App. 1988), the Texas Court of Appeals addressed a case with facts nearly identical to this case. In Naumann, an accident occurred on the public highway when the plaintiff's vehicle collided with a tractor trailer truck that was blocking both lanes of traffic as it was exiting property owned by Windsor. Id. at 190, 1988 Tex. App. LEXIS at * 1-3. The plaintiff brought suit against Windsor, the adjoining property owner, under the theory that it designed its plant in a manner that forced tractor-trailers exiting its property to block both lanes of the public highway as they leave the plant. Id. The court of appeals

affirmed summary judgment for Windsor, finding it owed no legal duty to the plaintiff. Id. at 190-92, 1988 Tex. App. LEXIS at * 3-10. In so holding, the court noted that Windsor did not "discharge onto [the highway] an inanimate, incognizant, or inherently dangerous entity." Id. at 191, 1988 Tex. App. LEXIS at * 7. Rather, Windsor's independent contractor, over whom Windsor had no control, was simply involved in a traffic accident on the adjacent public way. Id. "Although Windsor knew of the propensity of truck drivers to block both lanes when turning east on [the highway], it had every right to expect them to exercise due care and enter the highway safely." Id. at 192, 1988 Tex. App. LEXIS at * 9. "An owner or occupier of property is not an insurer of the safety of travelers on an adjacent highway and is not required to provide against the acts of third persons. Id. The Naumann case is nearly identical to this case and the Court should follow its reasoning in affirming the decisions of the trial court and court of appeals.

The Naumann holding is consistent with other decisions across the country concerning this issue. For example, in Estes v. Peels, 2000 Tenn. App. LEXIS 641, *1-4 (Ct. App. Sept. 21, 2000), the plaintiff was injured on the public highway when a vehicle exited a manufacturing plant adjacent to the highway and failed to yield to the plaintiff's right-of-way. The plaintiff sued the owner of the manufacturing plant, alleging the driveway was inadequate and caused drivers to unsafely enter the public highway. Id. The Tennessee Court of Appeals affirmed the trial court's order granting summary judgment in favor of the adjoining landowner. Id. at *19-22. The court concluded that there was nothing dangerous about the driveway or the parking lot in and of themselves. Id. The dangerous condition was the driver's failure to obey traffic laws and yield to oncoming traffic. Id. Even if such conduct was foreseeable by the landowner, the landowner is still

not liable because imposing a duty on the landowner to "prevent a driver from pulling out on a highway without yielding to oncoming traffic would be an onerous burden." Id. at 20. Such responsibility rests with law enforcement, not a private landowner. Id.

The case at hand is factually similar to both Naumann and Estes. Both decisions are consistent with South Carolina law on this issue. Just as in Nauman and Estes, this incident did not constitute an artificial condition on the roadway. This accident was merely a traffic accident caused by Defendant Moralez's failure to yield the right-of-way or otherwise obey traffic laws. See also, e.g., Safeway Stores, Safeway Stores, Inc. v. Musfelt, 1960 Okla. 34, 349 P.2d 756 (Okla. 1960) (landowner not liable where plaintiff alleged its parking spaces were designed in a manner that forced drivers to back their vehicles onto the public roadway, thereby creating a dangerous condition); Chouinard v. N.H. Speedway, 829 F.Supp. 495, 1993 U.S. Dist. LEXIS 11154 (D.N.H. 1993) (no artificial condition where plaintiff alleged use of adjoining property created a dangerous condition on the public roadway); Owens v. Kings Supermarket, 198 Cal. App. 3d 379, 243 Cal. Rptr. 627 (1st Dist. 1988) (supermarket owed no duty to pedestrian struck on adjoining public highway); Holter v. Sheyenne, 480 N.W. 2d 736, 1992 N.D. LEXIS 24 (1992) (no duty where landowner had neither control over vehicle that struck decedent nor authority over traffic regulation on public highway); Rosas v. O'Donoghue, 2005 U.S. Dist. LEXIS 17165 (E.D.Penn. 2005) (no duty to plaintiff struck on highway because landowner did not create a dangerous condition on highway); Dawson v. Ridgley, 554 So.2d 623, 1989 Fla. App. LEXIS 7270 (Ct. App. 1989) (no duty to passing motorist on public highway where vehicle exiting shopping center collided with motorist because driver's view was obstructed by a telephone pole located off of shopping center property).

Looking to the cases cited by Skinner also provides some guidance in determining what our courts consider as an artificial condition. Specifically, the Skinner Court cited Holiday Rambler Corp. v. Gessinger, 1989 Ind. App. LEXIS 739, 541 N.E.2d 559 (Ind. Ct. App. 1989), on this issue. In Holiday Rambler, a landowner operated a factory on its property, which employed several hundred employees. Id. at 560-61. Each day at 3:00 p.m. at the end of their shifts, these several hundred employees exited the property from four driveways and entered onto the two-lane public highway with no established traffic flow pattern. Id. An accident occurred one day during this process. Id.

The facts of this case are substantially different than the Holiday Rambler situation. The Moralez vehicle was not on the Subject Property prior to the accident or exiting the property at the time of the accident. (R. 11-23). There is no allegation Respondents were doing anything to attract, encourage, or promote trucks. Nor were Respondents doing anything to attract, encourage, or promote backing trucks onto the property. Appellant's vehicle simply collided with Defendant Moralez, who was negligently blocking traffic while attempting to enter the Subject Property.

One vehicle attempting to enter the property is not a "condition." Vehicles backing into and out of private property are not unusual; it is a daily occurrence. Hundreds of thousands of residential homes in South Carolina are situated such that cars must back either onto or off of the property on a daily basis. Many South Carolina businesses are situated such that vehicles must slow down on the public highway to turn onto the property. Daily, countless businesses and homes have packages delivered to their premises by trucks that might temporarily block traffic or sight lines. These are not "artificial conditions." Property owners should not be put to the burden of being forced to defend claims for traffic

accidents occurring on a public highway while persons are negligently entering or exiting their private property. Such a result would be too broad a reading of Skinner and companion cases. The Oklahoma Supreme Court recognized this principle in Safeway Stores, supra, when it noted that it is a matter of common knowledge that most residences and many businesses have driveways or parking lots such that vehicles must be backed up (or out) in order to leave the premises. 349 P.2d at 758. "Under these circumstances the property owner is not liable because the owner has no control and has no right to control the drivers of the vehicles. However, the property owner has the right to expect the drivers of cars to look before they back out." Id. To hold otherwise could potentially lead to a slippery slope and would impose an undue burden on private property owners who are ill-equipped to remedy the situation.

The Skinner Court also referenced Pitcairn v. Whiteside, 109 Ind. App. 693, 34 N.E.2d 943 (Ct. App. 1941), as constituting an artificial condition. In Pitcairn, a driver was injured when employees of the property owner started a fire on the subject property near the roadway, which caused a substantial amount of thick smoke to gather on the roadway, and obstruct the vision of drivers. Id. at 696-97, 34 N.E.2d at 945. The smoke remained on the highway for several hours and the property owner did nothing to direct traffic or otherwise attempt to minimize the effect of this condition. Id. Such facts are clearly different from the facts of this case where the accident was caused by the manner in which Defendant Moralez chose to maneuver his truck onto the Subject Property, rather than by some inherently dangerous entity, such as smoke, on the roadway. An employee of the landowner started the fire that created the smoke and the smoke was emanating from the landowner's property onto the highway. Here, there was no act on the Subject Property that

attracted, encouraged, or promoted trucks to obstruct Highway 17. Defendant Moralez's choice to enter the property and his subsequent choice in how to maneuver his vehicle onto the property did not constitute an artificial condition on the roadway.

In Mahle v. Wilson, 283 S.C. 486, 323 S.E.2d 65 (Ct. App. 1984), the South Carolina Supreme Court addressed a similar case and affirmed the trial court's dismissal. In Mahle, the plaintiff was injured when she left a skating rink, crossed the highway in front of the skating rink, and was struck by an automobile. Id. at 487, 323 S.E.2d at 65-66. The skating rink was owned and operated by the defendant. Id. The plaintiff alleged the skating rink was negligent in various ways by essentially allowing activity to take place on its property without providing adequate safety measures. Id. The Court of Appeals affirmed the trial court's dismissal of the suit on the ground that the skating rink was an adjoining property owner that owed no duty to the plaintiff, as one injured on the public highway adjacent to its property. Id. at 487-88, 323 S.E.2d at 66. Here, just as in Mahle, the decisions of the courts below should be affirmed because Respondents owed no duty to Appellants to control the acts of third parties on the public highway adjacent to their property. Such responsibility lies exclusively with government and law enforcement.

IV. THE DECISIONS BELOW SHOULD BE AFFIRMED BECAUSE THE COURTS PROPERLY CONCLUDED THAT RESPONDENTS DID NOT "CAUSE OR CREATE" AN ARTIFICIAL CONDITION.

If an artificial condition existed (which is denied), it was not caused or created by Respondents. Respondents leased the Subject Property to tenant Jose Valdez. (R. at 394-98; Supp. R. at 5, 13, 21, 29). The truck involved in the accident was driven by Defendant Moralez, who was not a tenant under the lease. (R. at 13-14, 394-98). Respondents did not know Defendant Moralez, have never met Mr. Moralez, and never gave him permission

to enter the property and/or drive trucks on the property on the date of the accident or on any other date. (Supp. R. at 85, 92-93, 96, 100). Therefore, Defendant Moralez did not have the express or implied permission of Respondents to drive a truck onto the property or to back a truck onto the property in such a way as would obstruct Highway 17. Id. This act is simply too far removed from Respondents to hold that they caused or created the alleged artificial condition.

Likewise, the Respondents never gave Mr. Valdez permission to drive or park tractor trailer trucks on the property. (R. at 228, 238-41, 244, 248; Supp R. at 5, 13, 21, 29, 82-84, 87-89, 94, 96-97, 99-102). In fact, every single time Respondents saw a tractor trailer truck on the property, they explicitly and expressly told Mr. Valdez this was not permitted and directed him to move the truck. (R. at 238-41, 244; Supp R. at 5, 13, 21, 29, 82-84, 87-89, 99-102).

In Naumann v. Windsor Gypsum, supra, the Texas Court of Appeals also discussed whether the defendant landowner caused or created the alleged condition. The court concluded that the dangerous condition (a tractor trailer truck obstructing two lanes of traffic) was not created by Windsor, the defendant landowner. 749 S.W. at 192, 1988 Tex. App. LEXIS at *9. Windsor had no control over the defendant driver, an independent contractor, when the driver was not on its property. Id. at 192, 1988 Tex. App. LEXIS at *8. Windsor was not responsible for the narrowness of the roadway, the length of the trailer, or any other issue that could conceivably be said to have caused this condition. Id. at 192, 1988 Tex. App. LEXIS at *9. "The same dangerous situation exists every time a tractor-trailer makes a right turn at an intersection of two-laned roads. A mere bystander who did not create the dangerous condition is not required to take action to and prevent injury to

others." Id.

In Estes v. Peels, supra, the Tennessee Court of Appeals also focused on this issue. In affirming summary judgment for the landowner, the court noted the defendant landowner "had no control over the instrumentality [the vehicle] that caused [the plaintiff's] injuries; it could not prevent [defendant driver] from failing to yield to oncoming traffic as she entered the highway." 2000 Tenn. App. at *22. Therefore, even if an artificial condition existed in Naumann and Estes, the landowners were entitled to summary judgment because they did not create the condition that led to the danger. Just as in Naumann and Estes, Respondents did not do anything which can be construed as causing or creating this alleged artificial condition, as it is undisputed that they had no control whatsoever over Defendant Moralez and his choice to obstruct the highway.

The Holiday Rambler decision is instructive on this issue as well. In Holiday Rambler, each day, the owner of the property chose to release several hundred employees from their shift at 3:00 p.m. onto a two-lane road from four driveways on the property. Unlike this case, the property owner was actively involved in creating the purported artificial condition, as it was the property owner that ran the manufacturing company, chose when to release its employees, chose where they should enter and exit the property, and, therefore, created the condition. That is not the situation here, as there is no evidence Respondents attracted, encouraged, or promoted the alleged condition. Rather, the record demonstrates just the opposite. Respondents never consented to allowing their tenant, Defendant Moralez, or anyone else to park a tractor trailer on the property, back a tractor trailer on the property, otherwise engage in acts that can be construed as causing or creating this condition. (R. at 228, 238-41, 244, 248; Supp R. at 5, 13, 21, 29, 82-84, 85,

87-89, 92-94, 96-97, 99-102).

Additionally, in Holiday Rambler, the Indiana Court of Appeals held it was a question of fact for a jury only because it was distinguishable from cases where there was lack of relationship between the landowner and the third person causing the injury. For example, in discussing this issue, the Holiday Rambler Court cited and discussed the case of Blake v. Dunn Farms, 274 Ind. 560, 413 N.E.2d 560 (1980). In Blake, the plaintiff was a passenger in an automobile that struck a horse on a public highway. Id. at 562-64, 413 N.E.2d at 561-62. The plaintiff brought suit against the owner of the horse and the landowner. Id. The landowner was neither the owner nor the custodian of the horse, as the horse belonged to a sub-tenant of the tenant to which the landowner was leasing. Id. The court affirmed granted summary judgment because "the owner of the property had no relationship to the agency causing the problem, and no duty to investigate to determine if there was a problem, emergency, or dangerous condition." Id. at 566-67, 413 N.E.2d at 564. The court expressly distinguished this case from Pitcairn, supra, wherein the landowner itself caused the artificial condition of heavy smoke traveling across the highway. Id. The court noted that to hold the landlord responsible "would place a duty on a property owner to continually inspect the perimeters of his property along an adjacent highway, to make sure that dangerous conditions do not arise for those traveling on the highway." Id. Here, just as in Blake and as recognized by Holiday Rambler, there is a complete lack of relationship between landowner and the third person causing the injury. As more fully set forth above, Respondents had no relationship whatsoever with Defendant Moralez and no control over him.

Thus, the actions and involvement of Respondents did nothing to cause or create

the alleged artificial condition. They did not attract, encourage, or promote trucking activity on the property or the act of backing a tractor trailer truck across the public highway. The record demonstrates that they did just the opposite. This accident was caused and created by the manner in which Defendant Moralez chose to maneuver the tractor trailer truck onto the Subject Property. Respondents' actions were too far removed from Defendant Moralez and the accident itself to be held liable. Property owners are under no duty to predict who will visit their residential tenant. Moreover, they are under no duty to predict or direct the manner in which such visitors will turn their vehicles onto the leased property. To expand Skinner to reach such a result would open up the floodgates of litigation for every accident that occurs on the public highway while someone is entering or exiting private property.

V. NEITHER SOUTH CAROLINA LANDLORD-TENANT LAW NOR THE LEASE AGREEMENT CREATE A LEGAL DUTY OF CARE FLOWING FROM RESPONDENTS TO APPELLANTS.

Appellants contend the lease agreement between Respondents and their tenant created a legal duty of care owed by Respondents to Appellants. There is nothing in the terms and conditions of the lease to support this allegation. (R. at 394-98). Appellants cite Sections 20 and 25 of the lease in taking this position. Section 20, entitled "Joint Responsibility," states: "Each party who signs this Rental Agreement is responsible for rent and the obligations herein." (R. at 396). This is a standard lease provision, which means that if more than one tenant signs the lease, each are equally responsible for the rent and the terms of the lease. To construe this language as imposing any responsibility or liability on the landlord would amount to a tortured reading of the provision. Section 25 of the lease sets forth rules and regulations that the tenant must follow. (R. at 397). It does not set forth an rules, regulations, or duties that the landlord must follow. No provision of the lease

creates a duty flowing from Respondents to Appellants. Nothing in the South Carolina Residential Landlord Tenant act or accompanying case law creates a duty owed by Respondents to Appellants.

CONCLUSION

For the reasons set forth above, the courts below properly held that Respondents owed no legal duty of care to Appellants for injuries sustained in this accident. Respondents respectfully request this Court affirm both the trial court's Order granting summary judgment and the court of appeals' decision affirming the trial court's Order.

Respectfully submitted,

Samuel R. Clawson
Timothy A. Domin
Christina R. Fargnoli
CLAWSON AND STAUBES, LLC
126 Seven Farms, Ste. 200
Charleston, South Carolina 29492
(843) 577-2026 (o)
(843) 724-8036 (f)

ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 03 2013

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-6574

NESHEN MITCHELL, individually and as the next friend of her minor child, HAKEEM T.M. . . . . PETITIONER

vs.

JUAN. P. MARUFFO d/b/a LIBERTY EXPRESS, ADRIAN MORALEZ, RET PARTNERSHIP, WILLIAM T. MCQUEENEY, CARL E. ROBERTS, KARL R. HENDERSON, and STEVEN PARHAM, ... Defendants

OF WHICH RET PARTNERSHIP, WILLIAM T. MCQUEENEY, CARL E. ROBERTS, KARL R. HENDERSON, and STEVEN PARHAM, are the . . . . . Respondents

---

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Respondents' Return to for Petition of Writ of Certiorarihas been served upon opposing counsel by mailing a copy, properly addressed, with sufficient postage affixed thereto this 28th day of May, 2013:

Richard S. Rosen
Andrew D. Gowdown
Rosen, Rosen, & Hagood, LLC
134 Meeting Street, Ste. 200
Charleston, SC 29401

J. Joseph Condon, Jr.
Law Office of J. Joseph Condon, Jr.
3842-C Leeds Avenue
North Charleston, SC 29405

Attorneys for [redacted] NESHEN MITCHELL, individually and as the next friend of her minor child, HAKEEM T.M.

CLAWSON AND STAUBES, LLC
Samuel R. Clawson
Timothy A. Domin
Christina R. Fargnoli
126 Seven Farms, Ste. 200
Charleston, South Carolina 29492
(843) 577-2026 (o)
(843) 724-8036 (f)

ATTORNEYS FOR RESPONDENTS