STATE OF SOUTH CAROLINA COUNTY OF BERKELEY MATTHEW ZETZ, Plaintiff, vs. DANIEL ISLAND COMPANY, INC., DANIEL ISLAND COMMUNITY FOUNDATION, INC., DANIEL ISLAND TOWN ASSOCIATION, INC., DANIEL ISLAND COMMUNITY ASSOCIATION, INC., AND MGR RESOURCES, INC. D/B/A MOONLIGHTING LANDSCAPE LIGHTING SYSTEMS, Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No. 2017-CP-08-02238 **ORDER GRANTING DEFENDANT DANIEL ISLAND COMPANY'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for a hearing on Defendant Daniel Island Company's ("DIC") Motion for Summary Judgment on October 20, 2020. At that hearing, Plaintiff's counsel requested additional time to find and present evidence in opposition to DIC's Motion for Summary Judgment. After hearing from both attorneys, this Court agreed to allow the Plaintiff additional time to discover and provide this Court with evidence of a disputed material fact. On August 24, 2022, this Court held a second hearing on DIC's Motion and the Plaintiff did not present any substantive evidence to challenge DIC's position. Having carefully reviewed and considered all submissions before the Court and arguments of counsel, DIC's Motion for Summary Judgment is hereby GRANTED.

FINDINGS OF FACT

This case arises out of an incident that occurred in what was known as the Children's Park on Daniel Island on the night of November 11, 2016. The Plaintiff, Matthew Zetz, accompanied his brother to inspect a vendor's booth that had been set up to promote his brother's orthodontics practice during Daniel Island Park Day, which was to take place the following day. Mr. Zetz's brother walked into the park with the guidance of a police officer with a flashlight. Mr. Zetz, who was unfamiliar with the park, walked some distance behind them without the aid of a flashlight.

The Children's Park, which was recently razed to allow for the construction of a new park and public marina, was built to resemble a map of the Charleston area. Some of the local waterways depicted on the hardscape surface of the children's play area were built as an actual water feature, consisting of a fountain that filled shallow concrete trenches with water. On the night of the incident, the fountain had been turned off and, by all accounts, there was no water in the trenches. Mr. Zetz stepped into one of the water feature trenches and fractured his left ankle.

DIC is a for profit corporation. It was the original developer entity for the entirety of Daniel Island. As part of the master plan to develop the island, the City of Charleston mandated a number of parks and greenspaces be built and be open to the public. The City also mandated that all such parks must be conveyed to one of the nonprofit property owners' associations on the island or to the City itself. The Children's Park where the Plaintiff was injured was constructed by DIC in 1999 and conveyed to the Daniel Island Town Association ("DITA") immediately upon its completion, per the City's requirements. DITA has been the sole owner of the Children's Park since that conveyance. DITA, a South Carolina non-profit corporation, is managed by a board of directors and operated in accordance with a Master Deed. DIC, as the declarant entity listed in the DITA Master Deed, has the right to appoint DITA's directors until a given number of properties

with that association have been sold to third party owners, at which time its board members will be elected from the association's members.

LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *Sapp v. Ford Motor Co*., 386 S.C. 143, 687 S.E.2d 47 (2009). Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Standard Fire Ins. Co. v. Marine Contracting & Tooling Co*., 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). However, the moving party's initial responsibility is discharged by showing that "there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. and Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)).

In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences that can be reasonably drawn must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). However, "summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Guinan v. Tenet Healthsystems of Hilton Head*, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009) (quoting *Davis v. McLeod Reg'l Med. Center*, 367 S.C. 242, 250, 626 S.E.2d 1, 5) (2006)).

CONCLUSIONS OF LAW

I. DIC is not liable to the Plaintiff because DIC owed no legal duties to the Plaintiff at the time he was injured on the property of another party.

The Plaintiff's negligence claim against DIC can be divided into two general categories: 1) negligent design/construction of the park; and 2) failure to properly maintain the park. The Plaintiff cannot prevail on either of these theories. First, as to the Plaintiff's claims for negligent design/construction of the park, the statute of repose bars the Plaintiff from any recovery. The park was completed in 2002. The Plaintiff's injuries were sustained in 2016. This action was filed in 2017. Given that the project was completed prior to 2005, the old thirteen-year statute of repose applies. Thus, the statute of repose expired roughly two years before this action commenced.

Furthermore, the Plaintiff cannot prevail on his negligence claim against DIC under a premises liability theory because DIC did not owe a legal duty to the Plaintiff. The Plaintiff alleged that DIC is liable to him for his injuries because DIC controlled DITA and DITA controlled the property where the Plaintiff was injured. The Court disagrees. "Control" is not a word with a single legal definition. In the context of horizontal property regimes, master deeds frequently refer to a "declarant control period." That is simply common parlance for the time during which the original developer of a community may appoint the board members of a property owners association it has formed. That said, if proper corporate formalities are observed, the declarant does not actually exercise direct operational control over the POA, much less the common elements that are owned by its members. In the context of the kinds of premises liability cases upon which the Plaintiff relies, "control" is used as a way to describe the circumstances under which a legal duty arises to protect occupants and visitors to a property. That is a very different analysis than what is appropriate to examine the relationships between separate corporate entities.

In this case, one must go through each link in the chain: DIC selects the board of DITA. DITA's board makes upper-level decisions for that entity. DITA's employees and vendors carry out those decisions. The Children's Park is one of the common elements owned by the many property owners that actually own all of the property that comprises DITA. An injury occurred in that park, allegedly because of inadequate lighting. The Plaintiff failed to provide any support for the notion that DIC has sufficient control over the park to create a legal duty in that entity. As a result, DIC is entitled to summary judgment on the Plaintiff's negligence claims.

II. DIC is not liable for the negligence of another entity based on a single enterprise or corporate amalgamation theory.

While the Plaintiff argued that he had asserted claims for corporate amalgamation and veil piercing during the hearing on DIC's Motion for Summary Judgment, the Plaintiff was not able to point to any facts in the record to support either of those claims.

The South Carolina Supreme Court formally recognized the amalgamation of interests, or single business enterprise theory, in *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280. In doing so, the Court emphasized that "corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that." *Id.* Notably, the Court held that "the single business enterprise theory requires a showing of more than the various entities' operations are intertwined." *Id.* Rather, "[c]ombining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Id.* at 655, 817 S.E.2d at 281.

In this case, the Plaintiff was apparently attempting to demonstrate the existence of a single business enterprise among DIC and the other Daniel Island Defendants based on DIC's involvement with the other Daniel Island Defendants' property owners associations. However, the

Plaintiff cannot point to any facts in the record to make such a showing. Prior to developing the island, and in compliance with the South Carolina Horizontal Property Act, DIC executed a master deed setting forth the necessary details of the development. That master deed expressly states that DIC, as the developer of the property, would retain control over the boards of the property owners' associations until control was automatically and completely turned over to the members of the association. Despite the Plaintiff's efforts to demonstrate that the Daniel Island entities should be legally classified as a single business venture, the evidence clearly demonstrates that the opposite is true: DIC is completely separate from the other Daniel Island entities. There is nothing remotely nefarious about the formation or structure of the Daniel Island entities. As a result, because the Plaintiff cannot provide the Court with any evidence of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions," as is required to establish a claim for amalgamation, DIC is entitled to summary judgment on all of the Plaintiff's claims against it.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant DIC's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

Berkeley Common Pleas

Case Caption: Matthew Zetz VS Daniel Island Community Foundation, Inc , defendant, et al

Case Number: 2017CP0802238

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134