

FORM 13
BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Case No. 2019-CP-02-02426

Historic Hospitality, LLC,
Shah Investments,
Shah Enterprises, LLC,
Southern Hotel Properties

Respondent,

v.

Stephan Shugart,

Appellant.

FINAL REPLY BRIEF OF APPELLANTS

s/ Stephan Shugart
546 Gates Court
Philadelphia, PA 19128
(215) 509-1088
Pro Se Appellant

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SC Court of Appeals

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TABLE OF AUTHORITIES

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- Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997)
- Creech, 328 S.C. at 33, 491 S.E.2d at 575
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- Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991)
- Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)

OTHER AUTHORITIES

163. Didiet v. J.C. Penny Co., 868 F.2d 276,281 {8 Cir. 1989}.
164. Id.
- South Carolina Bar Continuing Legal Education Division publication "Better Notion Practice-Tips, Suggestions and Ideas from the Court, Plaintiff and Defense Perspective dated Thursday, February 13, 2020 Page 125
- S.C. Code Ann. § 56-5-3150(a) (1991)
- S.C. Code Ann. § 56-5-3150(c) (1991)
- S.C. Code Ann. § 56-5-3230 (1991)

ARGUMENT IN REPLY

In response to the Respondent's Attorneys of Turner and Paget initial brief concerning my appeal received on August 4, 2021.

Please accept my sincere apologies for the ongoing matter between myself and the attorneys at Turner and Paget. I greatly appreciate the courts time and effort in this matter although I have diligently and sincerely have tried to resolve the matter without taking any more of the courts time to no avail.

I have not heard back from the Attorney James Knox and have now been informed by the Respondent's brief that he has left the firm. I tried calling Mr. Knox a few times in the past weeks but have to date not received any response. Mr. Knox was very understanding and pleasant and I greatly miss the rapport that we had developed.

I would like to point out some of the inconsistencies I believe exist in the Respondent's initial brief that was recently filed with the South Carolina Court of Appeals. After reading the Respondent's brief, I was left with an overwhelming sense that my rights as an American citizen are being violated.

1. One point is the Respondent's statement concerning my United States Service Dog asserting that the reason for my being negligent and causing my injury was in fact my Service animals responsibility. My disabilities that I was suffering from at the time of my accident have come into question as to my not being able to see concealed obstacles. Clearly my rights under the Disabilities Act afford me protection from such remarks. The sole reason for having a Service Dog is to prevent such accidents at all possible costs and not to cause them.

2. The Respondent's Attorney assertion of my seeing the foliage is not correct as per the deposition I attended at the offices of Turner and Paget held by the previous attorney James Knox. I humbly request be stricken from the record, Deposition TT pg.34 line 3 It is clear that the answer I provided was not in response to the question that I was asked. The question put forth by Mr. Knox was " could you not see the bushes due to the transition from going from dark to bright?". I answered Deposition-TTpg 14 line 8, "I couldn't see because of the foliage that was concealing the limb behind. And that's what I struck my head on". I did not answer the question asked and was not asked again to make it clear what was being asked. The answer I provided was taken completely out of context as to the question being asked at the time. It is clear that the Respondent's attorneys are using this statement to prove over Fifty Percent Negligence under the rules of the South Carolina civil code Under the South Carolina Bar Continuing Legal Education Division publication "Better Notion Practice-Tips, Suggestions and Ideas from the Court, Plaintiff and Defense Perspective dated Thursday, February 13, 2020 Page 125 Personal Injury and Products Liability, Whether a store customer assumed the risk when she stepped on a slippery floor was the "type of inquiry {that} is a textbook example 'of an issue of fact' inappropriate for determining through summary judgment" 163. *Didier v. J.C. Penny Co.* 868 F.2nd 276, 281 (8th. Cir. 1989), The trial court erred in finding as a matter of law that the

customer had assumed the risk. 164. *Id.* This issue falls squarely within the experience of most jurors and has traditionally been entrusted to them. The jury's determination involves primarily

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common sense and knowledge of human affairs".

I also need to make the court aware that I was given no opportunity to correct or address any of the statements I had given at the deposition. Furthermore, at the time of the deposition I was very weary from travelling from Philadelphia to Columbia, South Carolina by train. I also spent a very cold and freezing night due to no heat at a local hotel in Colombia City Center.

3. I would like to object to the previous and current use of the matter of *Marc J. Bloom, Respondent, v. James Ravoira, Petitioner*. The case was and is used inappropriately in my case to assert liability on my behalf to prove that the Fifty Percent rule of contributory negligence is breached. The case *Marc J. Bloom, Respondent, v. James Ravoira, Petitioner* of is being used as a roadblock for further cases that do not meet the Fifty Percent criteria. A summary of the case is as follows: It should be clear to the court that this case involves the Plaintiff putting himself in harm's way by not crossing at a designated crossing and risking personal harm by attempting a crossing from between two parked cars. My case is clearly not related to these issues of fault. I was not putting myself in harm's way by using entrances and exits that are open to the public and hotel guests. The proprietor of the Hotel Aiken had a duty (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. E.g., *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998).

"Summary judgment is warranted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

Bloom alleged in his complaint that Ravoira negligently caused his injuries. To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. E.g., *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991).

Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997); accord *Brown v. Smalls*, 325 S.C. 547, 481 S.E.2d 444 (Ct.App. 1997). In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Creech*, 328 S.C. at 33, 491 S.E.2d at 575 (discussing directed verdict standard); see also *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d

305, 307 (Ct.App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created" and a directed verdict motion is properly granted). Therefore,

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summary judgment is generally not appropriate in a comparative negligence case.

Under South Carolina law, Ravoira, as a driver, and Bloom, as a pedestrian, owed certain duties. Regarding pedestrian duties, a "pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." S.C. Code Ann. § 56-5-3150(a) (1991). In addition, where traffic-control signals operate between adjacent intersections, "pedestrians shall not cross at any place except in a marked crosswalk." S.C. Code Ann. § 56-5-3150(c) (1991). Drivers are charged with the duty to exercise due care to avoid colliding with any pedestrian. S.C. Code Ann. § 56-5-3230 (1991).

On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. Koester, *supra*. Nonetheless, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Hopson, 321 S.C. at 314, 468 S.E.2d at 307 (discussing directed verdict motion). In our opinion, a verdict for Bloom is not reasonably possible under the facts of this case".

Respectfully Submitted

s/ Stephan Shugart
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Pro Se Petitioner

Exhibit 1

CMS Medicare Health Care list of medical providers related to the care and treatment of medical care related to the accident billed directly to the client. Moneys due if any amount is paid by the Defendant's Nationwide Insurance provider.

Exhibit 2

Pictures of Hotel Aiken Annex of rooms showing severely pruned back shrubbery branches and limbs ordered by the Hotel Aiken manager shortly after the accident date of September 29, 2016 that were taken by Plaintiff on return from the Aiken County Hospital Emergency Room September 30, 2016. Note the fresh cuttings of branches and limbs that were removed after reporting that Plaintiff incurred injury while staying at the Hotel Aiken Annex of rooms.

Exhibit 3

Pictures of Hotel Aiken Annex of rooms showing current conditions of shrubbery as of March 03, 2020 taken where Plaintiff's accident occurred. Note the weathered branches and limbs depicted in Exhibit 2 after cuttings were aged and weathered.

Exhibit 4

Chart notes from treating physician dated 12/05/2016 showing Plaintiff sought medical treatment for injuries received while staying at Hotel Aiken September 29, 2016 onward. Additional medical treatment is available after 12/05/2016 from different medical providers in records upon request.

Exhibit 5

Request by Plaintiff to Defendants Attorney James Knox of Turner and Paget requesting dates for mediation. The 300 day rule expired and Defendant's Attorney did not answer Plaintiff by said date of August 10, 2020

Exhibit 6

Plaintiff's answer to Defendant's Attorney in regards to Defendants motion to dismiss dated July 18,2020 heard via Zoom virtual hearing August 30,2020.

Exhibit 7

Final Reply Brief of Appellants

1: Case Citing to be added to the list of table of Authorities. Citing 1 thru 14 are included in exhibit 7.

Exhibit 8

Notice of Appeal from Common Pleas regarding
Conviction in Magistrates or Municipal Court

Exhibit 9

Proof of Service of Notice of Appeal served to
all involved parties.

Exhibit 10

Transcript of Record 2019-CP-02-02426 Held
August 31, 2020 held before Honorable
Courtney Clyburn-Pope, Judge. held via Zoom
with no Exhibits attached by the court.

Exhibit 11

Picture of my Native South Carolina United States Service dog Layla, may she rest in peace, was with me at all times while staying in Hotel Aiken.

Exhibit 12

Deposition of Plaintiff conducted at the offices of James Knox of Turner and Paget, 1901 Main Street, Columbia South Carolina 29202, attorney for the Defendant.

Exhibit 13

Answer by Plaintiff to Defendants Attorney submission of Notice of Motion and Motion for Summary Judgment in the matter Stephan Shugart v. Shah Investments LLC.,
Please note all Examples listed have already been put into Discovery prior to Appeal to the South Carolina Court of Appeals.

Exhibit 14

Video taken at Hotel Aiken's annex of hotel rooms, showing enclosed breezeway, steps leading from second floor to covered breezeway. Showing concrete block pillars that support Breezeway of the second floor. Showing planting of shrubbery on parking lot side of concrete pillars. Examples of how concrete pillars conceal the shrubbery. Since all of the shrubbery branches have been pruned back since the accident the branches that protruded into the open breezeway exits into and out of the parking lot are not able to be shown. This video was submitted to the lower South Carolina court located in Aiken, South Carolina.

The South Carolina Court of Appeals

Stephen Shugart, Appellant,

v.

Shah Investments, LLC and Southern Hotel Properties,
LLC, Respondents.

Appellate Case No. 2020-001453

ORDER

Respondents have filed a motion to dismiss based on Appellant's failure to serve and file an amended record on appeal. Appellant's motion to allow extra time to serve and file a return to the motion to dismiss is denied. After careful consideration, Respondents' motion to dismiss is denied. Appellant shall serve and file the amended record on appeal within thirty days of the date of this order or this appeal will be dismissed.



FOR THE COURT

Columbia, South Carolina

FILED
Sep 06 2022

cc:
Stephan Shugart
R. Hawthorne Barrett, Esquire