THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BERKELEY COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-000927

Shelby Trehus and Kayden M.,
a Minor, By His Guardian Ad Litem
Shelby Trehus, Appellants,

v.

Santee Run Apartments,
A South Carolina Corporation, Respondent.

SECOND AMENDED INITIAL BRIEF OF APPELLANTS

April 3, 2023

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STATEMENT OF THE CASE

On November 11, 2019, Appellant Shelby Trehus ("Appellant Trehus") brought this action in the Berkeley County Court of Common Pleas against the Respondent, Santee Run Apartments ("Santee Run", or, "Respondent"), asserting negligence, gross negligence, and breach of contract. On December 6, 2019, Appellant Trehus filed an Amended Complaint. On April 29, 2020, Appellant Trehus filed a Complaint alleging the same causes of action individually and as Guardian Ad Litem for her minor son, Kayden M. ("Appellant Kayden", or, collectively as "Appellants").

Discovery was conducted and exchanged, and depositions were taken in both cases. The cases were eventually consolidated for trial, and the cases were put on the jury trial roster for Berkeley County Common Pleas on numerous occasions from December 2021 through February 2022 before being scheduled to move forward during the February 22, 2022 term of court before The Honorable Bentley Price.

On February 25, 2022, the case was submitted to the jury which deliberated and returned a verdict. Counsel was not given an opportunity to see or read the verdict form. Due to several

material defects and legal and factual deficiencies in the jury verdict, and the Court's failure to charge gross negligence, and the jury's failure to deliberate and consider the Appellants' claim for breach of contract, the Appellants have requested a new trial on March 4, 2022 pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. A hearing was held before Judge Price on April 18, 2022 in the Charleston County Court of Common Pleas. On June 6, 2022, Judge Price issued an order denying the Appellants' motion for a new trial. On July 5, 2022, the Appellants served the Notice of Appeal on the Respondent. On July 30, 2022, the transcript of the trial and of the hearing on the motion for new trial was received by the Appellants and served unto the Respondent on August 1, 2022.

STANDARDS OF REVIEW

The Court of Appeals can review orders granting or denying new trials "when based upon error of law." *Daughty v. Nw. R. Co. of S.C.*, 75 S.E. 553, 554 (1912), citing to *Byrd v. Small*, 2 S.C. 388, 388 (1870); *see also Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 670 S.E.2d 1, 4 (Ct. App. 2008). "When considering the trial court's ruling on motions for a new trial or new trial *nisi remittitur*, this court 'employ[s] a highly deferential standard of review.'" *Mills v. S.C. State Ports Auth.*, 865 S.E.2d 910, 917 (Ct. App. 2021), quoting *Burke v. AnMed Health*, 710 S.E.2d 84, 89 (Ct. App. 2011), citing *Rush v. Blanchard*, 426 S.E.2d 802, 806 (1993). "The trial court's 'decision will not be disturbed on appeal *unless its findings are wholly unsupported by the evidence* or *the conclusions reached are controlled by error of law*.'" *Mills*, 865 S.E.2d at 917, quoting *Brinkley v. S.C. Dep't of Corr.*, 687 S.E.2d 54, 56 (Ct. App. 2009) (emphasis added). "It is well settled, under the decisions of [the Supreme Court of South Carolina], that an order granting or refusing a new trial when based solely on errors of law is subject to review by [an appellate court]".

Donkle v. Forster, 119 S.E.2d 231, 232 (1961). On appeal here are issues of application of the law and proper procedure.

"The refusal [by the Court] to charge the jury with [Counsels'] requested instruction is subject to harmless error analysis." *State v. Lee-Grigg*, 649 S.E.2d 41, 53 (Ct. App. 2007), *aff'd*, 692 S.E.2d 895 (2010). "South Carolina courts acknowledge the appropriateness of harmless error analysis in cases where procedural errors rather than defects in the trial mechanism itself affect a defendant's constitutional rights." *Id.* at 54. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." *State v. Pagan,* 631 S.E.2d 262, 267 (2006) (citations omitted) (emphasis added). "In order to warrant reversal for refusal of the trial judge to give requested jury instructions, refusal must have been both erroneous and prejudicial. *Ellison v. Parts Distributors, Inc.*, 395 S.E.2d 740, 741 (Ct. App. 1990), citing *Ballou v. Sigma Nu General Fraternity,* 352 S.E.2d 488 (Ct. App. 1986).

FACTUAL BACKGROUND

This case arises from a fire that occurred at the Santee Run Apartments owned and operated by the Respondent corporation in Moncks Corner on May 29, 2019. Appellant Trehus and her son, Appellant Kayden, awoke to smoke clouding their apartment due the fire which began engulfing their residence. Appellant Trehus, according to her deposition testimony which was used at trial, awoke to "a very awful smell", "sore throat", and "nasty taste". (Dep. Shelby Trehus at 43:16-18 (June 22, 2020)[EXHIBIT A]). She navigated her way to the front door and, upon opening it, witnessed lights from fire trucks and smoke "roll" and "barrel" into her apartment. (*Id.* at 43:24-25, 48:17-18). Because of the thickness of the smoke, Appellant Trehus was unable to see the exterior staircase to exit the building safely. (*Id.* at 48:24-49:4). Having no other way to escape the burning building or their apartment that had filled with smoke, Appellant Trehus

dropped her four-year-old son out the window of their second-story unit at the beckoning of the neighbors below. Appellant Trehus then jumped out the window, sustaining a cuboid fracture of her foot in the process, and sustaining a permanent 6% disability as corroborated by broadcasted deposition testimony by an expert physician who performed an independent medical examination. Her then-three-year-old son, Appellant Kayden, suffered from symptoms of post-traumatic stress disorder as well as other generalized trauma and anxiety disorders. (R. at 180:9-10 [EXHIBIT C]). Appellant Trehus testified at trial that she, at no point, heard the sound of a smoke alarm to warn her of the fire that burned down most of her apartment building; (R. at 42:19-24). The Appellants alleged and provided evidence that the smoke detector in their apartment was inoperable and should have been replaced three years prior to the apartment fire, and alleged that it was the Respondent's duty according to the lease agreement and by statutory law to maintain and ensure operable smoke detectors. (Trehus Am. Compl. ¶¶ 10, 23, 28-30).

The Appellants in this matter had resided in an apartment on the premises since February of 2018, having signed a "month-to-month" lease or rental agreement, that could be terminated at the end of each month. (R. at 117:19 [Ex. D-5][EXHIBIT D]). The rental agreement states that an inspection is performed by the Respondent "on the last Tuesday of every month". (*Id.*) According to the Respondent, smoke detectors in the apartment were examined during these routine inspections, which allegedly included removing the smoke detectors from the ceiling and checking them to make sure they were functioning. (*Id.* at 225:7-10). No evidence was offered by the Respondent that refuted that the smoke detector did not function or that it did not need replacement; additionally, the Respondent stated that she did not, at any point, take the smoke detector off the ceiling to inspect that it operated or to check the battery. (*Id.* at 226:11-227:22) Furthermore, no

records of these inspections were kept or presented as evidence by the Respondent. (*Id.* at 225:16-226:5).

At trial, the Appellants introduced as evidence a photograph of the actual smoke detector installed in their apartment, which was confirmed by both the Chief and the Captain of the Moncks Corner Fire Department to warrant replacement ten years after its manufactured date of June 2006, which would recommend replacement nearly three years before the fire based on fire official testimony. (*See* R. at 47:21 [Ex. P-1][EXHIBIT E]); (*see also id.* at 151:9-17, 162:15-21). The Appellants also introduced evidence that the fire extinguisher installed in the Appellants' apartment had not been inspected or serviced in over eleven years, since April of 2008. (*Id.* at 152:13-23, 162:25-163:8). On the official report completed by the Moncks Corner Fire Department, the agency that responded to and extinguished the apartment fire, the responding firefighters reported that no smoke detectors were present. Furthermore, according to the testimony of the Captain of the Moncks Corner Fire Department who responded to the apartment fire and contributed to the completion of the report, smoke detectors were neither heard nor observed at the Respondent apartment complex. (*Id.* at 161:9-14, 145:1-2 [Ex. P-9][EXHIBIT F]).

When the parties' rested their cases, Counsel argued several outstanding motions and objections to the proposed jury charges. The Court declined to charge punitive damages and the Appellants' cause of action for gross negligence was dismissed, with objection from Appellants' Counsel. (*Id.* at 253:8-22). The Court opined that there was no statutory violation nor evidence of reckless conduct, despite these issues being established by the facts and questions for the jury to consider. (*Id.*)

The jury was ultimately charged on negligence, breach of contract, and a state statute in South Carolina Code §§ 27-40-10, *et seq.* (Residential Landlord and Tenant Act).

After the deliberation, the jury returned a verdict in which it determined:

(1) The Respondent was negligent as to Appellant Trehus, and that Appellant Trehus was not contributorily negligent;

(2) The Respondent's negligence was not the proximate cause of Appellant Trehus' injuries;

(3) The Respondent was not negligent as to then-three-year-old Appellant Kayden;

(4) The Respondent was not the proximate cause of Appellant Kayden's injuries; and

(5) A jury award of $0 in favor of the Appellants.

(*See id.* at 309:5-311:6).

The jury, however, made no finding as to the Appellants' claims for breach of contract pertaining to the lease agreement. (*See id.*) Counsel for Appellants were, at no point following the trial, offered an opportunity by the Court to view the jury verdict form. [EXHIBIT G – Jury Verdict Form].

In the days following the trial, Counsel for Appellants repeatedly requested from the Court copies of the jury verdict form to examine for the first time and to review the inconsistencies and defects which were then discovered. These requests were made beginning Monday, February 28, 2022, the Monday after trial which concluded on Friday, February 25, 2022. The verdict form was eventually sent to Appellants' Counsel Wednesday, March 2, 2022.

On March 4, 2022, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Appellants timely filed a Motion for a New Trial, and on March 21, 2022, an accompanying Memorandum in Support was submitted. The grounds for the Appellants' Motion were that the Court declined to give the jury a charge on punitive damages and gross negligence as requested, that the jury failed to render a verdict based upon the Appellants' cause of action for breach of

contract, that the jury found the Respondent negligent as to Appellant Trehus yet awarded no damages, and that the jury found the Respondent negligent as to Appellant Trehus but not Appellant Kayden despite the claims arising out of the same facts and circumstances. On April 18, 2022, a hearing was held before The Honorable Bentley D. Price on the Appellants' Motion, which was ultimately denied on June 6, 2022. The Appellants thereafter filed and served the Notice of Appeal on July 5, 2022. Therefore, the Appellants respectfully request that the order rendered on June 6, 2022 by the trial court be REVERSED, that the Appellants' Motion for a New Trial be GRANTED.

LEGAL ARUMENTS

The grounds for the Appellants' Appeal of the trial court's order denying a new trial in the present action are that the trial court made severe procedural and discretionary errors, and that the jury verdict that was delivered was defective, and that the Appellants are entitled to a new trial.

1. THE TRIAL COURT ERRED IN DECLINING TO INSTRUCT THE JURY AS TO PUNITIVE DAMAGES AND GROSS NEGLIGENCE.

Prior to charging the jury, both parties were asked to submit proposed jury charges to the Court, which the Court would use to formulate charges for the jury's deliberation. The Court allowed Counsel to object, on the record, the submitted charges. The Appellants alleged and the evidence established that the Respondent's conduct constituted gross negligence, and thus entitled the Appellants to punitive damages. Counsel for the Appellants requested to charge on punitive damages pursuant to their claim that gross negligence was proved as the Respondent's statutory and contractual breaches which were established by the evidence. The Court, however, unilaterally and without cause removed the Appellants' proposed charge for punitive damages, despite the determination of both gross negligence and punitive damages being questions for the jury, and effectively dismissed the Appellants' request to charge on gross negligence. (R. at 253:8-

22). This objection was argued as a ground for the Appellants' Motion for New Trial. Counsel for the Appellants' took exception to the Court's failure to charge the jury the Appellants' right to punitive damages and of the gross negligence of the Respondent. (R. 254:19-23).

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future. " *Clark v. Cantrell*, 529 S.E.2d 528, 533 (2000); *see also Austin v. Specialty Transp. Servs., Inc.*, 594 S.E.2d 867, 874–75 (Ct. App. 2004) ("Punitive damages serve at least three important purposes: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights."). "Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party. *Id.*, citing to *Harris v. Burnside,* 199 S.E.2d 65, 68 (1973); F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 581–93 (1997).

Punitive damages are meant to award a party who has been injured by negligence "so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness, or recklessness". *Bell v. Atl. Coast Line R. Co.*, 24 S.E.2d 177, 182 (1943) (citations omitted). As such, the award of punitive damages is warranted upon the jury given the opportunity to distinguish the Appellants' claims for negligence and gross negligence. The South Carolina Supreme Court opined in *Hicks v. McCandlish*, in pertinent part:

> [N]egligence may be so gross as to amount to recklessness, and when it does, it ceases to be mere negligence and assumes very much the nature of wilfulness. So much so that it has been more than once held in this state that a charge of reckless misconduct will justify the jury, if the same be proved, in awarding punitive damages.
>
> …

> While the determination of the question before us is not free from difficulty, it was for the jury to say in our opinion, under the evidence, whether the acts of omission and commission were committed by the defendants in such a manner that a person of ordinary reason and prudence would say that it was reckless disregard of the rights of the plaintiff.

Hicks v. McCandlish, 70 S.E.2d 629, 631 (1952), citing to *Proctor v. Southern Ry. Co.*, 39 S.E. 351 (1901).

Appellants are not asking this Court to analyze the application of the facts to the law; rather, Appellants are asserting that the trial Court erred in disallowing a charged to the jury on gross negligence and the Appellants' right to punitive damages. This is compounded by the jury's failure to award damages for the negligence they found to exist and the Court's failure to charge gross negligence for the jury to deliberate, as corroborated by the law stated by the highest Court of this State. The trial court clearly erred in dismissing the Appellants' request for a charge on gross negligence and punitive damages.

2. THE JURY AND TRIAL COURT ERRED BY FAILING TO DELIBERATE AND RENDER A VERDICT AS TO THE APPELLANTS' CLAIM FOR BREACH OF CONTRACT.

The jury was charged on the Appellants' claim for breach of contract pertinent to the month-to-month lease agreement between Appellant Trehus and the Respondent. (*See* R. at 297:23-298:20). However, the jury verdict form that was not presented for Counsel to examine but was provided to the jury contained no place on it, unbeknownst to Counsel, for the jurors to make that determination, and thus, the Appellants' claim for breach of contract was not addressed by the jury as later discovered. The verdict form procured by the Court concentrated solely on the jury's deliberation of negligence on the parts of the Respondent and Appellants. In the Court's Form 4 order denying the Appellants' Motion for a New Trial, the Court states that it would be prejudicial to the defense if a new trial was permitted to proceed, and that Counsel should have reviewed the form at trial. Conversely, it is the Appellants that have been prejudiced because a

primary cause of action was not deliberated by the jury, and the Court did not provide Counsel an opportunity to review the verdict form at the conclusion of trial. (*See* Order by The Hon. Bentley Price, C/A No. 2019-CP-08-02808 (June 6, 2022)).

"Prejudicial error in a jury instruction is an error that contributed to the jury verdict" or "affected the jury's deliberations". *State v. Bowers*, 875 S.E.2d 608, 611 (2022), citing *State v. Burdette*, 832 S.E.2d 575, 578 (2019). A failure to ask the jury to consider on its form an essential claim by a party is clearly prejudicial.

"It is well settled that jury instructions should be confined to the issues raised by the pleadings and supported by the evidence and where an issue is implicitly suggested by the pleadings and supported by the evidence, the trial judge is obligated to instruct the jury concerning it." *Ellison*, 395 S.E.2d at 741, citing *Mouzon v. Moore & Stewart, Inc.*, 317 S.E.2d 756 (Ct. App. 1984).

Here, the Complaints initially filed by the Appellants contained causes of action for breach of contract concerning the rental agreement; and further, the rental agreement was a bona fide contract and was admitted into evidence. There is no question that the error in excluding one of two causes of action that were charged to the jury likely influenced the jury's conclusion. The Court's failure to allow for the deliberation of and verdict for this cause of action on the jury form was a violation of South Carolina law because breach of contract was pled and submitted to the jury. Moreover, failing to include breach of contract on the jury form which was not presented to Counsel for review was clearly prejudicial to the Appellants, because an issue in dispute involved the Respondent's alleged violation of the lease agreement which required monthly inspections that involved the examination of the smoke detectors installed in the apartments. (*See* Trehus Am. Compl. ¶¶ 28-30); (*see also* Montagna Compl. ¶¶ 30-33).

3. THE JURY AND TRIAL COURT ERRED IN FINDING THE RESPONDENT NEGLIGENT AS TO APPELLANT TREHUS BUT NOT TO APPELLANT KAYDEN, AND THAT THE RESPONDENT'S NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF THE APPELLANTS' INJURIES.

The verdict rendered by the jury contained the finding that the Respondent was negligence as to Appellant Trehus, but not as to Appellant Kayden. The facts that were established at trial were exactly the same as to both Appellants with no distinction. Counsel for Appellants argued this assertion in their Motion for a New Trial and during the subsequent hearing; however, this issue was not addressed in the Court's order denying the Appellants' Motion for a New Trial.

Our law is clear that negligence requires that a plaintiff establish "three essential elements: (1) a duty of cared owed by the defendant to the plaintiff; (2) a breach of that duty by a negligence act or omission; and (3) damage proximately caused by a breach of duty.'" *Young v. Powell*, No. 2016-000210, 2018 WL 3156977, at *1 (S.C. Ct. App. June 27, 2018), citing *Hinds v. Elms*, 595 S.E.2d 855, 857 (Ct. App. 2004) (quoting *Vinson v. Hartley*, 477 S.E.2d 715, 720 (Ct. App. 1996)).

Despite the jury finding that the Respondent was negligent as to Appellant Trehus, but not to Appellant Kayden defies logic as the duty and factual situation established by the evidence are the same. The Appellants argued that the Respondent's failure to maintain and ensure the operability of the smoke detectors the Respondent installed in the Appellants' apartment that they shared prevented the Appellants any warning to successfully escape the apartment down the exterior staircase outside of the unit, due to the thick, deadly smoke that had filled the staircase and hallway. (R. at 42:19-24, 48:24-49:4). This failure by the Respondent prevented the Appellants any other viable option to escape except from a second-story window. (*Id.*); (*Id.* at 49:19-51:2, 54:17-24, 56:22-57:1; 62:5-25). Appellant Trehus further testified that but for the Respondent's failure in maintaining the smoke detector, she would have had adequate warning to escape her apartment before the smoke was too thick to allow escape. (*Id.* at 62:5-25). Appellant Trehus

sustained a cuboid fracture by being forced to jump from the second-floor window, and Kayden suffered from post-traumatic stress disorder (PTSD) and lingering trauma symptoms requiring numerous visits to various psychiatrists and counselors for therapy.

"Legal cause is established by showing foreseeability." *Wright v. PRG Real Est. Mgmt., Inc.*, 826 S.E.2d 285, 296 (2019). "'An act is the proximate cause if it is 'an efficient cause without which the injury would not have resulted to as great an extent and that any other efficient cause is not attributable to the person injured.'" *Mellen v. Lane*, 659 S.E.2d 236, 245 (Ct. App. 2008), citing *S.C. Ins. Co. v. James C. Greene and Co.,* 348 S.E.2d 617, 620 (1986) [citations omitted]. "'Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's action.'" *Id.*, citing *Bishop v. S.C. Dep't of Mental Health,* 502 S.E.2d 78, 83 (1998). "'The defendant may be held liable for anything which appears to have been a natural and probable consequence of his [actions].'" *Id.* at 246, citing *Bramlette v. Charter–Medical–Columbia,* 393 S.E.2d 914, 916 (1990); *Greenville Mem'l Auditorium v. Martin,* 391 S.E.2d 546, 548 (1990). "Conduct is the proximate cause of an injury if that injury is within the scope of reasonably foreseeable risks of the conduct." *Id.*; *Messier v. Adicks,* 161 S.E.2d 845, 846 (1968).

At trial and during the hearing on the Appellants' Motion for a New Trial, Counsel for Respondent referenced the case of *Robinson v. Code*, in which this Court opined that the defendant landlord did not violate the South Carolina Residential Landlord and Tenant Act (RLTA) found in S.C. Code § 27-40-10, *et seq.* for failing to provide smoke detectors in a rental dwelling. (*See* R. at 183:18-186:9); *See Robinson v. Code*, 682 S.E.2d 495 (Ct. App. 2009).

The RLTA requires, in essence, that landlords of residential dwellings provide tenants with a place to live that complies with applicable building codes. *See, generally* S.C. Code § 27-40-10, *et seq.* However, Respondent incorrectly and repeatedly asserts that there is no duty for a landlord

to "provide a safe place to live", citing *Young v. Morrisey*, a case that was superseded by the enactment of the RLTA. (R. at 183:3-8, 183:18-186:9). *Young v. Morrisey*, 329 S.E.2d 426 (1985). As specifically cited in *Robinson*, a case on which Respondent heavily relies, "the Landlord–Tenant Act, enacted in 1986, requires a landlord to comply with applicable housing codes materially affecting health and safety, and 'make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.'" *Robinson*, 682 S.E.2d at 496, quoting S.C. Code §§ 27–40–440(a)(1)-(2). This, of course, requires a landlord to insure operable smoke detectors in the leased household premises if that landlord represents that she will inspect and maintain them herself.

Though the Respondent may be correct in that, pursuant to the controlling building code, there is no affirmative duty that a landlord both provide AND maintain smoke detectors in a rental premises, "a duty to use due care may arise *where an act is voluntarily undertaken*." *Wright*, 826 S.E.2d at 290, quoting *Vaughan v. Town of Lyman*, 635 S.E.2d 631, 637 (2006) (emphasis added). The Respondent voluntarily installed and decided to undertake the inspection of smoke detectors and fire extinguishers during inspections of the apartments; the Appellants asserted that this was done negligently because, as alleged by the Appellants, the smoke detector failed to function, and it can be inferred through circumstantial evidence that there was no functioning smoke detector in the apartment where the fire originated. There are no records or other evidence of these inspections being performed. *See, generally, Wright*, 826 S.E.2d 285 (In which the South Carolina Supreme Court reversed the Court of Appeals' decision that there was no voluntarily undertaken duty by a landlord to provide security, and that the tenant's damages due to the failures of security could be the proximate cause of her injuries.).

It is clear from the evidence that the jury's attribution of negligence to the Respondent as to Appellant Trehus stemmed from the Respondent's failure and breach of her voluntarily undertaken duty to maintain smoke detectors, which are designed to warn occupants of the presence of smoke in a residence and allow them opportunity to escape, and clearly prevented the Appellants from escaping the apartment by the stairs and caused them to have to jump out of a second-story window to the ground, causing both Appellants to sustain actual damages, because there was no other way to escape. Based upon the jury's finding that the Respondent was negligent, a reasonable juror should not be able to conclude that this negligence did not proximately cause the damages to the Appellants. The evidence reveals no other possible result but a finding of proximate cause by the conduct of the Respondent.

Lastly, the jury's finding that the Defendant was negligent as to Appellant Trehus but not as to Appellant Kayden is contradictory and defective. The Appellants, mother and son, respectively, were both sleeping in the same apartment which they coinhabited, and experienced the same fire. Both Appellants suffered damages as a result of the negligent acts and omissions of the Respondent. Neither Appellants were found to be contributorily negligent. However, the Respondent was only determined to be negligent as to Appellant Trehus, but not as to Appellant Kayden who suffered PTSD and other mental, emotional, and psychological damages as supported by the evidence. The finding by the jury is not supported by an evidence. As alleged, Appellant Kayden sustained these damages as a result of experiencing the fire and being tossed from the second-story window, and that but for the Respondent's failure to install functioning smoke detectors in the apartment, the Appellants could not escape the apartment by the stairs or any other way. The finding by the jury is inconsistent, erroneous, and not supported by the application of the law or evidence presented.

4. THE TRIAL COURT ERRED BY AWARDING NO DAMAGES BUT FINDING THE RESPONDENT NEGLIGENT AS TO APPELLANT TREHUS.

As explained above, after deliberation, the jury found the Respondent to be negligent as to Appellant Trehus but allowed no damages where the existence of damages was irrefutable. A necessary element of negligence requires an injury suffered by the plaintiff but for an act or omission by the defendant. *Babb v. Lee Cnty. Landfill SC, LLC*, 747 S.E.2d 468, 481 (2013) ("Generally, under South Carolina law, the damages element requires a plaintiff to establish physical injury or property damage.").

The jury instructions provided by the Court required the jury to deliberate on the Respondent's negligence, and the jury found that the Respondent was indeed negligent as to Appellant Trehus. Therefore, by finding the Respondent negligent, it is established that the Appellant was injured by her negligence. In *Pope v. Heritage Communities, Inc.*, the trial court directed a verdict for negligence in favor of the plaintiffs, and charged that the jury consider damages; in its decision by the appeal of the defendant, the Court of Appeals stated "the [trial] court correctly charged the jury [that] it must award damages to the extent they were proven." *Pope v. Heritage Communities, Inc.*, 717 S.E.2d 765, 771 (Ct. App. 2011). Therefore, it is clear that the failure of the jury to connect the injuries suffered by Appellant Trehus to the negligence it found and attributed to the Respondent is an error of law that warrants reversal and was not addressed in the trial court's order denying the Motion for a New Trial. And, the same facts and application applies to Appellant Kayden.

CONCLUSION

WHEREFORE, for the aforementioned reasons, the Appellants in this matter respectfully ask this Court REVERSE the decision of the trial court denying the Appellants' Motion for a New Trial and order for a new trial.

Dated: April 3, 2023
Charleston, South Carolina

Respectfully submitted,

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