

RECEIVED

Jun 09 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
C/A No. 2019-CP-32-01442
Debra R. McCaslin, Circuit Judge

Appellate Case No. 2022-000597

Suzan Garland Respondent,

v.

Robert Cade, Christy Cade, and Roger Singleton Defendants,

of whom

Robert Cade and Christy Care are the Appellants and Roger Singleton in a Respondent

BRIEF OF THE RESPONDENT
Roger Singleton

Michal Kalwajtys, SC Bar No. 100950
BAKER RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
(803) 343-3872
mkalwajtys@brblegal.com
Attorney for the Respondent
Roger Singleton

S. Jahue Moore, SC Bar No. 4063
MOORE BRADLEY MYERS LAW FIRM P.A.
1700 Sunset Boulevard
West Columbia, SC 29171
(803) 796-9160
jake@mbmlawsc.com
Attorney for the Appellants

H. Freeman Belser, SC Bar No. 72403
Michael J. Polk, SC Bar No. 6936
Creston W. Brown, SC Bar No. 104086
BELSER & BESLER, PA
Post Office Box 96
Columbia, SC 29202
(809) 929-0096
Attorneys for the Respondent Suzan Garland

TABLE OF CONTENTS

Table of Authorities	iii
Statement of the Issue on Appeal.....	1
Statement of the Case.....	1
Statement of the Facts.....	2
Standard of Review.....	3
Argument	4
The trial court directed verdict in Singleton’s favor because the Cades failed to propound any evidence tending to prove the elements of their claims against Singleton.....	4
A. The negligence claim required proof that Singleton failed to exercise due care and yet the Cades testified that Singleton did nothing wrong.	4
B. According to Robert Cade’s testimony, Singleton could not have breached the purported contract.	6
C. Lack of evidence of Singleton’s fault in causing damage to Garland bars the Cades’ equitable indemnification claim against Singleton.	7
Conclusion	8

TABLE OF AUTHORITIES

Cases

<i>Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.</i> , 355 S.C. 614, 586 S.E.2d 586 (2013)	5
<i>F & D Elec. Contractors, Inc. v. Powder Coaters, Inc.</i> , 350 S.C. 454, 567 S.E.2d 842 (2000)	3
<i>Fuller v. Eastern Fire & Casualty Insurance Co.</i> , 240 S.C. 75, 124 S.E.2d 602 (1962)	6
<i>Howard v. Roberson</i> , 654 S.E.2d 877 (Ct. App. 2007)	4
<i>Jones v. Am. Fid. & Cas. Ins. Co.</i> , 478 S.C. 470, 43 S.E.2d 355 (1947).....	5
<i>Moore v. Moore</i> , 599 S.E.2d 467 (Ct. App. 2004)	4
<i>Nelson v. Piggly Wiggly Cent., Inc.</i> , 390 S.C. 382, 701 S.E.2d 776 (S.C. App. 2010).....	5
<i>Sims v. Giles</i> , 343 S.C. 708, 541 S.E.2d 857 (2001).....	3
<i>Small v. Pioneer Mach., Inc.</i> , 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997).....	3
<i>Steinke v. S.C. Dep’t of Labor, Licensing, and Regulation</i> , 336 S.C. 373, 520 S.E.2d 142 (1999)	4
<i>Stoneledge at Lake Keowee Owners’ Association, Inc. v. Builders FirstSource-Southeast Group</i> , 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015).....	7
<i>Stoneledge at Lake Keowee Owners’ Association, Inc. v. Clear View Construction, LLC</i> , 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015).....	7
<i>Strange v. S.C. Dep’t of Hwys. & Pub. Transp.</i> , 314 S.C. 427, 445 S.E.2d 439 (1994)	4
<i>Taylor v. Cummins Atlantic, Inc.</i> , 852 F.Supp. 1279 (D.S.C. 1994)	6
<i>Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.</i> , 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).....	7

STATEMENT OF THE ISSUE ON APPEAL¹

During the trial, the plaintiff-respondent Suzan Garland presented no evidence of Roger Singleton's fault in causing damage to her property, and the defendants-appellants Christy and Robert Cade testified that they had no evidence that Singleton did anything wrong in performing his scope of work on their property. Was the trial court correct in granting a directed verdict for Singleton?

STATEMENT OF THE CASE

On April 11, 2019, Suzan Garland sued her neighbors, Robert and Christy Cade (the Cades), for negligence, trespass, and private nuisance, all stemming from land-disturbing activities on their property that led to erosion and excessive siltation of a pond located on Garland's land. (R. pp. 13–16.) Nearly a month later, the Cades answered the complaint without impleading anyone. (R. pp. 17, 18.)

Following eight months of discovery, in which the Cades revealed that Roger Singleton performed certain land-clearing services for them, Garland amended her complaint, naming Singleton as a defendant. (R. pp. 20–23.) On January 22, 2020, Singleton filed an Answer (R. pp. 24–26.), and the following day the Cades answered the Amended Complaint. (R. p. 27.)

At the July 20, 2021, mediation, Garland and Singleton reached a compromise and entered a settlement agreement. Meanwhile, Garland and the Cades' negotiations ended in an impasse. (R. pp. 37, 38.) Following the settlement conference, Garland and Singleton sought to file a consent stipulation dismissing Garland's action against Singleton. The Cades, however, withheld their consent and raised the issue of indemnification.

¹ The respondent Roger Singleton submits this brief to address only the first part of the issue no. 1 in the Statement of Issues on Appeal of the appellants Christy and Robert Cades' brief.

On July 22, 2021, the Cades filed the Notice of Motion to Add Claim for Indemnification and on October 26, 2021, a Motion to Supplement, seeking “to bring a third-party action against the Co-Defendant based upon breach of warranty and neglect.” (R. pp. 39, 43.) The court granted the Cades’ motion and on November 4, 2021, entered an Order Allowing Crossclaim and/or Third-Party Complaint. (R. pp. 9–11.) About a month later, the Cades filed an Amended Answer and Third Party-Complaint against Roger Singleton. (R. pp. 30–32.) The Cades’ pleading, however, did not include a cause of action for indemnification. Instead, the Cades claimed breach of contract and negligence on Singleton’s part. (*Id.*) On January 6, 2022, Singleton answered the Third-Party Complaint, denying the Cades’ claims. (R. pp. 33–36.)

The case was tried during the March 28, 2022, term of court. At the end of the defendants’ case, the presiding judge granted Singleton’s motion for a directed verdict. (R. p. 530, line 12 – p. 536, line 23.)

The jury found for Garland on the causes of action for negligence and nuisance and awarded \$125,000 in actual damages and \$8,000 in punitive damages from the Cades. (R. pp. 52, 53.) Once the court denied the Cades’ motion for a new trial (R. pp. 1–5), this appeal followed.

STATEMENT OF THE FACTS

Singleton has worked in heavy construction most of his life and has been friends with the Cades for years. (R. p. 412, lines 3–5; p. 437, lines 22–23.)

The Cades hired him, among several other contractors, to perform land-clearing and construction work on their land located at New Cassel Drive in West Columbia, Lexington County, South Carolina. Singleton’s scope of work consisted of several specific tasks: deepening the Cades’ pond and shoring up its sides; replacement of the spillway and the pipe

on the pond's dam; re-coring of the dam; installation of a trash rack on top of the pond; and removal of the tree stumps. (R. p. 414, lines 16–18; p. 416, lines 4–18; p. 417, lines 7–12; p. 424, line 22 – p. 425, line 3.) Singleton was not tasked with erosion or sediment control. (R. p. 417, line 18.)

The Cades had other contractors cut down acres of trees and build multiple buildings on the property. (R. p. 417, line 18; p. 424, lines 22–25; p. 430, lines 5–7.)

While the work was still being completed, two hurricanes hit South Carolina, bringing a lot of rain to Lexington County; the dam Singleton had repaired remained stable throughout the storm. (R. p. 418, lines 5–6.)

* * *

To state additional relevant facts, Singleton hereby adopts the “Facts” section of the respondent Suzan Garland’s brief. (Garland’s Initial Brief pp. 4–9.)

STANDARD OF REVIEW

When reviewing a ruling on a motion for a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *See F & D Elec. Contractors, Inc. v. Powder Coaters, Inc.*, 350 S.C. 454, 567 S.E.2d 842 (2000). Where the evidence yields only one inference, a directed verdict in favor of the moving party is proper; however, if more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. *Sims v. Giles*, 343 S.C. 708, 541 S.E.2d 857 (2001). The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of the reasonable juror. *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997). But this rule does not authorize the submission of speculative, theoretical, and hypothetical views to the jury. *Id.* South Carolina courts have recognized that when only

one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. *Id.*

In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence. *Moore v. Moore*, 599 S.E.2d 467 (Ct. App. 2004). When considering directed verdict motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Howard v. Roberson*, 654 S.E.2d 877 (Ct. App. 2007). The appellate court can only reverse the trial court when there is no evidence to support the ruling. *Steinke v. S.C. Dep't of Labor, Licensing, and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). The appellate court must affirm a trial judge's denial of a directed verdict motion when there is evidence to support the court's ruling. *See Strange v. S.C. Dep't of Hwys. & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994).

ARGUMENT²

The trial court directed verdict in Singleton's favor because the Cades failed to propound any evidence tending to prove the elements of their claims against Singleton.

A. The negligence claim required proof that Singleton failed to exercise due care and yet the Cades testified that Singleton did nothing wrong.

In order to recover for negligence, the Cades had to establish that Singleton owed them a duty of care, that Singleton breached that duty by failing to act as a reasonable person of ordinary prudence would have acted in like circumstances, and that Singleton's failure to so act caused them damage. *Jones v. Am. Fid. & Cas. Ins. Co.*, 478 S.C. 470, 478, 43 S.E.2d 355, 359

² In addition to this Argument, Singleton also joins and adopts part I. of the respondent Suzan Garland's Argument, found on pages 10 through 13 of her brief.

(1947); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2013).

While the existence of a duty of care is an issue of law, the existence of the remaining elements of the negligence cause of action is a factual matter—each one of them needs to be proven by a preponderance of admissible evidence. *See Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780–781 (Ct. App. 2010).

Here, the Cades failed to carry that burden. In fact, each testified that Singleton did nothing wrong. According to Christy Cade, Singleton worked very hard on making the dam safe and the dam withstood the additional rainwater brought by the hurricanes. (R. p. 458, lines 4–13; p. 464, line 7 – p. 465, line 10.)

When asked by her attorney if Singleton did everything well in regard to clearing their land, Christy Cade answered: “As far as I know, yes, sir.” (R. p. 461, line 25 – p. 462, line 1.) On cross-examination, Mrs. Cade again confirmed that she had absolutely no problems with any of the work Singleton did on her property (R. p. 482, lines 11–13) and that she had no evidence of Singleton having done anything wrong. (R. p. 482, lines 18–22.) And on redirect examination, she yet again testified that Singleton did a “pretty good job.” (R. p. 483, lines 12–17.) Her husband had no complaints either.

Robert Cade testified that the dam had been stable and hydroseeded before the hurricanes (R. p. 506, lines 5–11) and that to his knowledge Singleton didn’t do anything wrong. (R. p. 492, lines 7–8; p. 527, lines 6–10.) On cross-examination, Mr. Cade was asked: “[Y]ou have absolutely no evidence that [Singleton] did anything wrong, do you?” (R. p. 526, line 25 – p. 527, line 1.) “No, sir.” was his answer. (R. p. 527, line 2.) And finally, Mr. Cade admitted

that he could not tell the “jury anything that Mr. Singleton has done wrong to justify being sued in this case.” (R. p. 529, lines 21–23.)

Because the Cades failed to present any evidence of negligence on Singleton’s part, nor did they claim to have been damaged, a directed verdict in Singleton’s favor was warranted as a matter of law.

B. According to Robert Cade’s testimony, Singleton could not have breached the purported contract.

A successful breach-of-contract claim requires proof of the defendant’s unjustifiable failure to perform a contractual duty that directly results in damage to the plaintiff. *See Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962); *Taylor v. Cummins Atlantic, Inc.*, 852 F.Supp. 1279, 1286 (D.S.C. 1994) *affirmed* 48 F.3d 1217 (4th Cir. 1995) *cert. denied* 516 U.S. 864, 116 S.C. 176, 133 Led.2d 116 (1995).

Here, no party testified about any contractual terms Singleton might have breached. In fact, the words “contract,” “terms,” “performance,” “breach,” or their synonyms appear nowhere in the transcript of the Cades’ testimonies. Robert Cade’s testimony, however, implies that Singleton adequately performed whatever contractual duties he owed the Cades:

Q. Mr. Cade, you hired Mr. Singleton, right? A. Yes, sir. Q. You paid him a lot of money for the work he did? A. Yes, sir. Q. Because he did a lot of work? A. He did a lot of work. Q. And you inspected all that work? A. I was there most days. Q. And you were happy with that work? A. I was satisfied, yes, sir.

(R. p. 526, line 3 – p. 526, line 12.)

In light of such testimony, no reasonable jury could have had a legally sufficient evidentiary basis to find that Singleton was liable for breach of contract.

C. Lack of evidence of Singleton’s fault in causing damage to Garland bars the Cades’ equitable indemnification claim against Singleton.

The Cades’ third-party complaint did not include a cause of action for equitable indemnification. However, by virtue of the conditional nature of the terms in which the Cades articulated their negligence and breach of contract claims, those claims could be considered a merely disguised claim for equitable indemnification. *See Stoneledge at Lake Keowee Owners’ Association, Inc. v. Clear View Construction, LLC*, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015); *Stoneledge at Lake Keowee Owners’ Association, Inc. v. Builders FirstSource-Southeast Group*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015). Indeed, judging by their attorney’s argument in opposition to Singleton’s motion for a directed verdict, it appears that equitable indemnification is the claim the Cades wanted to pursue against Singleton all along. (R. p. 531, lines 2–18.)

“The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation or places him in such relation with others as makes it necessary to incur expenses to protect his interest.” *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 61, 518 S.E.2d 301, 305 (Ct. App. 1999). In other words, for the Cades to prevail under the theory of equitable indemnification, three things must be proven: (1) Singleton was exclusively at fault in causing Garland’s damages; (2) the Cades bear no fault for those damages; and (3) the Cades suffered damages as a result of Garland’s claims against them.

Here, even if the equitable indemnification claim were properly before the court, the trial revealed no evidence that could have proven the elements of this cause of action. Arguably, the claim for indemnification would have had merit if Singleton’s actions or omissions were the only reason the Cades were haled into court: for example, the dam Singleton had repaired broke,

allowing for a runoff that excessively silted Garland's pond. But that was not the case here. Neither the parties nor the witnesses testified that the manner in which Singleton performed his scope of work on the Cades' project was the sole cause of Garland's damages. In fact, as discussed in detail above, no party presented any evidence of Singleton's wrongdoing. In light of the evidence that was actually presented, it appears that it was the Cades' decision to denude their land and to create impervious surfaces without taking appropriate precautions that exposed them to liability to Garland.

Furthermore, the jury's decision to hold the Cades liable for the damages to Garland's property deprives the Cades of the equitable indemnification claim against Singleton.

CONCLUSION

Because of a dearth of evidence of fault on Singleton's part, the trial court was correct in granting a directed verdict. For this reason, the respondent Roger Singleton asks this Court to affirm that decision.

Respectfully submitted,



Michal Kalwajtys, SC Bar No. 100950
BAKER RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
(803) 343-3872
mkalwajtys@brblegal.com
Attorney for the Respondent
Roger Singleton

June 9, 2023

RECEIVED

Jun 09 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
C/A No. 2019-CP-32-01442
Debra R. McCaslin, Circuit Judge

Appellate Case No. 2022-000597

Suzan Garland Respondent,

v.

Robert Cade, Christy Cade, and Roger Singleton..... Defendants,

of whom

Robert Cade and Christy Care are the Appellants and Roger Singleton in a Respondent

CERTIFICATE OF COUNSEL

I hereby certify that this final brief of the respondent Roger Singleton complies with the requirements of Rule 211(b), SCACR.

Michal Kalwajtys, SC Bar No. 100950
BAKER RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
(803) 343-3872
mkalwajtys@brblegal.com
Attorney for the Respondent Roger Singleton

June 9, 2023
Columbia, South Carolina