THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2012-212109

Susan Anne Bell Lynch,

Appellant/Respondent

v.

Carolina Self Storage Centers, Inc.,

Respondent/Appellant.

FINAL RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT

Kevin M. Barth
Ballenger, Barth, Hoefer & Lewis, LLP
P.O. Box 107
Florence, S.C. 29503
(843) 662-6301
ATTORNEY FOR APPELLANT/RESPONDENT

Brendan P. Barth
Ballenger, Barth, Hoefer & Lewis, LLP
P.O. Box 107
Florence, S.C. 29503
(843) 662-6301
ATTORNEY FOR APPELLANT/RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. THE TRIAL COURT WAS CORRECT IN FINDING THAT THE DEFENDANT OWED A DUTY TO THE PLAINTIFF TO EITHER CORRECT THE UNREASONABLY DANGEROUS CONDITION OR WARN THE PLAINTIFF OF THE CONDITION.

II. THE TRIAL COURT WAS CORRECT IN FINDING THAT THE ISSUE OF EACH PARTY'S NEGLIGENCE WAS A QUESTION OF FACT TO BE DETERMINED BY THE TRIAL JURY.

STATEMENT OF THE CASE

Susan Anne Bell Lynch (hereinafter "Appellant") commenced this action by the filing of a Summons and Complaint on July 26, 2010, alleging that she suffered damages arising from an accident that occurred on the premises of Carolina Self Storage Centers, Inc. (hereinafter "Respondent") on July 31, 2008. Appellant was an invitee on Respondent's premises, and alleges that Respondent was negligent, wilful, wanton and reckless in failing to discover and remedy an unreasonably dangerous condition or in the alternative, failing to warn Appellant of that condition. Respondent filed an Answer and Counterclaim in which it interposed a general denial to Appellant's allegations, and raised the defenses of comparative negligence, assumption of the risk, waiver and estoppel. Respondent also counterclaimed against Appellant for monetary damages alleging that the Lease Agreement for Appellant's storage unit required Appellant to indemnify Respondent for any losses or attorney's fees and costs incurred in defending an action for personal injuries.

The case was called for trial on March 5, 2012. After the jury was empanelled, the Court entertained Motions, one of which included a Motion for Summary Judgment for Appellant regarding Respondent's Counterclaim on the basis that the Lease

Agreement did not, as a matter of law, include a valid waiver of Appellant's right to file an action for personal injuries in this matter. The Court granted the Motion for Summary Judgment in Appellant's favor on the Counterclaim, and the case proceeded to trial on Appellant's negligence claim, and Respondent's affirmative defense of comparative negligence.

At the conclusion of Appellant's case, and again at the conclusion of the entire case, both parties moved for directed verdicts in their favor. These Motions were denied by the Court.

At the conclusion of the trial, the case was submitted to the jury on Appellant's claim for actual and punitive damages. The jury returned a verdict for Appellant in the amount of Two Hundred Forty Six Thousand, Sixty Eight and 42/100 Dollars ($246,068.42), but found that Appellant was 50% at fault in bringing about the accident. The Court then reduced the verdict by 50%, thus entering a verdict for Appellant in the amount of One Hundred Twenty Three Thousand, Thirty Four and 21/100 Dollars ($123,034.21).

Both parties made Post-Trial Motions, including Appellant's Motion for New Trial. The Court denied all Post-Trial Motions by written Order filed on May 18, 2012.

Appellant then appealed the denial of her Post-Trial Motions by Notice of Appeal dated May 31, 2012. Respondent then filed its own Notice of Appeal.

STATEMENT OF FACTS

This is a premises liability case arising from an accident that occurred on July 31, 2008, at Respondent's self storage facility in Florence, South Carolina. Appellant was

going through an acrimonious divorce and needed a storage unit to store her personal belongings until she found a home to purchase. After investigating storage facilities, she chose this particular location because of its security cameras and safety features, and the fact that they offered a suitable climate-controlled unit for her belongings. Appellant signed a Lease Agreement for her unit, and moved her belongings into that unit.

Appellant's unit was located within an enclosed building, and was accessible by entering an unlocked exterior door. The exterior door had an automatic closing mechanism on it, but no mechanism that would allow the door to be locked in the "open" position while moving items in and out of the facility. To access Appellant's actual unit, she would enter the exterior door, walk down two halls, and raise the roll down door to her unit. The exterior door used by Appellant to access her unit was metal, with a "bare sheet metal edge" (R. p. 312) at the bottom and was raised above the ground between two (2) to three (3) inches and five (5) inches depending on where the door was in its closing cycle. (R. p. 309). At the time of the accident, the door closed with a "closing force" of between fourteen (14) and twenty-six (26) to twenty-seven (27) pounds. (R. p. 316). The closing speed of the door, also known as the "sweep speed", can be adjusted by turning the "sweep valve adjustment screw." (R. p. 310).

On July 31, 2008, Appellant started moving her personal property items from her storage unit to a new home, and began loading items into her vehicle. She did not have any other persons assisting her on this occasion. In order to assist her in moving the items more efficiently, Appellant blocked the door open with a small table. Respondent's employees were aware of this practice and had observed tenants blocking doors open with items such as cinder blocks and small items of furniture. Even though this door

closes quickly and can hurt people, Respondent's employees do not stop people from using this practice. (R. pp. 273-274). Instead, the tenants are told to be sure "the weight is sufficient to keep the door open" (R. p. 274), but not to open so far as to destroy the closer.

Appellant made a number of trips to and from her storage unit to her vehicle, each time carrying a number of smaller items. After loading all of the items into her vehicle, Appellant picked up the table and turned to put it into the back of her car. Once the table was removed, the door's automatic closing mechanism began closing the door. Appellant "could feel the door closing fast" (R. pp. 147-148) so she attempted to stop the door from closing on her by putting up the heel of her foot. She did this "instinctively . . . so it wouldn't knock me over. This is a metal door and it is heavy." (R. p. 148). Due to the door's height from the ground, instead of the door hitting the bottom of her foot, the sharp metal bottom edge of the door sliced her Achilles Tendon area of her heel, causing a gaping wound.

Appellant wrapped her ankle with paper towels and immediately drove home. Due to the significant amount of bleeding, Appellant did not stop at Respondent's office to report the injury. When Appellant arrived at her house, Carol Dawson, a neighbor and friend suggested that Appellant be immediately treated by her husband, Dr. Al Dawson, an orthopaedic surgeon. (R. pp. 150-151). Appellant went to Dr. Dawson's office and was stitched up and given pain medication. Appellant was instructed to "go home and have a relatively easy weekend . . . and keep your foot up as much as you can." (R. p. 153). Dr. Dawson described the injury as a jagged injury. (R. p. 391). He further observed that this was an injury "that went to the tendon basically," (R. p. 392), and that

once you cut the skin and disrupt the blood supply the tendon is "weakened," (R. p. 392). Because of the nature and location of the injury, Dr. Dawson was "worried at day one" about a "skin problem", and prescribed an antibiotic. (R. p. 393). Appellant was told by Dr. Dawson to "protect the wound . . . elevate it some and things of that sort." (R. pp. 393-394).

Appellant alleges that her injuries and damages are the direct and proximate result of Respondent's negligence. Appellant's expert witness, Kristopher Seluga, has a degree in mechanical engineering from MIT, and a Master's Degree of Science from MIT, and testified the "setup" of this particular door was a dangerous condition that should have been corrected. More specifically, Seluga opined that the combination of the closing speed of the door, the height of the door bottom off of the ground, and the sharpness of the metal bottom constituted an unreasonably dangerous condition that proximately caused the injury to Appellant. He further opined that had the door been set to close more slowly, the "force" of the door hitting Appellant would not have been significant enough to cut her. (R. p. 330). Additionally, he testified that the injury most probably would have been avoided had Respondent either built the door closer to the ground itself, or had some type of covering over the bare metal bottom. Any of these three changes would have most probably avoided Appellant's injury. Based on the fact that the combination of factors was present, Seluga opined that this door violated the ANSI Building Standards. (R. pp. 334-335).

Respondent's expert, Skip Lewis, testified that as long as the door complied with the manufacturer's installation recommendations and the applicable Building Code, "it is considered to be safe". (R. pp. 494). He further testified, though, "it's not to say that

through some misuse or some unanticipated action there could not be a hazard of some kind that would exist". (R. p. 494).

APPLICABLE LAW

In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 663–64 (2006). An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions. Kiriakides v. Sch. Dist. of Greenville Cnty., 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009); Carson v. CSX Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

When the evidence yields only one inference, a directed verdict in favor of the moving party is proper. However, "[i]f 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, 714, 541 S.E. 2d 857, 860-61 (Ct. App. 2001). In deciding whether or not to grant a motion for directed verdict, the trial court is "concerned only with the existence or non-existence of evidence." Long v. Norris & Assoc., Ltd. 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000).

In order to recover in a premises liability case, the plaintiff must prove: "(1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." Singleton v. Sherer, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008) (citing Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006)).

ARGUMENT

I. THE TRIAL COURT WAS CORRECT IN FINDING THAT THE DEFENDANT OWED A DUTY TO THE PLAINTIFF TO EITHER CORRECT THE UNREASONABLY DANGEROUS CONDITION OR WARN THE PLAINTIFF OF THE CONDITION.

A defendant owes an invitee a duty of due care to discover risks and take safety precautions to warn of or eliminate foreseeable unreasonable risks. See Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc., 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). An invitee is entitled to expect that the owner or occupier will take reasonable care to know the actual condition prevailing at the time the invitee is on the premises and either make those conditions safe or warn the invitee of the dangerous conditions. See id. "The degree of care required is commensurate with the particular circumstances involved, including the age and capacity of the invitee." Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2d 535, 538 (Ct. App. 2000).

The owner or occupier is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the owner or occupier should anticipate the harm despite such knowledge or obviousness. Callander v. Charleston Doughnut Corp., 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991). Accordingly, an owner or occupier "is liable for injuries to an invitee, despite an open and obvious defect, if the owner should anticipate that the invitee will nevertheless encounter the condition, or that the invitee is likely to be distracted." Id. at 125, 406 S.E.2d at 362. An owner or occupier "may be required to warn the invitee, or take other reasonable steps to protect him, if the [owner or occupier] 'has reason to expect that the invitee's attention may be distracted, so that he will not discover what is

obvious, . . . or fail to protect himself against it.'" Id. at 126, 406 S.E.2d at 362 (quoting Restatement (Second) of Torts § 343(A) (1965)).

"This duty is an active or affirmative duty. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him. It is not necessary that the precise manner in which the injuries were sustained be foreseeable." Sims, 343 S.C. at 719, 541 S.E.2d at 863 (internal citations omitted). To the contrary, "it is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range." Hughes v. Children's Clinic, P.A., 269 S.C. 389, 397, 237 S.E.2d 753, 757 (1977) (internal citations and quotations omitted).

The owner or occupier of the premises has an "affirmative duty to use reasonable care to discover unreasonably dangerous conditions of the premises and either put the premises in a reasonably safe condition for use in a manner consistent with the purpose of invitation or warn him of the danger." Id. at 400, 237 S.E.2d at 758 (quoting 32 A.L.R. 3d 508, 518).

In this action, the purpose of Appellant and other patrons for being on the premises was to move items of personal property in and out of the storage buildings and individual units. Other than moving items in and out, a person has no reason to be on the premises or entering or exiting the building. Respondent appears to contend in its Brief that it has no duty to foresee this particular type of injury occurring and thus owes no duty to protect against it. Appellant disputes this contention; a land owner does not necessarily need to foresee "the precise manner in which the injuries were sustained." Sims, 343 S.C. at 719, 541 S.E.2d at 863. To the contrary, it is sufficient to foresee a "generalized gamut of

greater than ordinary dangers of injury." Id. (internal quotations and citations omitted). In other words, Respondent is not required to foresee that a person's heel would be sliced by this door on this occasion. Appellant submits that it is sufficient for Respondent to know that there is a greater than ordinary risk of any type of injury when making a furniture-mover go through this quickly-closing door carrying furniture—all the while stepping down and attempting to hold the door open.

As is outlined below in this Brief, Respondent admits knowing that patrons routinely prop these doors open with pieces of furniture and concrete blocks. Respondent also admits that the door does close quickly on patrons, and that it can be dangerous to them. Appellant submits that this is exactly the situation Respondent has placed its patrons in, and as a result, should either warn them of the danger or correct the issue. In this case, Respondent did neither. Respondent's employees continued to watch their patrons block these doors open while moving furniture in and out. Appellant contends that knowledge of the patrons' method of moving in and out, with the door automatically closing behind them, is sufficient to give rise to a legal duty to warn of or correct the dangerous condition.

Respondent cites Nelson v. Piggly Wiggly, 390 S.C. 382, 701 S.E. 2d 776 (2010), in support of the proposition that a "plaintiff must identify a duty that the defendant has to protect her from . . . ." Nelson, 390 S.C. at 392, 701 S.E.2d at 781. In that case, the plaintiff was injured when a driver drove over a wheel stop in the defendant's grocery store parking lot and pinned the plaintiff between the front bumper of the car and the grocery store's wall. In Nelson, the Court dismissed the plaintiff's claim, concluding that the grocery store should not have to guard against "the possibility that an improperly

operated vehicle would injure" the plaintiff. Id. at 393, 701 S.E.2d at 781. Stated another way, should a grocery store be required to guard patrons against an unexpected activity that has nothing to do with the operation of the business entity itself? In Nelson, the answer was no.

In this case, however, Appellant is not asking that Respondent be required to guard her against activities completely unexpected and wholly unrelated to its business. Instead, Appellant's injury occurred while she was engaging in the only activity in which customers and invitees participate while on Respondent's premises—moving items of furniture and personal belongings in and out of a storage building. This is completely distinguishable from Nelson. The business of a grocery store is the buying and selling of groceries, and patrons are on a grocery store premises for the sole purpose of selecting and purchasing grocery items. Driving a vehicle to and from the store is peripheral to the actual business of buying and selling groceries. In addition, as the Court in Nelson accurately recognized, the "vehicle's acceleration and contact with [the plaintiff] were unexpected and unusual." Nelson, 390 S.C. at 394, 701 S.E.2d at 782. Appellant is willing to concede that if another patron had unexpectedly driven his or her vehicle into Appellant while she was in Respondent's parking lot, then that type of risk and injury would be much less foreseeable and the Nelson holding would be directly applicable. However, the sole purpose for a patron to be on Respondent's premises is to either move his or her belongings into or out of a storage building. This is the precise activity in which Appellant was engaged at the time she was injured. Thus, not only was the risk of the injury suffered by Appellant foreseeable, but it should have been expected.

Additionally, Respondent contends that it should not be liable for Appellant's injuries because all "[d]oors . . . have the inherent capacity to close upon, pinch, or catch hands, feet, arms and legs." (Initial Appellant's Br. of Resp't 12). While it can be argued that all doors have the inherent capacity to close upon or pinch, those are not the risks complained of in regards to the specific door in question in this case. It is the unique characteristics of Respondent's door that made it unreasonably dangerous. As Appellant's expert testified, "[i]t was the combination of the height of the edge [of the door] above the ground, the sharpness of that edge, the fact that it wasn't guarded in any way, and . . . the speed and then as a result of that, the force with which the door closed" that made it a safety hazard (R. p. 334) and a violation of the International Building Code (R. pp. 342-343). This combination of characteristics created a safety risk that is not inherent with every door.

Nonetheless, Respondent would have this Court rule as a matter of law that a property owner could never be held liable for injuries caused by a door due to the fact that all individuals encounter a door "every day". (Initial Appellant's Br. of Resp't 12). However, to the contrary, there are multiple cases in existence in which property owners have been held liable for injuries caused by a door in these same or similar circumstances. See Sterling Stores Co. v. Martin, 238 Ark. 1041, 386 S.W.2d 711 (1965) (affirming trial court's denial of directed verdict motion when evidence existed showing store owner failed to adjust hinges of door to make it swing easier and closer to floor); Jackson v. Cherokee Drug Co., 434 S.W.2d 257 (Ct. App. 1968) (affirming trial court's denial of directed verdict motion after several witnesses testified to the fact that the door "banged" shut and they had to use caution when going through the door); Franconia

Assocs. v. Clark, 250 Va. 444, 448, 463 S.E.2d 670, 673 (1995) (finding constructive notice of a dangerous condition based on testimony that door would "spring back" and other patrons had "experienced difficulty using the same door"). Most notably, in Hall v. Medical Building of Houston, 151 Tex. 425, 251 S.W.2d 497 (1952), the Supreme Court of Texas held that in determining whether the property owner owed a duty to the patron, you must look to all the circumstances surrounding that particular door. Id. at 431, 251 S.W.2d at 501. Specifically, after looking at "the facts in evidence concerning the lobby, the stairway, the door, their use and the conditions surrounding them," that court held that "[t]he case [was] not one of open and obvious danger in using or passing by an ordinary door," but rather that "[t]he evidence . . . clearly show[ed] that the door as constructed, maintained and used created a dangerous condition." Id. Again, just as Appellant's expert testified in this case, after looking at all of the characteristics of the door in question, including its height off the floor, the speed at which it closed, and the sharpness of its bottom edge, this was not an ordinary "every day", door as Respondent argues, but rather a safety hazard with unique and dangerous qualities. (R. p. 334).

Similarly, Respondent also contends that it did not have a duty to warn Appellant of any dangers because this door's condition was not a latent defect, and Appellant had encountered the door on several other occasions making her familiar with its operation and characteristics. However, in making its arguments, Respondent again fails to take into consideration the combination of characteristics unique to this particular door. Respondent simply contends that Appellant was fully aware of the fact that the door would close if not held or propped open. The fact that the door would close is not the latent defect. The latent defect in this particular door was created by its closing speed,

the height off the ground, and the sharpness of the bottom edge. While Appellant may have been aware that the door would close if not propped open, there is no evidence in the record that she was aware of these other dangerous conditions, the sharpness of the bottom edge in particular. Moreover, while Appellant admits she had used this door prior to the date of her injury, she had never used the door under the circumstances present when she was injured. Specifically, she had been accompanied on most prior occasions by either her sons or Mr. Dan Comfort, an employee of Respondent, (R. pp. 140, 143) but she was alone on the date she was injured (R. p. 146). Additionally, this was the first time that she had been removing items from her unit, as opposed to carrying them into the unit, (R. p. 145), and Respondent's own employee, Ms. Glenda Painter, even testified to the fact that the "direction" from which you pick up the item propping the door open factors into how the door closes on you (R. p. 369). Based on the unique characteristics of this particular door and the circumstances surrounding Appellant's use of the door on the date in question, Respondent still had the affirmative duty to warn Appellant of the door's heightened risk of injury.

Even more, Appellant contends that the "distracted patron" doctrine applies. This doctrine provides that even if a condition is "open and obvious," a store owner or occupier may still "be required to warn the invitee, or take other reasonable steps to protect him, *if the [owner or occupier] 'has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, . . . or fail to protect himself against [the dangerous condition].*'" Callander, 305 S.C. at 126, 406 S.E.2d at 362 (emphasis added) (quoting Restatement (Second) of Torts § 343(A) (1965)). Because of the nature of the storage business, a patron will almost always either have a

piece of furniture or other belongings in his or her hand, or will be retrieving the last item from its position of propping open the door. In both of these scenarios, the patron (including Appellant in this case) will have his or her back to the door that is quickly closing, and will literally have his or her hands full. Appellant asserts that this is the classic example of a "distracted" patron. As a result, a condition that someone might normally encounter, observe and avoid, is directly behind that person and definitely not obvious.

II. THE TRIAL COURT WAS CORRECT IN FINDING THAT THE ISSUE OF EACH PARTY'S NEGLIGENCE WAS A QUESTION OF FACT TO BE DETERMINED BY THE TRIAL JURY.

"In order 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." Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 394, 665 S.E.2d 222, 226 (Ct. App. 2008). A plaintiff may only recover damages if his own negligence is not greater than that of the defendant. Id. A determination of the degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury to decide. Id. at 394-95, 665 S.E.2d at 226. "In a comparative negligence case, the trial court should grant a motion for directed verdict if the sole reasonable inference from the evidence is that the non-moving party's negligence exceeded fifty percent." Hurd v. Williamsburg Cnty., 363 S.C. 421, 429, 611 S.E.2d 488, 492 (2005); see also Fairchild v. S.C. Dep't of Transp., 385 S.C. 344, 362, 683 S.E.2d 818, 828 (Ct. App. 2009) aff'd 398 S.C. 90, 727 S.E.2d 407 (2012).

Here, however, Appellant asserts there was ample evidence in the record regarding Respondent's negligence. This facility is a facility built and designed to allow people to move their personal belongings in and out of the building. As a result, much of the time a patron is coming in or out of the door, their hands will be full with the items they are moving. (R. pp. 365-366). Respondent admits this fact, and admits that its employees know patrons are customarily propping the doors open with items of property. (R. pp. 273-274).

Respondent's store manager, Dan Comfort, testified that he knows "propping the door open is an issue", and the door can swing shut and hurt people. (R. p. 273). In fact, Mr. Comfort notes that the door "most definitely" closes fast. (R. p. 273). As a result, he tries to remind patrons to be careful of that fact, but does not recall telling Appellant about it. (R. p. 274).

Appellant's expert opined that the speed of the door closing was a contributing cause to this accident, and when combined with the height and sharpness of the door bottom, created an unreasonably dangerous condition that should have been remedied or warned against. (R. pp. 334-335). More specifically, Appellant's expert testified that Respondent "should have either eliminated the hazard . . . by guarding or somehow eliminating that sharp edge or reducing the closing speed of the door and they also should have provided some sort of means for people to keep the door open or to delay the closing of the door so that the customers wouldn't be left to their own to figure out how to prop it open." (R. p. 335).

In spite of Respondent's knowledge of the dangers of the door closing and the fact that most patrons will have their hands full, Respondent did not remedy the situation by

slowing down the door speed or providing the patrons with a safe way to hold the door open while the items were moved.

Instead, as Respondent's employee, Glenda Painter, testified, Appellant or any other patron would have to move his or her items in and out by pushing the door open with whatever the item is and either going "sideways" or "back[ing] out of it and walk[ing] away from the door." (R. p. 367). Ms. Painter's other suggestion to Appellant would be to "brace (whatever you have in your hand) against the wall and you take your arm and push the door open so it opens out and you walk out". (R. p. 367). Additionally, this witness acknowledged that if the door is propped open as it was by Appellant, when that last piece of furniture is moved, the door will close on the patron "depending on which direction you picked it up." (R. p. 369).

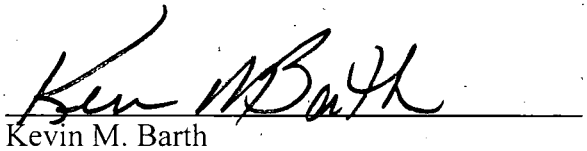
Respondent's expert even acknowledged that, in installing and setting up a door such as this, a merchant should consider the specific use for a door, along with the "abuse probability" of its users. (R. pp. 512-513). Respondent's expert then gave examples of this type of "abuse", such as blocking the door open with foreign objects or "opening doors with body parts other than hands." (R. p. 513). However, he ultimately opined that the door is reasonably safe and that Appellant should have placed duct tape over the latch, propped the door open with a rock, or asked someone at the office for assistance. (R. pp. 517-518).

As courts have historically held, "the determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury." Hurd, 353 S.C. at 615, 579 S.E.2d at 146. In this case, the jury heard the facts, including the testimony of Appellant and both experts, and apparently determined that the

door's condition was unreasonably dangerous and further determined that Respondent should have known about it and either "fixed it" or warned its patrons. The jury further found that based upon these facts, both parties were equally at fault in bringing about this accident. Appellant contends that the issue of each party's negligence in this case was properly left to the jury to determine.

CONCLUSION

Based on the foregoing, Appellant respectfully submits that this Court should deny and dismiss Respondent's appeal, and remand the matter to the Trial Court as outlined in Appellant's Initial Brief.



Kevin M. Barth
Brendan P. Barth
Ballenger, Barth, Hoefer & Lewis, LLP
P.O. Box 107
Florence, South Carolina 29503
(843) 662-6301

ATTORNEYS FOR APPELLANT/RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2012-212109

Susan Anne Bell Lynch,

Appellant/Respondent

v.

Carolina Self Storage Centers, Inc.,

Respondent/Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant/Respondent, Final Respondent's Brief of Appellant/Respondent, and Reply Brief of Appellant/Respondent comply with Rule 211(b), SCACR.

Kevin M. Barth
Brendan P. Barth
Ballenger, Barth, Hoefer & Lewis, LLP
P.O. Box 107
Florence, S.C. 29503
(843) 662-6301
ATTORNEYS FOR APPELLANT/RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2012-212109

Susan Anne Bell Lynch,

Appellant/Respondent,

v.

Carolina Self Storage Centers, Inc.,

Respondent/Appellant.

CERTIFICATE OF MAILING

I, the undersigned, of the law offices of Ballenger, Barth, Hoefer & Lewis, do hereby certify that I have served all counsel in this action with a copy of the foregoing pleading by causing a copy of the same to be mailed by United States mail, postage prepaid, to the following address(es):

PLEADING: Final Brief of Appellant/Respondent
Final Respondent's Brief of Appellant/Respondent
Reply Brief of Appellant/Respondent

COUNSEL SERVED: Kirby D. Shealy
Post Office Box 2285
Columbia, South Carolina 29202

Christy Graves

Christy Graves
Post Office Box 107
Florence, South Carolina 29503
(843) 662-6301

Sworn to and subscribed before me
this 12th day of June, 2013

Notary in and for South Carolina
My Commission Expires: 06/04/2022