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Aug 23 2023

SC Court of Appeals

FORM 14
RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr. Circuit Court Judge, Third Judicial Circuit

Case Number.: 2019-CP-07-00554

NICHOLAS SANFILIPPO,

Appellant,

v.

ESTATE AT WESTBURY HORIZONTAL
PROPERTY REGIME (a multifamily
real estate community) and HIGHTIDE
ASSOCIATES (A property and HOA
Management company)

Respondent,

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

By: S/Gary Coggin

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Other Counsel of Record

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Latest Actions

1. Order Granting Defendants' Joint motion for Summary Judgment 08/16/2022;
2. Plaintiff's Notice and Motion to Reconsider 08/25/2022;
3. Order Denying Motion for Reconsideration 10/04/2022;
4. Notice and Appeal to Court of Appels 11/09/2022 1

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1. Summons and Complaint 03/13/2019;
2. Answer 05/09/2019;
3. Amended Answer 06/05/2019;
4. Response to Amended Answer 06/17/2019;
5. Amended Summons and Complaint 07/05/2019;
6. Answer to Amended Complaint 09/13/2019;
7. Response to Answer to amended Complaint 09/19/2019;
8. Summons and 2nd Amended Complaint by Plaintiff 06/02/2022;
9. Answer to Amended Complaint 06/29/2020;
10. Sanfilippo Response to Reply to Answer to 2nd Amended Complaint 07/02/2020;
11. Motion for Summary Judgment by Estate at Westbury 03/08/2021;
12. Motion for Summary Judgment by High Tide Associates 03/08/2021;
13. Response to Motion for Summary Judgment 06/02/2022;
14. Memo for Motion for Summary Judgment Estate at Westbury 06/03/2021; 1
15. Response to Motion to Compel Appearance of Expert Witness;

16. Response to Motion of HTA Motion for Summary Judgment 06/04/2021;
17. Affidavit of Diane Lewis 06/25/2021;
18. Affidavit of Kathleen Sanfilippo; 06/25/2021
19. Affidavit of Brian Durig; 07/28/22;
20. Letter to Sanfilippo 07/07/2021;
21. Sanfilippo filing 07/07/2021;
22. Reply memo in support of summary judgment 07/09/2021;
23. Form 4 Order Denying Motion for Summary judgment 11/14/21;
24. High Tide and Estate at Westbury Motion for Summary Judgment 05/17/2022;
25. Motion in Opposition to Defendant’s Second Motion for Summary Judgment;
26. Plaintiff’s Motion for Summary Judgment 06/22/22;
27. Response to Motion to Compel Appearance of Expert Witness;
28. Plaintiff’s Appeal from Beaufort County; July 5, 2023;
29. Memo of Law in Support of Renewed Motion for Summary Judgment 07/19/2022;
30. Plaintiff’s Addendum to Motion for Summary Judgment 07/28/2022;
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2. Deposition of Expert Witness Bryan Durig 3
3. Deposition of Nicholas Sanfilippo

Summary Judgment Hearings

1. Transcript of Summary Judgment Hearing #1 June 7, 2021

Summary Judgment Hearings

- 1. Transcript of Summary Judgment Hearing #1 June 7, 2021
- 2. Transcript of Summary Judgment Hearing #2 May 17, 2022 4

Stare Decisis.

Affidavits and Exhibits 4, 5

Nicholas Sanfilippo, the appellant herein, proposes the following **DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL:**

Latest Actions

1. Order Granting Defendants' Joint motion for Summary Judgment 08/16/2022;
2. Plaintiff's Notice and Motion to Reconsider 08/25/2022;
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11. Motion for Summary Judgment by Estate at Westbury 03/08/2021;
12. Motion for Summary Judgment by High Tide Associates 03/08/2021;
13. Response to Motion for Summary Judgment 06/02/2022;
14. Memo in Support of Motion for Summary Judgment Estate at Westbury 06/03/2021;

15. Response to EAW Motion for Summary Judgment 06/04/2021;
16. Response to Motion for to HTA Motion for Summary Judgment 06/04/2021;
17. Affidavit of Diane Lewis 06/25/2021;
18. Affidavit of Kathleen Sanfilippo; 06/25/2021
19. Affidavit or Bryan Durig 07/07/2021;
20. Letter Sanfilippo 07/07/2021;
21. Sanfilippo filing 07/07/2021;
22. Reply Memo in Support of Summary Judgment 07/09/2021;
23. Order Form 4 Denying Motions for Summary Judgment 11/14/21;
24. High Tide and Estate at Westbury Motion for Summary Judgment 05/17/2022;
25. Motion in Opposition to Defendant's Second Motion for Summary Judgment 06/22/2022;
26. Plaintiff's Motion for Summary Judgment 06/22/22;
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30. Plaintiff's Addendum to Motion for Summary Judgment 07/28/22
31. Response to Addendum for Summary Judgment 07/29/2022

Transcripts of Depositions

1. Deposition of Rocky Dunlap

Page 1 Population of Westbury 400; P11 Dunlop was Vice-President and a board member; P16 Deb Schumann took minutes and taped the proceedings; pgs 20-23 there were up to 23 cameras about the complex placed under High Tide Associates

(HTA); 25, 26 Rocky did not think there was a tape of the Plaintiff's fall; he claimed not to be aware of Plaintiff's fall; 29 talked about the fall of a lady in a wheel chair on the sidewalk; 32 Doug Skelly is the owner of HTA; 34 The board at HTA paid for the installation of the cameras and maintenance fees; 38 discussion of MAJ Concrete; 50 Talked about uneven segments of sidewalk;

2. Deposition of Expert Witness Bryan Durig

Pgs 6-9 education and work experience; pgs. 10-12 Durig is a Ph.d and a forensic Engineer and does about 150 premises cases annually with about 20 cases per year going to trial; pgs. 14-17 case load 75% plaintiff and 25% defendant; pgs 18-32 discussed the case at hand; p 40 explained the dynamics of a trip and fall; pgs 52-71 reviewed the standards and rules of the various public groups dealing with walkways. Opined that Sanfilippo is handicapped as the handicapped parking space has his apartment number (1001) on it. The differential in concrete segments where plaintiff fell was ¼ inch to 1 inch – a trip and fall hazard.

3. Deposition of Nicholas Sanfilippo

Transcript of video deposition of Nicholas Sanfilippo. Pgs. 17-29 Sanfilippo history and background of the accident; pgs 30-34 recovery, high blood pressure, treatment by orthoped, medication; 36-39 sidewalk conditions, payment of rent, etc.; trip and fall, report of fall, visit to hospital; pgs 42-43 aftermath of accident, kidney problems, dialysis, dietary changes; p. 45 can walk 60 feet at a time today with a cane; p. 46 moved from Estate at Westbury to independent living at a facility on Hilton Head Island, South Carolina

Summary Judgment Transcripts

1. Transcript of Summary Judgment Hearing #1. Transcript of the Defendant's first Summary Judgment hearing of June 7, 2021. Here, the Defendant made only two arguments before Judge Carmen T. Mullen:

- a. Plaintiff was a licensee;

- b. The condition of the walkway was open and obvious;

Sometime thereafter, by a Form 4 Order, the Court denied the defendant's summary judgment motion.

2. Transcript of Summary Judgment Hearing # 2. A year later, Defendant made a second summary judgment motion to the Court on the basis that, if there was new information in the case from the expert the Plaintiff brought into the case, then the Defendant had the right to bring a second motion for summary judgment on the new information.

A review and comparison of the Transcripts numbers 1 and 2 will show that the arguments made by Defendant's counsel in hearing no. 2 were the same as Defendant made in the in the first hearing. There were no discussions re the opinions or new information provided by mechanical engineer expert Dr. Bryan Durig. Instead Durig's opinions were ignored and Defendant's arguments were a reprise of the arguments placed before the original Judge Carmen Mullen a year before. The only difference here was that, on the identical evidence put forth by the Defendant in summary judgment #2 on 05/17/2022 the Defendant received a favorable verdict from the second Judge Ferrell Cothorn. On this basis Judge Cothorn's ruling of summary judgment in the matter should be reversed dismissed

Stare Decisis

All of the above is important in that the above ruling of Judge Cothorn of summary Judgment motion in favor of the Defendant is adverse to the legal doctrine of Stare Decisis. Stare Decisis is the legal doctrine that states that once a Court has once laid down a principle of law as applicable to a certain state of facts, that Court will adhere to that principle and apply it to all future cases where the facts are the same. Black's Law Dictionary, 5th Edition, page 1261.

With the above said, please be aware that the facts argued before Judge Mullen on June 7, 2021 in Mr. Aker's Motion for Summary Judgment were the same as the facts argued a year earlier by Douglas Leadbitter of Gower Wooton & Darneille, LLC before Judge Mullen who, as stated above found for the Plaintiff. Judge Cothorn was either unaware of or ignored the Court's June 7, 2021 ruling and, on May 7, 2022 found in favor of the Defendant. This decision reversed the Court's June 7, 2021 ruling which is the grounds for this instant appeal.

Affidavits and Exhibits

1. Tony Pinto Affidavit
2. Estate at Westbury Management Agreement
3. Hospital radiology
4. The old lady falling on the sidewalk discussion at the EAW board meeting (excerpt from board meeting minutes)
5. MAJ Concrete repair estimate
6. The September 26, 2017 meeting of EAW before the injury of Sanfilippo

7. Section 27-40-440 South Carolina Code of Laws
8. Affidavit of Bryan Durig, M.E. Ph.d
9. Affidavit of Diane Lewis
10. E-mail Theresa Childers from Karla Patterson
11. Affidavit of Kathleen Davey Sanfilippo
12. Hospital bill for Sanfilippo's knee injury
13. Transcripts of the depositions of the following:
 - a. Nick Sanfilippo
 - b. Bryan Durig, M.E. Ph.d
 - c. Rocky Dunlap, Board V.P. retired, of the Board of Directors of the Estate at Westbury
14. Transcripts of Summary Judgment hearings
 - a. Transcript #1
 - b. Transcript #2
15. Notice & Motion to Reconsider and Alter and Amend Summary Judgment.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 22, 2023

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FORM 7
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
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Appellant,

v.

ESTATE AT WESTBURY HORIZONTAL
PROPERTY REGIME (a multifamily
real estate community) and HIGHTIDE
ASSOCIATES (A property and
Management company)

Respondent,

PROOF OF SERVICE

I certify that I have served the enclosed DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL upon Defendant's Counsel of Record by depositing a copy of the same in the United States Mail, postage prepaid, on August 21, 2023 to Mr. Akers at the below address.

S/ Gary Coggin

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FORM 7
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ESTATE AT WESTBURY HORIZONTAL
PROPERTY REGIME (a multifamily
real estate community) and HIGHTIDE
ASSOCIATES (A property and
management company

Respondent,

PROOF OF SERVICE

I certify that I have served the first iteration of the DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL upon Defendant's Counsel of Record by hand delivering copy of the same Mr. Aker's law firm at 25 Rue DuBois in Beaufort, South Carolina at the below address.

S/ Gary Coggin

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April 23, 2023

Jenny A. Kitchens
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

ctappfilings@sccourts.org

Re: Sanfilippo v. Estate at Westbury and High Tide Associates
Case Number: 2029-CP-07-00554

Designation of Matter to be Included in Record on Appeal

Dear Clerk of Court:

Please find enclosed in the above referenced case:

1. Cover Sheet;
2. Index;
3. Designation of Matter;
4. Proof of Service;
5. Proof of service in Hand of earlier Designation of Matter to Attorney Akers

If you have any questions or concerns re the enclosed, please do not hssitate to contact me.

Sincerely


Gary Coggin

GPC/cab
Copy: Akers

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