

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Shannon M. Phillips, Master-in-Equity

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Case No. 2022-001649

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Gwendolyn Lockett,

Appellant,

v.

Barnyard Flea Market of Greer, LLC, and Jane Doe,

Defendants,

of which Barnyard Flea Market of Greer, LLC is the Respondent.

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FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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## STATEMENT OF ISSUE ON APPEAL

WHETHER THE CIRCUIT COURT ERRED IN GRANTING BARNYARD FLEA MARKET SUMMARY JUDGMENT WHERE THE RECORD CONTAINS EVIDENCE THAT BARNYARD BREACHED ITS STANDARD OF CARE OWED TO LOCKETT AS IT FAILED TO REMEDY THE DANGEROUS CONDITION THAT INJURED LOCKETT.

## STATEMENT OF CASE

Gwendolyn Lockett (“Lockett”) commenced this action by filing a summons and complaint October 12, 2020, and serving it January 8, 2021, alleging a negligence cause of action against Barnyard Flea Market of Greer (“Barnyard”) based on premises liability from a trip and fall.<sup>1</sup> (ROA pp. 17-22.) Barnyard filed an answer February 5, 2021, that contained several affirmative defenses. (ROA pp. 23-30.)

Barnyard filed a motion for summary judgment June 17, 2022, arguing that Barnyard was not liable because (1) it did not create the dangerous condition or have notice of the dangerous condition; (2) it did not control the area or product where Lockett was injured; and (3) it was not liable through agency principals. (ROA pp. 31-33.) The circuit court held a virtual hearing via Web Ex on September 20, 2022. On October 4, 2022, the circuit court issued an order that granted Barnyard summary judgment. (ROA pp. 1-13.)

On Friday, October 14, 2022, Lockett filed a motion to alter or amend that asked the circuit court to reconsider its ruling. At 3:03:08, the clerk of court issued an NEF for this filing, which was classified as Motion/Reconsider. (ROA p. 148.) The clerk of court later that day rescinded the NEF without explanation. (ROA p. 149.) The circuit court eventually accepted Lockett’s motion

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<sup>1</sup> The Complaint also named other defendants, who are not pertinent to this appeal.

and reissued the NEF on October 19, 2022, at 12:49:40 p.m. (ROA p. 150.) On October 27, 2022, the circuit court issued a Form 4 order denying Lockett's motion to reconsider. (ROA pp. 14-16.)

On November 23, 2022, Lockett filed and served the notice of appeal.

## FACTS

On October 15, 2017, Lockett fell at the Barnyard when she tripped over items that were sticking out from under a table. (ROA p. 104, ll. 1-15.) Lockett was walking backwards to avoid a woman backing towards her on an electric wheelchair when her feet got tangled up in the items protruding from under the table, and she fell backwards onto her back and hips and lost consciousness. (ROA p. 104, ll. 8-15; p. 108, ll. 1-8.) In addition to injuring those body parts, she suffered an injury to her left hand and subsequent headaches from the fall. (ROA p. 124, l. 17-p. 126, l. 15.) Her left hand was further hurt that day at the emergency room when it got stuck in an imaging machine. (ROA p. 134, l. 11-p. 135, l. 13.)

The fall occurred in front of the stall known as Gypsy's Caravan, which was a rented stall at the Barnyard. (ROA p. 103, ll. 2-14.) Lockett, who was also a vendor at Barnyard, was present outside of Gypsy's Caravan's stall that day to ask the proprietor of Gypsy's Caravan a question. (ROA p. 103, ll. 2-21.) The table the items were under belonged to Barnyard, which provided them to vendors at vendors' request. (ROA p. 105, ll. 6-22.) Vendors could use the tables to display items for sale. (ROA p. 106, ll. 5-8.) The table provided by Barnyard had to be orderly maintained within Gypsy's Caravan's allotted space and comply with Barnyard's rules about where certain items could be. (ROA p. 98, l. 8-p. 99, l. 16.; p. 138-39.)

Lockett believes the items she tripped over belonged to Gypsy's Caravan but is not sure whether they were Barnyard's. (ROA p. 106, ll. 9-17.) Lockett was familiar with the Barnyard's

rules and regulations and method of operation as she was a vendor at Barnyard until she could no longer physically operate her stall not long after this incident because of the injuries she sustained in this fall. (ROA p. 129, ll. 16-23.)

#### STANDARD OF REVIEW

Summary judgment is appropriate “if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). “[T]he non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Management Co., 381 S.C. 326, 673 S.E.2d 801, 803 (2009).

“When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP.” Knight v. Austin, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 796 (2008). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Clegg at 651, 661 S.E.2d at 796.

## ARGUMENT

THE CIRCUIT COURT ERRED IN GRANTING BARNYARD SUMMARY JUDGMENT BECAUSE EVIDENCE EXISTS THAT BARNYARD VIOLATED ITS DUTY TO LOCKETT BY FAILING TO REMEDY THE DANGEROUS CONDITION THAT CAUSED LOCKETT INJURIES AS IT HAD CONSTRUCTIVE NOTICE OF THE CONDITION.

To recover for a dangerous condition on a storekeeper's premises, the plaintiff must show either "(1) that the injury was caused by a specific act of the defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it." Wintersteen v. Food Lion, Inc., 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001). "Generally, a person owes an invitee the duty of exercising reasonable or ordinary care for his safety and is liable for any injury resulting from the breach of this duty." Id. at 36, 542 S.E.2d at 730. A storekeeper "owes a duty to keep aisles and passageways in a reasonably safe condition." Id.

The key question in this case is whether Barnyard had constructive notice of the dangerous condition that existed because of the items under the table outside of Gypsy's Caravan's shop. A person has constructive notice of a condition and is deemed to know of that condition if a person knows facts that if pursued with due diligence would lead to knowledge of undisclosed facts that would make the person know of that condition. See Multimedia Publishing of South Carolina, Inc. v. Mullins, 314 S.C. 551, 556, 431 S.E.2d 569, 572 (1993). Constructive notice is based on circumstantial evidence so courts should not apply the law strictly and mechanically but should instead emphasize fairness and flexibility in analyzing whether the plaintiff has met its burden of proof. See, F.P. Hubbard & R.L. Felix, THE SOUTH CAROLINA LAW OF TORTS (4<sup>th</sup> Ed. 2011) p. 182, fn. 44.

In Garrison v. Target Corp., the Supreme Court upheld the circuit court's denial of JNOV to Target in a premises liability case. Garrison v. Target Corp., 435 S.C. 566, 869 S.E.2d 797 (2022). In Garrison, the plaintiff suffered injury when she swatted a syringe from her daughter's hand that her daughter had picked up in Target's parking lot. Id. at 571, 869 S.E.2d at 800. Target's store manager testified that employees would monitor the parking lot for dangerous conditions when returning carts to the store, but no schedule existed for monitoring the parking lot. Id. at 579, 860 S.E. at 804. The Court further noted that Target did not keep records of the maintenance it performed. Id. The Court held, "Based on this evidence, the jury could reasonably find the syringe had been in the parking lot long enough for Target to discover and remove it in the exercise of due care." Id. at 580, 860 S.E. at 804.

Barnyard maintained sufficient control over the area where the dangerous condition existed that injured Lockett so it knew or should have known about the existence of the dangerous condition. Barnyard, therefore, had a duty to remedy this dangerous condition and failed to do so.

The circuit court summarily found that "no evidence provided by [Lockett] that [Barnyard] had actual or constructive knowledge that the table or items under the table posed an alleged risk." (ROA p. 10.) The circuit court failed to consider the control Barnyard exerted over its tenants, including Gypsy's Caravan. Barnyard has many areas of control over its tenants through the warehouse rental policy it requires all tenants to abide by. Paragraph 8 limits several appliances as "a safety precaution for all vendors." (ROA p. 138.) Paragraph 14 requires vendors to "[s]tay inside your lines to keep aisles free of obstructions for shoppers." (ROA p. 138.) The warehouse rental policy is full of other ways Defendant Barnyard Flea Market controls and regulates the actions of

its tenants. Defendant Barnyard Flea Market answered Interrogatory No. 10 by stating the Market staff enforces the policies and procedures.<sup>2</sup> (ROA p. 144.)

Lockett would not have been injured if Barnyard had enforced its rules and regulations regarding keeping aisles clear. Furthermore, a jury could find that Barnyard should have known about the tripping hazard caused by the items under the table because its staff had the duty to enforce its rules and regulations, which the tripping hazard violated. If Barnyard had properly monitored the area as required, it would have known about the tripping hazard. Barnyard, therefore, had constructive notice of the tripping hazard that injured Ms. Lockett. Evidence exists such that a jury could determine Defendant Barnyard Flea Market acted negligently in failing to warn of or correct the tripping hazard that injured Ms. Lockett based on Barnyard's constructive knowledge of the dangerous condition.

Furthermore, the area outside the vendor's booth is akin to a common area that Barnyard has responsibility for maintaining in a safe condition for its customers and all vendors. See, e.g., Daniels v. Timmons, 216 S.C. 539, 59 S.E.2d 149 ("The law applies an obligation creates a legal duty to keep the same in repair and to operate properly such parts of the premises which the lessor reserves possession and control of for the common use of several tenants and this is peculiarly applicable to halls, entrances ... of which no particular tenant has exclusive possession or control.") Barnyard should have known of the dangerous condition because Barnyard would have learned of these boxes protruding from under the table had it acted with due diligence in enforcing its rules and regulations in place for safety.

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<sup>2</sup> Interrogatory No. 10 asked "Who enforces compliance by vendors with the policies and procedures for maintenance and cleanliness at the flea market in Greer, S.C.?"

Barnyard answered, "The Market staff."

The numerous, specific rules Barnyard had for its vendors such as Gypsy's Caravan were in place to protect customers and others present on flea market premises. These rules and regulations gave Barnyard almost absolute control over how Gypsy's Caravan operated, particularly for the vendor's behavior outside its booth. Barnyard had specific rules even for the table rentals such as where the table could be placed. (ROA p. 139.) If Barnyard had enforced its rules, as it stated in its answers to Interrogatories that it does, then Barnyard would have learned of the dangerous condition posed by the items sticking out from under the table at Gypsy's Caravan. Similar to Garrison, Barnyard has failed to produce any schedule of when it monitors its vendors for compliance with its safety rules or any records of such inspections. Lockett, therefore, has produced evidence that Barnyard had constructive notice of the dangerous condition in its aisleway outside of Gypsy's Caravan's store so evidence exists that it violated its duty of due care by failing to remedy the situation. Lockett's claim, therefore, should survive summary judgment.

#### CONCLUSION

For the reasons argued above, Lockett has produced sufficient evidence that Barnyard had constructive notice of the dangerous condition on its premises caused by the items under the table it provided to Gypsy's Caravan so the Court of Appeals should reverse the trial court's grant of summary judgment to Barnyard because Barnyard failed to meet its duty of remedying the situation.

Respectfully submitted,



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October 30, 2023

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Certificate of Counsel

Counsel for the Appellant hereby certifies that the Final Brief of Appellant complies with Rule 211(b).

  
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