

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Daisy Crump,

Plaintiff,

vs.

Glenfield Capital, LLC d/b/a Glen 1441, LLC;
Colliers International South Carolina, Inc.; tk
Elevator Corporation; and Sizemore, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2022-CP-40-05610

RECEIVED

Sep 18 2024

SC Court of Appeals

**ORDER GRANTING DEFENDANTS
GLENFIELD CAPITAL, LLC D/B/A GLEN
1441, LLC, COLLIERS INTERNATIONAL
SOUTH CAROLINA, INC., AND TK
ELEVATOR CORPORATION'S JOINT
MOTION FOR SUMMARY JUDGMENT**

This matter comes before me upon joint motion by Defendants Glenfield Capital, LLC d/b/a Glen 1441, LLC (“Glenfield”), Colliers International South Carolina, Inc. (“Colliers”), and tk Elevator Corporation (“tk Elevator”) for Summary Judgment on all claims alleged by Plaintiff Daisy Crump. This Court held a hearing on the motion on July 24, 2024. Shaquana Cuttino and Nicholas Spetsas appeared for the Plaintiffs, Grace G. Brown appeared for Glenfield, W. Bryant Neal appeared for Colliers, and JD Elliott appeared for tk Elevator. After reviewing the record, including the deposition testimony of the Plaintiff and Plaintiff’s treating physician; reviewing the Affidavit filed by Plaintiff’s counsel; reviewing the memoranda of law filed by all parties; and hearing the able arguments of counsel, for the reasons set forth below, the joint motion for summary judgment of Defendants Glenfield, Colliers, and tk Elevator is hereby granted.

FACTS

On November 4, 2019, the Plaintiff was working as an “outbound” LPN at Absolute Total Care in Columbia, SC. The Plaintiff worked on the 11th floor of the building located at 1441 Main Street. Between 4:30 and 5:00 p.m. on the day of the incident, the Plaintiff had left work, gone down the elevator, and walked out of the building to her car. When she got to her car, the Plaintiff realized she had forgotten her phone and returned to the building to get it.

The Plaintiff walked back into the lobby of the building and went to get on one of the elevators to take her up to the 11th floor. The Plaintiff stated she did not have to press a button to summon the elevator because there were people that had just come down in the elevator before she got on. The Plaintiff entered the elevator and pushed the button for the 11th floor. The doors began to close but stopped about 8 inches apart. The elevator did not move on its own, and the doors did not open. The Plaintiff was stuck in the elevator.

The Plaintiff pressed the door-open and door-close buttons, but the doors did not respond. The Plaintiff testified that she believed the motor was running and that the cables holding the elevator could break at any second. The Plaintiff testified that she was scared the elevator would crash and that she would go down with it.

The building’s property manager also came to check on the Plaintiff, and the property manager told her that an engineer was on his way to fix the elevator. When the engineer got the doors to open, the Plaintiff exited the elevator.

The Plaintiff testified that she had no physical injury as a result of the incident. The Plaintiff testified that the incident has caused her emotional distress. The day after the incident, the Plaintiff visited her primary care physician, Dr. Martha Parker-Hester. Dr. Parker-Hester testified that the Plaintiff did not have any physical injuries when she treated the Plaintiff on November 5, 2019. In

an Affidavit filed with the Court, the Plaintiff's counselor stated that the Plaintiff began hyperventilating, sweating, and trembling when she saw an elevator.

STANDARD OF REVIEW

Summary judgment is appropriate when the movant demonstrates that the material facts of the case are undisputed, and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); Rule 56(c), SCRCP. If the moving party meets its initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party cannot simply rest on mere allegations or denials contained in the pleadings. *Singleton v. Sherer*, 377 S.C. 185, 197–98, 659 S.E.2d 196, 203 (Ct. App. 2008). Instead, the nonmoving party must come forward with specific evidentiary support showing there is a genuine dispute for trial. *Rife v. Hitachi Const. Mach. Co.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (holding that the “‘mere scintilla’ standard does not apply under Rule 56(c); rather, the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of the Rule.”). “The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.” *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008).

LAW/ANALYSIS

The Court finds the Plaintiff was not physically injured in this case and therefore, cannot establish actionable damages under negligence.

To recover damages in a negligence action, the plaintiff must establish (1) a duty of care owed that was (2) breached by a negligent act or omission and (3) damages that proximately resulted from the

breach. *Shaw v. City of Charleston*, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002). Under South Carolina law, the damages element of a cause of action for negligence requires a plaintiff to establish either physical injury or property damage. *Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013). “Damages for emotional or mental suffering are typically not recoverable, unless there is some physical manifestation of the emotional distress.” *Id.*

The South Carolina Court of Appeals determined that South Carolina recognizes negligent infliction of emotional distress in three contexts: (1) when a plaintiff observes a defendant’s negligence cause the death or serious injury of a relative; (2) when a plaintiff suffers emotional distress in addition to physical injuries; and (3) when emotional trauma proximately causes bodily injury. *K.S. by and through Seeger v. Richland School District Two*, 2022 WL 2966388 (Ct. App 2022) (citing (1) *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985); (2) *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001); and (3) *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 103 S.E.2d 265 (1958)).

Here, the Plaintiff was not a bystander and did not have a physical injury, so the three contexts established by *Kinard*, *Boan*, and *Padgett* and collectively discussed in *Seeger* do not provide a method of recovery for Plaintiff. The incident occurred to the Plaintiff, so the first context, the bystander context, established by *Kinard* does not apply. The second and third contexts, established by *Boan* and *Padgett*, respectively, require a physical injury that either caused the emotional distress or was borne from the emotional distress, but the Plaintiff and the Plaintiff’s treating physician have testified that the Plaintiff did not suffer a physical injury at all. The Plaintiff’s allegations of hyperventilating, sweating, and trembling do not constitute a physical injury as defined in *Seeger* and the prevailing authorities referenced therein. Therefore, Plaintiff

cannot succeed on her claims against Glenfield, Colliers, and tk Elevator under the second or third contexts.

In conclusion, the Court finds the Plaintiff was not physically injured in this case and therefore, cannot establish actionable damages under negligence. Without evidence of physical injury, there is no genuine issue of material fact. The Court grants summary judgment on this ground as to all Defendants. Therefore, it is

ORDERED, ADJUDGED, and DECREED that Glenfield Capital, LLC d/b/a Glen 1441, LLC, Colliers International South Carolina, Inc., and tk Elevator Corporation's Joint Motion for Summary Judgement is hereby **GRANTED**.

IT IS SO ORDERED.

The Honorable Jessica Ann Salvini
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina
August 8, 2024



Richland Common Pleas

Case Caption: Daisy Crump vs Glenfield Capital Llc , defendant, et al

Case Number: 2022CP4005610

Type: Order/Summary Judgment

So Ordered

Jessica A. Salvini