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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No.: 2024-001780
Civil Action No. 2020-CP-2481

Stefani Eddins, Respondent,

vs.

Tall Sam I Am, LLC d/b/a Tabbuli, Petitioner.

RETURN TO PETITION

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COUNTER-STATEMENT OF THE CASE

This is a negligence action concerning: Petitioner's own duties to keep its premises safe for patrons, discover and eliminate risks, and not put patrons in harm's way; Petitioner's breach of those duties on July 20, 2017; and the injuries and damages caused by Petitioner's breach. [Complaint, R. pp. 15-24.]

In reversing the trial court's summary judgment, the Court of Appeals held:

> Additionally, Tabbuli employees testified that they were heavily involved in the planning and execution of the event, including collaborating with the independent contractor on the floor plan. They also explained Tabbuli established responsibilities to investigate and mitigate hazards and to ensure a location was safe before seating patrons. Accordingly, viewing the evidence in the light most favorable to Eddins, we hold a jury could reasonably infer Tabbuli was negligent in seating Eddins under the light and in failing to notice and correct the hazardous condition that resulted in her injury.

[June 3, 2024 Opinion Reversing and Remanding, pp. 2-3.]

In the "Questions Presented" listed in the Petition for a Writ of Certiorari, the Petitioner continues to misrepresent the nature of the actual duty Respondent alleged was, and the Court of Appeals said may have been, breached (it was not the installation of the lights, but the installation of the customers under the lights), and again states, incorrectly, that the Court of Appeals "solely relies" on the expert testimony [Petition, p. 1]. Too, Petitioner's idea that Respondent is making Petitioner an "absolute insurer" [Petition, p. 3] is a straw man, which Petitioner has constructed from selective quotes from expert testimony rather than Respondent's actual pleadings or arguments. Again, as well, Respondent is manifestly not seeking to make Petitioner liable for third-party negligence, but for Petitioner's own negligence in seating the customers under a heavy unsecured light placed atop a vibrating speaker. The discussion of res ipsa is another straw man – Petitioner is not "inventing some higher standard" [Petition, p. 10]. In reversing the trial court's

summary judgment, the Court of Appeals was able to consider much more than has been included in the Petition as follows.

Petitioner, via its Rule 30(b)(6) designee and Operations Manager, Jeff Deihl, testified that it had a duty to keep its premises safe [Deihl Depo., p. 66, lines 18-21, R. p. 250, lines 18-21], discover and eliminate risks [Deihl Depo. pp. 58, lines 18-25, p.59, lines 1-10, R. p. 248, lines 18-25, R. p. 248, lines 1-10], and not put patrons in harms' way [Deihl Depo., p. 128, lines 23-25, p. 129, lines 1-2, R. p. 265, lines 23-25, R. p. 265, lines 1-2].

On the night of July 20, 2017, at 10:20 p.m., a temporary portable stage light fell on Respondent's head while a patron at Petitioner's restaurant. [Complaint, R. p. 16; Incident Report, R. p. 396.] According to Petitioner' manager, Cait Chapin, after investigating the incident that night, it was determined that the light fell because "[i]t was not secured properly." [Chapin Depo., p. 92, line 4, R. p. 228, line 4.] Plaintiff's expert, Mark E. Williams, AIA, NCARB, agrees, testifying "[i]t fell because it wasn't properly attached" [Williams Depo., p. 79, lines 3-4, R. p. 154, lines 3-4], and "[i]t fell because it was unstable." [Williams Depo., p. 44, line 12, R. p. 145, line 12.]

Petitioner was holding its outdoor Thursday night fashion show, White Haute Nights, at the time. [Chapin Depo., pp. 11, line 3, p. 20, lines 12-14, R. p. 208, line 3, R. p. 210, lines 12-14.] The temporary portable stage light was to be used for lighting. [Chapin Depo., p. 23, lines 3-11, R. p. 211, lines 3-11.] The light was set on top of a speaker that was attached to a support column. Petitioner did not supervise the installation of the light. [Chapin Depo., pp. 60, lines 15-25, R. p. 220, lines 15-25.]

In this case, Petitioner arranged its floor and seating plan accordingly for the fashion show. [Chapin Depo., p. 19, lines 3-10, p. 23, lines 3-15, R. p. 210, lines 3-10, R. p. 211, lines 3-15.]

Instead of keeping the light barriered from patrons, Petitioner placed one of its seats under the temporary portable stage light. [Chapin Depo., p. 19, lines 3-10, p. 23, lines 3-15, R. p. 210, lines 3-10, R. p. 211, lines 3-15.] Petitioner told Respondent to sit below the light in the seat it had placed under the light. [Eddins Depo., p. 20, lines 7-24, R. p. 291, lines 7-24.]

Petitioner testified that when Petitioner tells a patron where to sit, Petitioner has a duty to make sure it is safe for that patron to sit there. [Deihl Depo., p. 128, lines 23-25, p. 129, lines 1-2, R. p. 265, lines 23-25, p. 265, lines 1-2.] Petitioner did not inspect the light to make sure it was safe for patrons to sit below it before it sat Respondent under the light. [Chapin Depo., p. 62, lines 2-7, R. p. 221, lines 2-7.]

Thereafter, the show, with its noise and activity, started and the light fell on Respondent's head causing serious injuries. [Complaint, R. pp. 15-24; Eddins Depo., p. 21, lines 1-25, p. 33, lines 1-18, R. p. 292, lines 1-25, p. 304, lines 1-18, Haynes Depo., p. 14, lines 1-25, p. 19, lines 1-24, p. 20, lines 9-17, R. p. 367, lines 1-25, p. 372, lines 1-24, p. 373, lines 9-17.]

In response to a Rule 34 request for photographs of the light, Petitioner produced only one photograph, which showed the light unsecured, upside down, without any safety chain, sitting on top of the speaker. [Photograph of Light, R. p. 398.] This photo must have been taken earlier on the day of the incident because Petitioner claims a DJ brought the light onto the premises about 3:00 or 4:00 p.m., Petitioner took the light out of service after it fell on Respondent's head, and the DJ took the light after the incident. [Chapin Depo., p. 73, lines 24-5, p. 74, lines 1-9, R. p. 223, lines 24-5, p. 224, lines 1-9, Deihl Depo., p. 77, lines 12-14, R. p. 252, lines 12-14.] A photo taken that night of the seating area below the light where Petitioner seated Respondent was also produced in discovery. [Photograph of Scene, R. p. 400.]

As further background, Petitioner's manager, Cait Chapin, testified "Thursday nights were, our fashion show, White Haute Nights." [Chapin Depo., p. 20, lines 12-14, R. p. 210, lines 12-14.] Petitioner would "arrange chairs and couches" "according to whatever event is taking place." [Chapin Depo., p. 19, lines 3-10, R. p. 210, lines 3-10.] If Petitioner had a DJ, the DJ would set up "according to our floor plan" over which Petitioner had control. [Chapin Depo., pp. 23, lines 3-15, p. 24, lines 4-7, R. p. 211, lines 3-15, R. p. 211, lines 4-7.] The DJs "would arrive probably 4:00 p.m., maybe 3:00 p.m." "and they would set up whatever they need set up." [Chapin Depo., p. 37, lines 8-11, R. p. 214, lines 8-11.] "If Tabulli saw something with the setup that they did not like and told the DJ to not do that, the DJ would have to comply." [Chapin Depo., p. 26, lines 12-16, R. p. 212, lines 12-16.] However, on July 20, 2017, nobody from Tabbuli was monitoring the DJs and the light set up. [Chapin Depo., p. 60, lines 15-25, R. p. 220, lines 15-25.] "[O]ne of the duties [Petitioner] had was making sure that anything that was a danger be taken care of." [Chapin Depo., p. 30, lines 1-4, R. p. 213, lines 1-4.]

"Lighting [has] to be safe." [Chapin Depo., p. 33, lines 11-13, R. p. 213, lines 11-13.] However, on July 20, 2017, "no one from Tabulli was monitoring the light setup." [Chapin Depo., p. 60, lines 15-25, R. p. 220, lines 15-25.] "No one was standing there watching it being installed." [Chapin Depo. p. 60, lines 15-25, R. p. 220, lines 15-25.] "No one from Tabbuli checked for any safety hazards that might be presented by the hanging light setup." [Chapin Depo., p. 61, lines 17-21, R. p. 220, lines 17-21.] "Nobody from Tabbuli told the DJ not to put the light where it was" placed. [Chapin Depo., p. 61, lines 22-25, p. 62, line 1, R. p. 220, lines 22-25, R. p. 221, line 1.] More importantly, "nobody from Tabbuli did a safety inspection with respect to the lighting to make sure lights were safe for the patrons before it fell on Ms. Eddin's head." [Chapin Depo., p. 62, lines 2-7, R. p. 221, lines 2-7.]

When Respondent got to the restaurant that night, she sat at a table to eat. [Eddins Depo., p. 20, lines 7-24, R. p. 291, lines 7-24.] Petitioner's server told Respondent she should stay for the White Haute Nights event. [Eddins Depo., p. 20, lines 7-24, R. p. 291, lines 7-24.] The server told Respondent to move closer to the stage, and then seated her under the light. [Eddins Depo., p. 20, lines 7-24, R. p. 291, lines 7-24.] After the show started, at 10:20 p.m., with the crowd and music, the light fell and struck Respondent on the head causing serious injuries. [Incident Report, R. p. 396, Complaint, R. pp. 16-24; Eddins Depo., p. 21, lines 1-25, p. 33, lines 1-18, R. p. 292, lines 1-25, p. 304, lines 1-18, Haynes Depo., p. 14, lines 1-25, p. 19, lines 1-24, p. 20, lines 9-17, R. p. 367, lines 1-25, R. p. 372, lines 1-24, R. p. 373, lines 9-17.]

Petitioner testified that it investigates incidents and keeps Incident Reports in case "we ever needed to go back and find out what happened on a particular day or a particular event" and "to help determine a root cause of what caused that incident." [Deihl Depo., p. 94, lines 14-21, R. p. 257, lines 14-21.] Petitioner investigates incidents because it wants "to see if it is something that [it] could have prevented and how do[es it] prevent it in the future." [Deihl Depo., p. 120, lines 7-22, R. p. 263, lines 7-22.]

Petitioner's manager, Cait Chapin, testified that she investigated the incident and is the one who completed the Incident Report. [Incident Report, R. p. 396; Chapin Depo., p. 58, lines 5-14, R. p. 220, lines 5-14.] Ms. Chapin "went over to talk to whoever was setting up lighting where this happened," "looked at what happened, how it had fallen [and] what we could have done to prevent it, why it happened." [Chapin Depo., p. 58, lines 5-14, R. p. 220, lines 5-14.] Ms. Chapin stated "we all spoke about it together upon [Respondent's] exiting" and then Ms. Chapin spoke to "corporate," which had the video from that day, about what happened. [Chapin Depo., p. 68, lines 23-4, p. 69, lines 1-5, R. p. 222, lines 23-4, R. p. 222, lines 1-5.] After speaking with those involved

and completing her official investigation of the incident, Ms. Chapin concluded that the light fell because "[i]t was not secured properly." [Chapin Depo., p. 92, line 4, R. p. 228, line 4.]

After the incident, the manager told the "DJs to make sure that they are setting things up properly and things are secured and not setting things up over people and things like that." [Chapin Depo., p. 71, lines 1-4, R. p. 223, lines 1-4.] She looked at the light after it fell on Respondent and "[she] told everyone to make sure that things like this are secured, especially that are hanging overhead." [Chapin Depo., p. 73, lines 13-17, R. p. 223, lines 13-17.] The manager testified that they took down the light after it was put back from where it fell because "they didn't want that to happen again." [Chapin Depo., p. 74, lines 1-7, R. p. 224, lines 1-7.]

The manager testified that Petitioner and its employees have a duty to "obey safety rules and exercise caution and common sense," and "report any potential accidents." [Chapin Depo., p. 81, lines 1-16, R. p. 225, lines 1-16.] "You better be making sure that your t's are crossed and your i's are dotted in the restaurant because you want to make sure everyone is safe all around." [Chapin Depo., p. 83, lines 17-21, R. p. 226, lines 17-21.] "Negligence that could lead to a safety violation or cause injuries to guests or employees [is] prohibited." [Chapin Depo., p. 83, lines 22-25, p. 84, lines 1-4, R. p. 226, lines 22-25, R. p. 226, lines 1-4.] "Violation of any federal, state or local law or failure to follow prescribed rules or regulations, which could result in potential legal action" is also prohibited. [Chapin Depo., p. 84, lines 9-14, R. p. 226, lines 9-14.]

The manager testified that if staff told her there was a problem with one of the lights the DJs were using, "[she] would have gone out there and [she] would have investigated the entire situation. If [she] had known about this prior to this happening, [she] would have asked them to take it down or secure it somewhere that it couldn't potentially hurt somebody." [Chapin Depo., p. 90, lines 19-25, p. 91, lines 1-3, R. p. 228, lines 19-25, R. p. 228, lines 1-3.] Ms. Chapin testified

that the "staff is kind of constantly looking for safety issues" "just by being observant, by being observant of the surroundings, the situations, the people." [Chapin Depo., p. 97, lines 14-25, p. 98, line 1, R. p. 229, lines 14-25, R. p. 230, line 1.]

Petitioner testified that Petitioner had a general manager "who directed or supervised discovering [and inspecting] hazardous, dangerous and defective conditions on the premises on July 20, 2017." [Deihl Depo., p. 37, lines 4-15, R. p. 242, lines 4-15.] The general manager would have directed "premises safety, inspecting for hazards, discovering hazards, preventing hazards, correcting hazards, [and] warning about hazards." [Deihl Depo., p. 37, lines 20-25, p. 38, lines 1-3, R. p. 242, lines 20-25, R. p. 243, lines 1-3.] Petitioner had a "duty" to "keep the premises in first class condition in accordance with the highest standards of operation of similar businesses." [Deihl, Depo., p. 45, lines 19-25, p. 46, lines 1-6, R. p. 244, lines 19-25, R. p. 245, lines 1-6.] Mr. Deihl explained "at Tabbuli our employees go through training at orientation where we describe and show them how to watch out for things that would potentially be dangerous as far as their safety is concerned as an employee or as a guest." [Deihl Depo., p. 50, lines 17-25, p. 51, line 1, R. p. 246, lines 17-25, R. p. 246, line 1.] Mr. Deihl testified:

> Q. What does Tall Sam I Am, LLC do to inspect, discover, correct, remedy, remove, and warn about any hazardous, dangerous or defective conditions at its premises in general, and on the date of the incident that we are here about today?
>
> A. Sure. So our general manager, all of our employees have a responsibility to look out for hazards. Our general manager would be tasked with probably more responsibility than a server or a dishwasher. But they do constant circles through the restaurant. They open up the restaurant. They get it ready for service. They close the restaurant throughout the day if they observe something that they would deem potentially hazardous, then they would address it and call for help to remedy or address it.

[Deihl Depo. p. 58, lines 18-25, p.59, lines 1-10, R. p. 248, lines 18-25, R. p. 248, lines 1-10.] "Of course it is our job to make sure our premises is safe for our guests coming into our restaurants, of course it is" added Mr. Deihl. [Deihl Depo., p. 66, lines 18-21, R. p. 250, lines 18-21.]

Defendant has "just to be always on the lookout for general potentially hazardous conditions to be familiar with." [Deihl Depo., p. 107, lines 7-9, R. p.] "If one of [Petitioner's] employees [including managers, general managers, and operations managers] encountered a hazardous condition or something that had the potential to become a hazardous issue [emphasis added]" "they would take what immediate action they could to either fix it or prevent . . . it from causing a problem." [Deihl Depo., p. 107, lines 10-25, p. 108, lines 1-2, R. p. 260, lines 10-25, R. p. 260, lines 1-2.]

If one of the employees viewed equipment of an independent contractor that was hazardous "they would – if they could do anything about it, they would. If they could not do anything about it, then they would report it to their manager." [Deihl Depo., p. 109, lines 15-22, R. p. 260, lines 15-22.] "If someone had informed him that there was any other hazardous condition whatsoever with this particular light" he [and all employees and managers] would have "taken whatever steps necessary to fix it." [Deihl Depo., p. 123, lines 4-12, R. p. 264, lines 4-12.]

Petitioner controls what DJs come onto the premises and where they put any of their equipment and what they do with it. [Deihl Depo., p. 126, lines 21-25, p. 127, lines 1-19, R. p. 265, lines 21-25, R. p. 265, lines 1-19.] "If they didn't want the DJ to put a piece of equipment in any particular spot, they could tell that DJ not to do it." [Deihl Depo., p. 127, lines 1-19, R. p. 265, lines 1-19.]

Petitioner also "controls where tables and chairs where patrons sit are located in proximity to the DJ's equipment." [Deihl Depo., p. 127, lines 20-25, p. 128, line 1, R. p. 265, lines 20-25, R.

p. 265, line 1.] According to Petitioner "we would control tables and chairs as located to any equipment in the building." [Deihl Depo., pp. 127, lines 20-25, p. 128, line 1, R. p. 265, lines 20-25, R. p. 265, line 1.] Most importantly, "when [Petitioner] tells a patron where to sit, [Petitioner has] a duty to make sure it is safe for that patron to sit there." [Deihl Depo., p. 128, lines 23-25, p. 129, lines 1-2, R. p. 265, lines 23-25, R. p. 265, lines 1-2.]

ARGUMENTS

I. THE COURT OF APPEALS PROPERLY FOUND THAT THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO PETITIONER

The Court of Appeals properly ruled that Petitioner's motion for summary judgement should have been denied. Each of the Petitioner's Questions Presented (duty, breach, causation, and expert testimony) in its Petition for a Writ of Certiorari are addressed below.

Petitioner's negligence

To establish a cause of action for negligence, a plaintiff must show three elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) damages proximately resulting from the breach of duty. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1886).

Respondent established that Petitioner's duties were to keep its premises safe for patrons, discover and eliminate risks, and not put patrons in harm's way

Concerning Petitioner's first argument [Petition, pp. 1, 10], and the first element of negligence [duty], even without Respondent's experts, Respondent established that Petitioner's duties included keeping its premises safe for patrons, discovering and eliminating risks, and not putting patrons in harm's way via Petitioner's testimony noted above. In South Carolina, "[t]he owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty." Sims v. Giles, 343 S.C. 708, 718, 541 S.E.2d 857, 863 (Ct. App. 2001) (citing Larimore v. Carolina

Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000)). Like a landowner, a merchant also owes its customers "the duty to exercise ordinary care to keep his premises in a reasonably safe condition." Young v. Meeting St. Piggly Wiggly, 288 S.C. 508, 510, 343 S.E.2d 636, 637 (Ct. App. 1986). "A business owner owes an invitee a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks." Landry v. Hilton Head Plantation Prop. Owners Ass'n, 317 S.C. 200, 452 S.E.2d 619, 620-1 (S.C.App. 1994). "[A]n invitee enters the premises with the implied assurance of preparation and reasonable care for his protection and safety while he is there." Bryant v. City of North Charleston, 304 S.C. 123, 403 S.E.2d 159, 161 (S.C.App. 1991) (citing RESTATEMENT (SECOND) OF TORTS § 341A cmt. a (1965)).

When it comes to duty, "[t]he general rule is that evidence of industry safety standards is relevant to establishing the standard of care in a negligence case." Elledge v. Richland/Lexington Sch. Dist. Five, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002). "This kind of evidence is admitted not because it has 'the force of law,' but rather as 'illustrative evidence of safety practices or rules generally prevailing in the industry.'" Id.

Even if these duties were not mandated in South Carolina, if an act is voluntarily undertaken, the actor assumes the duty to use due care. Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813 (1997) (where evidence indicated a dam builder may have voluntarily undertook to monitor the lake for the benefit of others, it may have owed a duty to those injured when the dam broke). *See also* Wright v. PRG Real Estate Mgmt., 426 S.C. 202, 826 S.E.2d 285 (2019) (although a landlord generally has no duty to provide security to protect tenants from criminal acts of third parties, a landlord who undertakes to provide security measures may be liable if the undertaking is performed negligently). Hill v. York Cty. Sheriff's Dep't, 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993) (where sheriff refused to give intoxicated appellant a ride after charging him

with disorderly conduct, and where appellant was shot trying to reach his hotel, trial court erred in granting summary judgment to sheriff in appellant's negligence suit).

Whether out of compliance with South Carolina law or voluntarily undertaking same, or both, according to the testimony of Petitioner's Rule 30(b)(6) designee, Jeff Deihl, and Petitioner's manager, Cait Chapin, set forth above, Petitioner acknowledges owing the duties to keep its premises safe for patrons, discover and eliminate risks, and not put patrons in harm's way.

Petitioner breached its duties to keep it premises safe for patrons, discover and eliminate risks, and not put patrons in harm's way

Concerning Petitioner's second argument [Petition, pp. 1, 16] and the second element of negligence [breach], this case is about Petitioner's own breach of duties which created the dangerous condition in this case. This is not a notice case. Petitioner wants this to be a notice case so the Court will ignore Petitioner's negligence that created the danger which caused Respondent's injuries. Out of caution, Respondent addressed notice in the courts below and will do so again in the event writ is granted. However, the specific breaches that created the dangerous condition and caused the injuries in this case were Petitioner's own acts in failing to supervise the installation of the temporary portable stage light, failing to make sure it was properly secured, failing to barrier the light from patrons in case it did fall, putting a couch under the light, and seating Respondent on the couch under the light.

Petitioner cited Duane v. Presley Constr. Co., Inc., 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978) in support of its claim that it cannot be held liable for the torts of the unknown alleged DJ unless an inherently dangerous act was involved. *Duane* actually supports Respondent's case and arguments herein because seating a patron under a speaker with an unsecured 10 pound temporary portable stage light sitting on top and then starting the show is inherently dangerous. Duane also overruled the motion for summary judgment in that case and, more importantly, specifically held

that defendant "is responsible if the injury is caused by his own negligence in failing to take preventive measures." Id. at 683.

That is exactly what happened in this case. Petitioner is responsible because Respondent's injury was caused by Petitioner's own negligence in failing to take preventive measures. Petitioner cannot evade liability because Petitioner is the one who failed to supervise the installation of the temporary portable stage light, failed to make sure it was properly secured, failed to barrier the light from patrons, put a couch underneath the light, and seated a patron on the couch under the light, before the light fell and injured Respondent.

Respondent's case is not based on res ipsa loquitor

Like the defendant tried to do in O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006), Petitioner in this case argues that Respondent relies solely upon the doctrine of *res ipsa loquitor* to prove negligence. That is not true. In O'Leary-Payne, the Court discussed *res ipsa loquitor* and overruled the defendant's motion for summary judgment which had tried to argue that plaintiff in that case relied solely on *res ipsa loquitor*. O'Leary-Payne held:

> Charter argues the trial court erred in failing to grant its directed verdict motion because O'Leary-Payne relied on the doctrine of *res ipsa loquitur*. We disagree.
>
> *Res ipsa loquitur* means "the thing speaks for itself." W. Page Keeton et al., *Prosser and Keeton on Torts* § 39, at 243 [5th ed. 1984]. According to the doctrine of *res ipsa loquitur*:
>
> There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from lack of care. Id. at 244.
>
> Charter mischaracterizes O'Leary-Payne's argument as being "the rod speaks for itself." O'Leary-Payne did not attempt to prove Charter's negligence by asserting that simply because she was

> injured at Charter's Shopping Center, Charter was therefore negligent. Instead, she attempted to prove negligence by introducing details about the rod, such as its height and location, from pictures and testimony. Accordingly, we find the trial court did not err in failing to grant Charter a directed verdict on the grounds that O'Leary-Payne relied on *res ipsa loquitur* to prove negligence.

O'Leary-Payne at 100.

In this case, any attempt by Petitioner to claim Respondent is relying solely on *res ipsa loquitur* to prove negligence mischaracterizes Respondent's argument as being "the [light] speaks for itself." Respondent is not attempting to prove Petitioner's negligence by asserting that simply because she was injured at Petitioner's restaurant, Petitioner was therefore negligent. Instead, Respondent is attempting to prove negligence by introducing details about Petitioner's duties, Petitioner's breaches such as Petitioner failing to supervise the installation of the temporary portable light, Petitioner's failure to properly secure the light, the light itself with its height and location, Petitioner failing to barrier the light from patrons, Petitioner seating Respondent beneath the light, and Petitioner's own policies of "constantly circling through the restaurant" "looking for safety issues," with the use of the evidence and testimony in this case. Also, Petitioner's manager concluded in her investigation that the light fell because it was not properly secured. Accordingly, Respondent is not relying on *res ipsa loquitur* to prove negligence.

Respondent's damages proximately resulted from Petitioner's breach of duty

Concerning Petitioner's third argument [Petition, pp. 1, 19] and the third element of negligence (proximate cause), as a proximate result of Petitioner's breach, Respondent suffered serious bodily injuries. Respondent was questioned in her deposition about some of the injuries inflicted by the light striking her head, including the injuries to her head, neck, shoulder and other parts of her body, a traumatic brain injury, neurocognitive disorder, persistent post-concussion syndrome, concussion, chronic post-traumatic headache, memory problems, cervicalgia, muscle

spasms, muscle strain, tendon strain, cervical, thoracic and lumbar spine problems, vision changes, diminished acuity, cognitive changes, speech difficulties, cognitive-linguistic problems, dizziness, physiologic cupping of optic disc of both eyes, myopia of both eyes, light sensitivity, noise sensitivity, and right shoulder pain. [Complaint, R. pp. 16-24; Eddins Depo., p. 21, lines 1-25, p. 33, lines 1-18, R. p. 292, lines 1-25, R. p. 304, lines 1-18, Haynes Depo., p. 14, lines 1-25, p. 19, lines 1-24, p. 20, lines 9-17, R. p., 267, lines 1-25, R. p. 372, lines 1-24, R. p. 373, lines 9-17, Plaintiff's Expert Disclosures, R. pp. 59-63.]

In South Carolina, there can be more than one proximate cause of an incident. Gibson v. Gross, 280 S.C. 194, 311 S.E.2d 736 (Ct. App. 1983). The general rule is that negligence, to render a person liable, need not be the sole cause of an injury. Id. at 738. It is sufficient that his negligence, concurring with one or more efficient causes, is the proximate cause of an injury. Id. Where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them; it is sufficient that his negligence is an efficient cause without which the injury would not have resulted. Id. Thus, in this case, it does not matter who owned or installed the light. What matters for Respondent's claim against Petitioner are Petitioner's own duties and breaches in failing to supervise the installation of the temporary portable light, Petitioner's failure to properly secure the light, Petitioner failing to barrier the light from patrons, Petitioner seating Respondent beneath the light, and Petitioner's violation of it's self-proclaimed duty of "constantly circling through the restaurant" "looking for safety issues."

Actual causation is proved by establishing the injury would not have occurred but for the defendant's negligence while legal causation is proved by establishing foreseeability. Hill v. York Cty. Sheriff's Dep't, 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993). Here, the injury would not have occurred but for Petitioner's breaches in failing to barrier the light from patrons and instead

seating Respondent beneath the light in harm's way. That is true even without Petitioner failing to supervise the installation of the temporary portable stage light and Petitioner's failure to properly secure the light.

Here also, the injury was foreseeable. Allowing a 10 lb. light fixture to sit unsecured on top of a vibrating audio speaker 8 ft. above patrons made it foreseeable that patrons seated below the speaker would be struck and injured if it fell. The light should have been inspected, discovered, secured and barriered by Petitioner thereby eliminating the risk before inviting patrons onto the premises and seating them below the light. A restaurant exercising reasonable or ordinary care for its patrons' safety would have done so. Had Petitioner done so, the light would not have fallen on Respondent and Respondent would not have been injured.

The Court of Appeals did not "solely" rely on alleged inadmissibile expert testimony

Petitioner fourthly argues that the Court of Appeals solely relied on alleged inadmissible expert testimony [Petition, pp. 1, 22]. The restaurant here also asserts [Petition, p. 2], incorrectly, that the reversal was "grounded entirely in the Order's observation that 'Eddins presented expert testimony that temporary light fixtures should have been barriered from patrons and the light's height and weight posed a foreseeable risk of harm to spectators seated underneath the light fixture'" and that this was the "sole basis" [Petition, p. 3] for the reversal. That is not correct.

As noted above, the Court of Appeals stated that Petitioner's employees also testified that "Tabbuli established responsibilities to investigate and mitigate hazards and to ensure a location was safe." Here, the appellate court is not saying a jury may have found the Petitioner negligent for the placement or the unsecured nature of the light, but is saying a jury could find the restaurant negligent in failing to notice and correct the hazardous condition represented by the unsecured light and seating a customer directly under it.

The relevant part of Respondent's expert testimony is then not whether the light was negligently placed or negligently unsecured, but whether Petitioner was negligent in (1) seating a patron directly under the unsecured light, and (2) failing to notice and correct the hazardous condition. Petitioner's argument [Petition, p. 3] regarding testimony as to the specific code that was violated misses the point. What is relevant to the determination by the Court of Appeals was that the jury could find the restaurant negligent in seating patrons directly under a heavy unsecured light that was set atop a vibrating speaker blowing in the wind. Petitioner's repeated insistence that the expert testimony is "not admissible" [Petition, p. 5] misses the point of the Court of Appeals' holding: "a jury could reasonably infer Tabbuli was negligent in seating Eddins under the light and in failing to notice and correct the hazardous condition that resulted in her injury." Petitioner asserts that the Court of Appeals "overlooks the inadmissibility of Respondent's expert witness testimony regarding whether temporary overhead lighting constitutes a foreseeable danger in a restaurant setting—which testimony alone forms the basis of the Order's reversal of the district court below." That is not correct.

However, even if the Court of Appeals' analysis did rely on the premise that a 10-pound, unsecured light resting on a vibrating speaker directly over a seated patron's head would be a foreseeable hazard under these circumstances, that is something a jury would be able to understand without a need for expert testimony:

> The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required. See Green v. Lilliewood, 272 S.C. 186, 192-93, 249 S.E.2d 910, 913 (1978). Conversely, where a lay person can comprehend and determine an issue without the assistance of an expert, expert testimony is not required. See O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006) ("[E]xpert testimony is not necessary to prove negligence or causation so long as lay persons possess the knowledge and skill to determine the matter at issue." (quoting F. Patrick Hubbard & Robert L. Felix, The Law of South Carolina Torts 167 (2d ed. 1997))). Deciding what is within the knowledge of a lay jury and what requires expert testimony

> depends on the particular facts of the case, including the complexity and technical nature of the evidence to be presented and the trial judge's understanding of a lay person's knowledge.

Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 153-154 (S.C. 2013). See also O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340 (S.C. 2006), where the plaintiff tripped over a metal pipe protruding approximately five-and-a-half inches from the sidewalk.

> Charter mischaracterizes O'Leary-Payne's argument as being "the rod speaks for itself." O'Leary-Payne did not attempt to prove Charter's negligence by asserting that simply because she was injured at Charter's Shopping Center, Charter was therefore negligent. Instead, she attempted to prove negligence by introducing details about the rod, such as its height and location, from pictures and testimony. [...]
>
> Charter maintains O'Leary-Payne presented no evidence the rod constituted a dangerous or defective condition because she did not have an expert testify the rod was a hazard nor did she demonstrate the rod was improperly placed or installed. We find this argument unavailing. [...]
>
> Here, O'Leary-Payne was not required to provide expert testimony that the rod created a dangerous or defective condition. A lay person could determine the rod was a hazard from the pictures of it and testimony about its height and position. Accordingly, we find Charter was not entitled to a directed verdict on the grounds O'Leary-Payne did not use an expert to establish the rod was a hazard.

Id., p. 348-349.

Here, a 10-pound unsecured light resting on a vibrating speaker in the wind directly over a seated patron's head would be a foreseeable hazard a jury would be able to understand without a need for expert testimony.

Respondent's experts, Mark Williams and James Rivenbark, also addressed Petitioner's negligence. [*See e.g.* Plaintiff's Expert Disclosures, R. p. 42-64.] If needed, Respondent maintains that testimony from her experts is admissible and further supports her arguments herein. Respondent will further address this issue should writ be granted. However, this issue was not decided by any of the lower courts and is not necessary on this appeal for the reasons stated above.

Out of caution, Respondent also addressed a number of other legal arguments, such as notice, spoliation, constructive notice, "proof by circumstantial evidence," in the courts below, and will do so again should writ be granted.

CONCLUSION

The Court of Appeals decisions set forth in its Order Reversing and Remanding and Order Denying Rehearing are correct. None of the reasons to grant writ set forth in Rule 242(b) apply here. The trial court erred in granting Petitioner's Motion for Summary Judgement. Viewing the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to Respondent, Respondent has presented sufficient evidence in order to withstand a motion for summary judgment. Thus, the trial court's granting of Petitioner's Motion for Summary Judgment was improper.

For the reasons set forth above, Respondent respectfully requests that this Court DENY Petitioner's Petition for a Writ of Certiorari.

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