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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. 2022-000754
Civil Action No. 2020-CP-2481

Stefani Eddins,..... Respondent,

v.

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

PETITIONER'S REPLY TO RESPONDENT'S RETURN TO PETITION

SWEENY WINGATE & BARROW, P.A.
Mark S. Barrow
Brandon R. Gottschall
Daniel Q. Atkinson
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Petitioner

Other Counsel of Record:

GARY C. JOHNSON, P.S.C.
Michael E. Liska
2265 Executive Drive
P.O. Box 55106
Lexington, KY 40505
(859) 268-4300

THE NYE LAW GROUP, P.C.
Justin D. Maines
2008 Whitaker Street
Savannah, Georgia 31401
(912) 200-530

Attorneys for Respondent

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ARGUMENT

I. RESPONDENT CONTINUES TO RELY ON RES IPSA REASONING TO PROVE THAT THE LIGHT CONSTITUTED A DANGEROUS CONDITION OF WHICH PETITIONER SHOULD HAVE BEEN AWARE.

The central argument of Respondent's Return, the basis for its assertion that there is evidence aside from the inadmissible opinions of Respondent's experts that Petitioner breached a duty of care, is found on Page 16 of the Return: "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." (Return, p. 16). This characterization of the condition of the light is repeated throughout Respondent's Return—except, notably, in the citation-supported Statement of the Case:

- "[Respondent seeks to hold Petitioner liable] for Petitioner's own negligence in seating the customers under a heavy unsecured light placed atop a vibrating speaker" (id. at 1);
- "[S]eating 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" (id. at 11);
- "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" (id. at 15);
- "[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" (id.);
- "[A] 10-pound, unsecured light resting on a vibrating speaker directly over a seated patrons head would be a foreseeable hazard under these circumstances" (id. at 16); and
- "[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" (id. at 17).

The problem with these characterizations in Respondent's Return—such as the height and weight of the light, the nature of the speaker it was placed on, and the wind conditions on the subject evening—is that they are never supported by citations to the record. Petitioner has demonstrated throughout that Respondent has impermissibly speculated on all these details, with Respondent's expert admitting in deposition that he did not know the manufacturer of the light in question, whether it would have included any safety devices designed to secure it to a base, what installation or usage instructions were included with this particular light, the weight of the light, what kind of lightbulb was installed, whether music was playing through the speaker, or whether the light was in the same condition when it fell as when it was installed. (R.p. 144 (Williams Dep. 39:13–40:10); R.p. 145 (id. at 42:13-18); R.p. 146 (id. at 48:18–24); R.p. 147 (id. at 52:18–21); R.p 153 (id. at 74:1–2); R.p. 157 (id. at 92:23–93:2)). This is a failure to meet the standard of proof set by the O'Leary-Payne court, which required the plaintiff to prove that "a metal pipe protruding approximately five-and-a-half inches from the sidewalk" constituted a dangerous condition by "introducing details about the rod, such as its height and location, from pictures and testimony." O'Leary-Payne v. R.R. Hilton Head, II, 371 S.C. 340, 349, 638 S.E.2d 96, 100 (Ct. App. 2006). Respondent's speculations about what the condition of the light might have been do not suffice to prove that it was hazard of which Petitioner should have been aware.

In addition to the above characterizations which seem to have materialized *ex nihilo*, Respondent takes absolutely for granted that the light was unsecured at the time that it fell, and indeed that it was also unsecured at the time when Petitioner seated Respondent under the light. But none of the evidence proffered by Respondent on this issue is probative. First, Respondent points to a photo of the light sitting atop the speaker, asserting that it "must have been taken earlier on the day of the incident" and "showed the light unsecured, upside down, without any

safety chain" (Return, p. 5). But not only has Respondent failed to establish whether this photo was taken before or after the DJ's set-up for the show was completed, the angle of the photo from below the speaker completely obscures from view the allegedly unsecured base of the light.

Respondent further relies on res ipsa logic, starting with the testimony of her two experts, who repeatedly and emphatically explained in their depositions that they concluded that the light was unsecured simply because it fell. Then Respondent points to deposition testimony of Petitioner's manager at the time of the accident, Cait Chapin, quoting her as concluding in her incident report "that the light fell because '[i]t was not secured properly.'" (Return, p. 6). But Respondent omits the next sentence from Chapin's deposition testimony, which revealed the entirely speculative nature of Chapin's conclusion: "That's all I can come up with." (R.p. 228 (Chapin Dep. 92:4–5)).[1]

Even more problematically, Respondent relies on concomitant res ipsa logic from her experts to prove that Petitioner's staff should have noticed the allegedly dangerous condition created by the DJ's placement of the light and either corrected it or avoided seating Respondent underneath it: "someone is responsible for what goes on in a restaurant as far as being the operator/owner of the restaurant, what happens there[;] [a] light fell and hit someone in the head[;] [m]y opinion is that the restaurant's responsible." (R.p. 173 (Rivenbark Dep. 21:1–7)). In South Carolina, "[the] burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care." Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Ct. App.1991).

[1] As Chapin further explained in her deposition, "I don't even know how the light fell in the first place. So my investigation didn't really go anywhere because I couldn't find answers." (R.p. 223 (Chapin Dep. 71:4–7)).

According to Respondent, "[t]he 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." (Return, p. 16). This assumes the point to be proved. Respondent has not offered any admissible and probative evidence that the DJ did not secure the light, or that if so, it should have been recognized by the restaurant as a hazardous condition. Respondent's experts' opinions that the light had to have been improperly secured because it fell and had to have been a foreseeable danger because it hurt a customer are not admissible opinions. Neither do Respondent's unsupported characterizations of the light—as "unsecured," weighing "10 lbs.," being located "8 ft." above the customer's head (it is unclear whether this purported calculation involves a seated or standing customer), being placed atop a "vibrating" speaker, and indeed "blowing in the wind"—stand in as competent evidence that the light constituted a foreseeable hazard when Petitioner seated Respondent under the light. The trial court was thus correct when it found that this lack of evidence against Petitioner entitled Petitioner to summary judgment, and that Respondent's attempts to fill the gap constituted inadmissible res ipsa loquitur reasoning.

Petitioner also incorporates herein by reference and does not waive any argument it has previously advanced with respect to any other contested issue in this case.

CONCLUSION

Because Respondent failed to meet her evidentiary burden to prove her claim of negligence against Petitioner, the Court of Appeals incorrectly reversed the trial court's grant of summary judgment to the Petitioner, and Petitioner therefore respectfully requests that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

s/Daniel Q. Atkinson
Mark S. Barrow, SC Bar No. 72835
Brandon R. Gottschall, SC Bar No. 100621
Daniel Q. Atkinson, SC Bar No. 105252
Sweeny, Wingate and Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

Attorneys for Petitioner

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