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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No.: 2025-000757

George Gallow,.....Appellant,

v.

Autumnwood Crossing LP and Intermark Management Corporation,....Respondents,

**MOTION TO STRIKE APPELLANT’S DESIGNATIONS OF MATTER TO
BE INCLUDED IN THE RECORD ON APPEAL AND REQUEST FOR
ORDER INSTRUCTING APPELLANT TO FILE AN AMENDED INITIAL
BRIEF COMPLYING WITH THE SOUTH CAROLINA RULES OF
APPELLATE PROCEDURE AND TO STAY BRIEFING DEADLINES
PENDING A RULING ON THE MOTION**

Pursuant to Rule 240, SCACR, counsel for the Respondents hereby move for an Order striking certain parts of Appellant’s Designations of Matter to be Included in the Record on Appeal, and instructing Appellant to file and serve an Amended Initial Brief complying with the South Carolina Rules of Appellate Procedure, and staying the current deadlines until this motion is ruled upon.

BACKGROUND

This is an appeal of the granting of Respondents’ Motion for Summary Judgment concerning a premises liability case at an apartment complex owned by Respondent Autumnwood Crossing, L.P. (hereinafter “Autumnwood”) and managed by Respondent Intermark Management Corporation (hereinafter “Intermark”).

Appellant (hereinafter “Gallo”), a tenant, tripped and fell while walking down a hallway at the complex. The trip was allegedly caused by a ripple on the carpet at or near a set of fire doors.

The action commenced with the filing and subsequent service of a Summons and Complaint on October 11, 2022. The Complaint was answered timely on November 30, 2022. [Ex. 1 – Case Docket]. The parties engaged in written discovery and depositions were taken.

On October 22, 2024, Respondents filed a Motion for Summary Judgment arguing Gallo failed to provide written notice of the condition complained of prior to his fall and, therefore, his claims were barred by the S.C. Residential Landlord Tenant Act. [Ex. 1; Ex. 2 – Motion for Summary Judgment]. The motion included the grounds for the relief sought and was supported by three (3) exhibits: (1) five (5) pages of excerpts from Gallo’s deposition transcript; (2) two (2) color photographs of the hallway at issue from Gallo’s deposition transcript; and (3) two (2) color photographs of the hallway taken by Intermark’s property manager. [Ex. 2].

No memorandum in opposition or other documents were submitted by Gallo in response to the motion. [Ex. 1]. No affidavit as allowed by Rule 56(f), SCRCP, seeking denial of the motion or a continuance for further depositions or discovery was filed. [Ex. 1].

A hearing was held before the Honorable Daniel Coble on February 12, 2025, attended by counsel for the parties. [Ex. 3 – Hearing Transcript]. At no time did Gallo seek leave to submit a memorandum or any documents to support the arguments made at the hearing. [Ex. 3]. Judge Coble confirms that there was only one brief for him to review in addition to the case law cited. [Ex. 3, p. 18, lines 11-13]. Additionally, as

represented to the Court by the undersigned, the case was up for trial in two weeks. [Ex. 3, p. 18, lines 14-17].

On March 3, 2025, Judge Coble filed a formal Order granting the Motion for Summary Judgment. [Ex. 1]. On March 13, 2025, Gallo timely filed a Rule 59(e), Motion to Reconsider, which was accompanied by six (6) exhibits never before presented to Judge Coble. [Ex. 4 – Rule 59(e) Motion]. The exhibits included the following: (1) Gallo’s lease; (2) Deposition excerpts from Intermark’s Rule 30(b)(6) witness; (3) Respondents’ Fourth Supplemental to Requests for Production of Documents; (4) Emails between counsel; (5) Respondents’ Facebook Post; (6) Lexington County GIS information. [Ex. 4].

The undersigned timely filed a Response in Opposition to the Rule 59(e) motion. [Ex. 5 – Response in Opposition]. The first page set forth in part the legal standard that the hearing judge

may not consider documents submitted for the first time with a Rule 59(e) motion. *See Spreuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding this court could not consider a document that was submitted to the family court “only as an attachment to [the father’s] Rule 59(e) motion”); *see also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”)

[Ex. 5, p. 1].

Judge Coble filed his Order denying the Rule 59(e) motion on March 20, 2025, and file appeal followed. [Ex. 1].

On July 15, 2025, Gallo filed his Initial Brief and Designation of Matter to be Included in the Record on Appeal, which has been docketed by this Court. Gallo has designated the following documents which were not presented to Judge Coble prior to or during the hearing, or after the hearing but before he issued his Order granting

summary judgment, *and* which were not previously filed and part of the court’s docket: “Plaintiff’s motion to reconsider filed on March 13, 2025, *with attached exhibits*[.]” [Gallo’s Designation of Matter] (emphasis added).

Additionally, Gallo’s Initial Brief is replete with references to the documents submitted for the first time in his Rule 59(e) motion in support of his arguments. [Gallo’s Initial Brief].

Respondents file the present motion seeking an Order striking from Gallo’s Designation of Matter to be Included in the Record on Appeal all documents submitted for the first time to the hearing judge in his Rule 59(e) motion. Respondents further seek an Order instructing Gallo to file and serve an Amended Initial Brief which only cites to documents and information before the hearing judge prior to the issuance of the Order granting summary judgment.

ARGUMENTS

Rule 209(b), SCACR, provides in part that the Designation of Matter to be Included in the Record on Appeal “may only propose to include . . . materials which may be included in the Record on Appeal [See Rule 210(c)].”

Rule 210(c), SCACR, states “[t]he Record [on Appeal] shall not, however, include matter which was not presented to the lower court or tribunal.”

Rule 208(1)(E), SCACR, provides “[a] party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party’s contentions.”

It is well established in South Carolina that a Rule 59(e) motion cannot be used as a vehicle to introduce new arguments or new evidence, including documents, that a party could have presented to the court prior to judgment but did not. *Spreeuw v.*

Barker, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding this Court could not consider on appeal a document that was submitted to hearing judge only as an attachment to a Rule 59(e) motion) citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”); *see also Viviano v. Jeffers*, No. 6120, 2025 S.C. App. LEXIS 53, at *9 (Ct. App. Aug. 20, 2025) (concluding the circuit court properly declined to address materials first provided in the Rule 59(e) motion].

Upon information and belief, failing to raise the improper designations and citations to those designations in Appellant’s Initial Brief would constitute a waiver of Respondents’ arguments that this Court should not consider the improper documents or citations thereto. *See Epstein v. Coastal Timber Co.*, 393 S.C. 276, 289 n.4, 711 S.E.2d 912, 919 (2011) (noting challenges to material listed in a party’s Designation of Matter that was included in the record was not supported by a timely objection by filing a motion to strike at the time the material was designated for inclusion in the record).

Respondents would be prejudiced in allowing the improper designations to be included in the Record of Appeal and to allow Gallo to make his arguments based on documents not presented to the hearing judge prior to judgment being issued. The undersigned did not submit e-mails or other documents contesting the arguments raised in the Rule 59(e) motion because it would be improper to present said documents in a Rule 59 response. Moreover, by submitting documents in opposition to the documents first submitted in the Rule 59(e) motion, counsel would run the risk of giving credibility to the documents and arguments which were barred from consideration in the first place, said arguments being vehemently denied regardless. *Id.* (implying a party must

show prejudice for documents improperly designated but included in the Record on Appeal).

CONCLUSION

For the reasons set forth, Respondents respectfully request an Order granting them the following relief:

- (1) An Order striking Appellant's Designations of Matter filed with the Rule 59(e) motion;
- (2) An Order instructing Appellant to file an Amended Initial Brief removing reference and/or citation to any document struck from Appellant's Designation of Matter; and
- (3) An Order staying the current deadlines until such time as the motion is ruled upon.
- (4) For such other and further relief as this Court deems just and proper.

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Attorney for Respondents

Columbia, South Carolina
September 12, 2025



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Switch View

George Gallo vs Autumnwood Crossing Lp , defendant, et al

Case Number:	2022CP4005305	Court Agency:	Richland County Common Pleas	Filed Date:	10/11/2022
Case Type:	Common Pleas	Case Sub Type:	Premises Liab 330	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	02/18/2025	Disposition Judge:	Coble, Daniel
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Gallo, George	NEF(04-18-2025 08:53:44 AM) Appeal/Notice of Appeal to C...	Filing		04/21/2025-08:42		
Gallo, George	Appeal/Notice of Appeal to Court of Appeals	Filing		04/18/2025-08:53		
Gallo, George	NEF(04-16-2025 02:49:29 PM) Notice/Notice of Appearance	Filing		04/16/2025-14:50		
Gallo, George	Notice/Notice of Appearance	Filing		04/16/2025-14:49		
Gallo, George	NEF(03-20-2025 02:52:42 PM) Order/Other	Filing		03/20/2025-14:52		
Gallo, George	Order Denying Plaintiff's Motion for Reconsideration	Order		03/20/2025-14:52		
Autumnwood Crossing Lp	NEF(03-13-2025 07:16:39 PM) Memo/Memo in Opposition	Filing		03/14/2025-09:21		
Autumnwood Crossing Lp	Response In Opposition To Motion To Reconsider	Filing		03/13/2025-19:16		
Gallo, George	NEF(03-13-2025 01:41:52 PM) Motion/Reconsider	Filing		03/13/2025-13:48		
Gallo, George	Motion/Reconsider Order Granting Summary Judgment	Motion		03/13/2025-13:41		
Autumnwood Crossing Lp	NEF(03-03-2025 09:51:01 AM) Order/Summary Judgment	Filing		03/03/2025-09:51		
Autumnwood Crossing Lp	Order Granting Defendant's Motion for Summary Judgment	Order		03/03/2025-09:51		
Autumnwood Crossing Lp	NEF(02-28-2025 08:52:21 PM) Order/Order Cover Sheet \$25....	Filing		03/02/2025-15:49		
Autumnwood Crossing Lp	Order/Order Cover Sheet \$25.00	Filing		02/28/2025-20:52		
Autumnwood Crossing Lp	Order Granting Defendant's Motion for Summary Judgment	Order		02/18/2025-10:56	02/18/2025-10:56	
Autumnwood Crossing Lp	NEF(02-18-2025 10:56:44 AM) Order/Other	Filing		02/18/2025-10:55	02/18/2025-10:55	

Autumnwood Crossing Lp	NEF(02-13-2025 11:36:07 AM) Order/Electronic Form 4	Filing		02/13/2025-11:36	02/18/2025-11:36	
Autumnwood Crossing Lp	Form 4 This matter has been taken under advisement.	Order		02/13/2025-11:36	02/18/2025-11:36	
Gallo, George	ADR/Notice of ADR	Action		02/10/2025-15:01	02/18/2025-15:01	
Krzyston, Stephen F.	2/24/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		01/28/2025-16:39	02/18/2025-16:39	
Thickens, Joseph Odell	2/24/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		01/28/2025-16:39	02/18/2025-16:39	
Wlodarczyk, Damon Christian	2/24/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		01/28/2025-16:39	02/18/2025-16:39	
Autumnwood Crossing Lp	NEF(01-13-2025 10:21:22 AM) Order/Electronic Form 4	Filing		01/13/2025-10:21	02/18/2025-10:21	
Autumnwood Crossing Lp	Form 4 The Motion for Summary Judgment (filed 10/22/24) sche	Order		01/13/2025-10:21	02/18/2025-10:21	
Wlodarczyk, Damon Christian	2/12/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2025-10:04	02/18/2025-10:04	
Thickens, Joseph Odell	2/12/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2025-10:04	02/18/2025-10:04	
Krzyston, Stephen F.	2/12/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/09/2025-10:04	02/18/2025-10:04	
Thickens, Joseph Odell	1/13/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		12/13/2024-16:39	02/18/2025-16:39	
Wlodarczyk, Damon Christian	1/13/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		12/13/2024-16:39	02/18/2025-16:39	
Krzyston, Stephen F.	1/13/2025_J1_Roster/Notice of Case Roster Publication Sent	Action		12/13/2024-16:39	02/18/2025-16:39	
Gallo, George	NEF(11-12-2024 03:01:38 PM) ADR/Notice of ADR	Filing		11/12/2024-15:01	02/18/2025-15:01	
Krzyston, Stephen F.	1/9/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		11/05/2024-16:47	02/18/2025-16:47	
Wlodarczyk, Damon Christian	1/9/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		11/05/2024-16:47	02/18/2025-16:47	
Thickens, Joseph Odell	1/9/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		11/05/2024-16:47	02/18/2025-16:47	
Gallo, George	NEF(10-25-2024 10:08:06 AM) Order/Consent Order	Filing		10/25/2024-10:08	02/18/2025-10:08	
Gallo, George	Consent Order to Waive Mediation	Order		10/25/2024-10:08	02/18/2025-10:08	
Gallo, George	NEF(10-23-2024 08:58:28 AM) Proposed Order/Consent Order	Filing		10/23/2024-09:02	02/18/2025-09:02	
Gallo, George	Order/Order Cover Sheet \$25.00	Filing		10/23/2024-08:58	02/18/2025-08:58	
Autumnwood Crossing Lp	NEF(10-22-2024 04:40:29 PM) Motion/Summary Judgment	Filing		10/22/2024-16:53	02/18/2025-16:53	
Autumnwood Crossing Lp	Motion/Summary Judgment	Motion		10/22/2024-16:40	02/13/2025-16:40	   
Krzyston, Stephen F.	11/4/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		10/07/2024-15:42	02/18/2025-15:42	
Thickens, Joseph Odell	11/4/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		10/07/2024-15:42	02/18/2025-15:42	
Wlodarczyk, Damon Christian	11/4/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		10/07/2024-15:42	02/18/2025-15:42	
Wlodarczyk, Damon Christian	9/23/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		09/06/2024-13:55	02/18/2025-13:55	
Thickens, Joseph Odell	9/23/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		09/06/2024-13:55	02/18/2025-13:55	

Krzyston, Stephen F.	9/23/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		09/06/2024-13:55	02/18/2025-13:55	
Gallo, George	NEF(08-22-2024 11:47:39 AM) Order/Electronic Form 4	Filing		08/22/2024-11:47	02/18/2025-11:47	
Gallo, George	Form 4 Plaintiff's motion to Compel (filed on December 7, 20	Order		08/22/2024-11:47	02/18/2025-11:47	
Krzyston, Stephen F.	8/19/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		07/30/2024-11:47	02/18/2025-11:47	
Thickens, Joseph Odell	8/19/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		07/30/2024-11:47	02/18/2025-11:47	
Wlodarczyk, Damon Christian	8/19/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		07/30/2024-11:47	02/18/2025-11:47	
Autumnwood Crossing Lp	NEF(07-24-2024 09:48:14 AM) Order/Scheduling Order	Filing		07/24/2024-09:48	02/18/2025-09:48	
Autumnwood Crossing Lp	Order/Scheduling Order/Trial not before November 1, 2024	Order		07/24/2024-09:48	02/18/2025-09:48	
Autumnwood Crossing Lp	NEF(07-22-2024 07:24:15 PM) Order/Order Cover Sheet \$25....	Filing		07/23/2024-08:41	02/18/2025-08:41	
Autumnwood Crossing Lp	Order/Order Cover Sheet \$25.00	Filing		07/22/2024-19:24	02/18/2025-19:24	
Gallo, George	NEF(07-10-2024 10:23:24 AM) Order/Consent Order	Filing		07/10/2024-10:23	02/18/2025-10:23	
Gallo, George	CONSENT ORDER CONTINUING PLAINTIFF'S MOTION TO COMPEL	Order		07/10/2024-10:23	02/18/2025-10:23	
Gallo, George	NEF(07-09-2024 02:47:20 PM) Order/Order Cover Sheet \$25....	Filing		07/09/2024-15:56	02/18/2025-15:56	
Gallo, George	Order/Order Cover Sheet \$25.00	Filing		07/09/2024-14:47	02/18/2025-14:47	
Krzyston, Stephen F.	7/29/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		07/02/2024-08:25	02/18/2025-08:25	
Wlodarczyk, Damon Christian	7/29/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		07/02/2024-08:25	02/18/2025-08:25	
Thickens, Joseph Odell	7/29/2024_J1_Roster/Notice of Case Roster Publication Sent	Action		07/02/2024-08:25	02/18/2025-08:25	
Thickens, Joseph Odell	7/9/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		06/20/2024-09:38	02/18/2025-09:38	
Wlodarczyk, Damon Christian	7/9/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		06/20/2024-09:38	02/18/2025-09:38	
Krzyston, Stephen F.	7/9/2024_MOTION_Roster/Notice of Motions Roster Publication	Action		06/20/2024-09:38	02/18/2025-09:38	
Autumnwood Crossing Lp	NEF(01-25-2024 06:25:09 PM) Notice/Other	Filing		01/26/2024-08:25	02/18/2025-08:25	
Autumnwood Crossing Lp	Notice/Of Change of Law Firm & Address	Filing		01/25/2024-18:25	02/18/2025-18:25	
Gallo, George	NEF(12-07-2023 04:40:55 PM) Motion/Compel	Filing		12/07/2023-16:46	02/18/2025-16:46	
Gallo, George	Motion/Compel	Motion		12/07/2023-16:40	09/25/2024-16:40	   
Krzyston, Stephen F.	8/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2023-12:44	02/18/2025-12:44	
Thickens, Joseph Odell	8/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2023-12:44	02/18/2025-12:44	
Wlodarczyk, Damon Christian	8/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2023-12:44	02/18/2025-12:44	
Gallo, George	ADR/Alternative Dispute Resolution (Workflow)	Action		05/09/2023-09:34	11/12/2024-09:34	

Gallo, George	NEF(02-08-2023 11:02:50 AM) Motion/Compel	Filing		02/08/2023-11:21	02/18/2025-11:21	
Gallo, George	Motion/Compel	Motion		02/08/2023-11:02	08/09/2023-11:02	  
Autumnwood Crossing Lp	NEF(11-30-2022 03:20:40 PM) Answer/Answer and Jury Deman...	Filing		11/30/2022-16:11	02/18/2025-16:11	
Autumnwood Crossing Lp	Answer/Answer and Jury Demand of Autumnwood Crossing Lp And	Filing		11/30/2022-15:20	02/18/2025-15:20	
Autumnwood Crossing Lp	NEF(11-15-2022 05:27:48 AM) Notice/Notice of Appearance	Filing		11/15/2022-05:28	02/18/2025-05:28	
Autumnwood Crossing Lp	Notice/Notice of Appearance	Filing		11/15/2022-05:27	02/18/2025-05:27	
Gallo, George	NEF(11-02-2022 02:11:44 PM) Service/Affidavit Of Service	Filing		11/02/2022-14:41	02/18/2025-14:41	
Gallo, George	Affidavit Of Service of Intermark Management Corporation on	Filing		11/02/2022-14:11	02/18/2025-14:11	 
Gallo, George	NEF(10-31-2022 02:44:47 PM) Service/Affidavit Of Service	Filing		10/31/2022-15:49	02/18/2025-15:49	
Gallo, George	Service/Affidavit Of Service on Autumnwood Crossing Lp on Au	Filing		10/31/2022-14:44	02/18/2025-14:44	 
Gallo, George	Summons & Complaint	Filing		10/11/2022-09:34	02/18/2025-09:34	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

GEORGE GALLO.

PLAINTIFF,

V.

AUTUMNWOOD CROSSING, L.P., AND
INTERMARK MANAGEMENT
CORPORATION,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2022-CP-40-05305

**NOTICE OF MOTION
AND
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Richland County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendants summary judgment on the grounds that there are no legal duties owed to the Plaintiff based upon the facts developed during discovery and, therefore, Defendants are entitled to judgment as a matter of law in their favor. Specifically,

- 1) The South Carolina Residential Landlord and Tenant Act ("RLTA") provides the exclusive avenue through which a tenant may seek recovery of damages from their landlord.
- 2) In order to state a claim under the RLTA, a tenant must give notice to the landlord of the defect and the landlord must fail to act within a reasonable amount of time.

STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRCF; *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000). Once a party moving for summary

judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. *Id.*

FACTS

This is a premises liability case at an apartment complex owned by Defendant Autumnwood Crossing, L.P. (hereinafter “Autumnwood”) and managed by Defendant Intermark Management Corporation (hereinafter “Intermark”). Plaintiff, a tenant, tripped and fell while walking down a hallway at the complex. The trip was allegedly caused by a ripple on the carpet at or near a set of fire doors.

Plaintiff has resided at the complex since approximately 2019, when the complex first opened. [Ex. 1 – Pl. Deposition Transcript, p. 11, lines 17-21]. Plaintiff’s unit was the first unit on the left past the fire doors. [Ex. 2 – Exhibits 1 and 3 to Pl. Depo]. The photo was taken *after* Plaintiff’s fall when he was investigating what allegedly caused him to fall. The photo was taken by Plaintiff as he was seated in his motorized chair. The carpet ripple is visible in the photo on the left and right side of the hall. [Ex. 1, p. 23, line 13-p. 25, line 7]. However, the ripple was not visible in Exhibit 3 to Plaintiff’s deposition. [Ex. 2, page 2].

Plaintiff confirmed that prior to his fall, he did not notice the ripple on the carpet. [Ex. 1, p. 23, lines 1-3]. Plaintiff never reported the issue with the ripples in the carpet before his fall. [Ex. 1, p. 23, lines 4-10]. Plaintiff never heard anybody who lived in the complex complain of the ripple on the carpet where Plaintiff fell. [Ex. 1, p. 23, lines 11-15]. Plaintiff testified he only discovered the ripple *after* he fell when he went back to investigate what could have caused him to fall. [Ex. 1, p. 23, line 26-p. 25, line 7].

In addition to Plaintiff, the depositions of Renee Bryant, who was at all times relevant to the case the property manager for the complex. Ms. Bryant testified that nobody reported any issue with the carpet prior to Plaintiff's fall and she was not aware of the ripple prior to Plaintiff's fall. [Deposition transcript to be provided upon receipt]. Ms. Bryant took photographs of the area before the carpet was repaired. [Ex. 3 – Photos].

Louis Rodriguez, who at all times relevant to the case was the maintenance person at the complex. Mr. Rodriguez was not aware of the ripple prior to the Plaintiff's fall and only made repairs to the area after being notified by management after Plaintiff's fall. [Deposition transcript to be provided upon receipt].

Ms. Nevla Fogle is a resident of the complex and lives two doors down from the Plaintiff. Ms. Fogle testified she was not aware of the ripple prior to the Plaintiff's fall and only became aware of the ripple after Plaintiff showed her the ripple after his fall. [Deposition transcript to be provided upon receipt].

ANALYSIS

At common law, "a landlord who, without covenanting to repair, and without knowledge of latent defects, puts a tenant into full possession and control of demised premises, not intended for public purposes, and which are free from defects of construction constituting a nuisance, will not be liable for personal injuries sustained on the demised premises, by reason of the defective condition thereof, by the tenant, members of his family, employees, guests or invitees, or others entering upon the premises under the tenant's title." 36 C. J. 204, § 874 . . .

Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 330 (1932); *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426, 428 (1985).

[W]hen land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.

Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992).

However, the common law has been abrogated as to residential property by the South Carolina Residential Landlord Tenant Act (“the Act”). *Id.* citing S.C. Code §§ 27–40–10 to –940 (1991).

The Act, enacted in 1986, was passed “to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants.” S.C. Code. § 27-40-20(b)(1). The Act “requires a landlord to comply with applicable housing codes materially affecting health and safety, and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[.]” S.C. Code. § 27-40-440(a)(1)-(2). The Act also requires that a landlord “keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition[.]” .C. Code. § 27-40-440(a)(3).

In *Watson v. Sellers*, the Court of Appeals has held the Act “is designed to abrogate the well-defined and established common law and embark on a course totally divergent from existing precedent in this area as to the duty of the landlord.” 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). The exclusive remedy for negligence against a defendant-landlord is under the statute because at common law, a landlord does not owe a tenant any duty to maintain the premises in a safe condition *Young*. See also *Clea v. Odom*, 394 S.C. 175, 182, 714 S.E.2d 542, 546 (2011) (holding that the Act arrogated the common law which held a landlord *can not* be liable for injuries inflicted upon an invitee or licensee of a tenant where the attack occurs in the common area of an apartment complex).

To bring a claim under the Act, the Court of Appeals has found a tenant must give “written notice to the landlord specifying the acts and omissions constituting the breach and failure of the landlord to make the necessary repairs after notice.” *Robinson v. Code*, 384 S.C. 582, 588, 682 S.E.2d 495, 497-98 (Ct. App. 2009) citing S.C. Code Ann. § 27-40-610(a) (emphasis added).

The notice requirement—even in cases where the residential unit fails to comply with safety standards—has been applied without exception in South Carolina courts for more than twenty-five years. *See Id.*, 384 S.C. at 586, 682 S.E.2d at 496 (holding that because tenant failed to notify property owner of the lack of smoke detectors, “they could not state a claim under the SCRLTA”); *Thompson v. CDL Partners LLC*, 378 F. App’x 288, 292 (4th Cir. 2010)(citing decisions handed down by South Carolina Courts in determining that “the South Carolina Supreme would require that a landlord have notice of a defect before being liable to the tenant under the SCRLTA” where a tenant was severely injured after falling when a balcony railing gave way).

Courts have made clear that rights under the Act do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time.” *Id.* Additionally, the Act requires this notice must be given in writing and allow the landlord a reasonable amount of time to repair the allege defect. S.C. Code Ann. § 27-40-610.

While the vast majority of cases in South Carolina addressing the notice requirement under the Act for injuries suffered within the tenant’s unit, the notice requirement also applies to claims brought pursuant to the act injuries sustained in a common area. *Odom*, 394 S.C. at 182, 714 S.E.2d at 546 (finding under the Act a landlord could be liable to a tenant’s invitee or licensee for a dog bite by a tenant’s dog where the attack occurred in a common area *and* there was evidence the landlord *had actual knowledge* of the dog’s vicious propensity and landlord failed to remedy the situation).

In the present case, Defendants did not have actual notice of the condition complained of prior to the Plaintiff’s fall. Therefore, under the explicit terms of the Act, Defendants are entitled to judgment as a matter of law in their favor.

CONCLUSION

For the reasons set forth, Defendants respectfully request an Order granting them judgment as a matter of law in their favor and for such other and further relief as the Court deems just and proper.

HOWSER, NEWMAN & BESLEY, LLC

s/Damon C. Wlodarczyk
Damon C. Wlodarczyk, Esquire
Attorney for Defendants

Columbia, South Carolina
October 22, 2024

State of South Carolina	)	
	)	
County of Richland	)	
	)	
George Gallo,	)	2022-CP-40-05305
	)	
Plaintiff,	)	
	)	Deposition
v.	)	
	)	of
Autumnwood Crossing,	)	
L.P., and InterMark	)	George L. Gallo, Jr.
Management Corporation	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

Date: September 17, 2024

Time: 9:59 a.m.

Location: Cavanaugh & Thickens, LLC, 1717 Marion
Street, Columbia, South Carolina

Reported by
Breanna Sharper

1 from my understanding, Autumnwood got its
2 certificate of occupancy -- in other words, people
3 could live there -- in 2019.

4 A Uh-huh.

5 Q And I think your lease agreement was dated in 2022.
6 Did you live there before that?

7 A No. That's incorrect.

8 Q Okay. Let me just confirm that for a second.

9 MR. WLODARCZYK: (To the court reporter) And
10 just go off the record, just for a second.

11 (Off the record from 10:07 a.m.
12 until 10:08 a.m.)

13 THE EXAMINATION BY MR. WLODARCZYK CONTINUES.

14 Q All right, Mr. Gallo, did you sign more than one
15 lease with Autumnwood?

16 A Yes.

17 Q Okay. All right. That probably explains it. So I
18 have a 2022 lease. And you're saying you think you
19 moved in there when it opened in around 2019,
20 approximately?

21 A Approximately, yes.

22 Q Okay. Do you recall how many leases you signed?

23 A At least two before. At least two before that.

24 Q Okay. That would explain some of my questions.

25 A Sure.

1 Q Okay. Did you notice the ripple shown in
2 Defendants' 1 anytime prior to your fall?

3 A No.

4 Q Okay. So it's fair to say that you never reported
5 the issue with the ripple before your fall?

6 A No.

7 Q That comes out bad when I ask that question because
8 -- so did you report the condition, the ripple,
9 before your fall?

10 A No.

11 Q Okay. Did you ever hear anybody who lived in the
12 hall, any of your neighbors or any other tenants,
13 complain of the ripple right there at the -- the
14 fire doors on your hallway?

15 A No.

16 Q Okay. And when did you first discover the ripple
17 in the carpet?

18 A After I fell.

19 Q Okay. And I know it may seem like a smart-ass
20 comment, but it's not intended to be.

21 A No, no, no.

22 Q In other words, when you fell, after you're lying
23 on the ground in pain, did you know that you
24 tripped on a ripple in the carpet?

25 A I didn't know about it until after I came back

1 home.

2 Q Okay. That's what I was trying to get at.

3 A But -- no, no, no.

4 Q All right. And so now I understand that you came
5 home for about a week, and then you had to go back
6 to the emergency room. Do you know if you
7 discovered the ripple in the carpet during that
8 break, or was it after you got back the second
9 time?

10 A During the break.

11 Q Okay. That one week that you -- I think you were
12 discharged the same day that you went to the ER for
13 your fractured knee?

14 A Uh-huh.

15 Q Is that a yes? Is that yes?

16 A Yes. I'm sorry. Sorry, sorry, sorry, sorry. I'm
17 sorry.

18 Q Not a -- not a fireable offense. Don't worry. And
19 what did you do to investigate to determine what
20 caused you to fall?

21 A I was wondering, "How was it that I fell?" Because
22 I felt something when I was walking down the hall.
23 And I said, "How could I have fallen when I use
24 both of my feet except, when I was walking,
25 something grabbed my foot?"

1 Q Okay. All right.

2 A And when I rolled out of the apartment, I looked
3 down and I saw the ripples in the carpet. And it
4 was the same foot, my left foot.

5 Q Uh-huh. Okay.

6 A I rolled out to that same area, and I looked down,
7 and the imprint of my knee was still in the carpet.

8 Q Okay. All right. And where were you going when
9 you fell?

10 A My neighbor across the hall -- well, two doors down
11 -- was going to go to the store, which was actually
12 going to be my first outing in quite some time.

13 Q Okay.

14 A And, well, we didn't quite actually make it.

15 Q What was the neighbor's name?

16 A Nell Fogle.

17 Q Okay. Were you-all going to Wally World?

18 A Yes.

19 Q I just saw that in your medical record.

20 A I'm sorry. Yes.

21 Q I call it Wally World, too.

22 A It's a Southern thing.

23 Q It's an adventure anytime you go. All right.

24 MR. WLODARCZYK: (To the court reporter)

25 We'll just get this marked as Exhibit 2.



DEFENDANT'S
EXHIBIT 1
62110
9/17/24 BS
PENGAD 800-631-6989

DEFENDANT'S 3
EXHIBIT
Gallo
9/17/24 BS
PENGAD 800-631-6889

ELECTRONICALLY FILED - 2024 Oct 22 4:40 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4005305





1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND * TRANSCRIPT OF RECORD
 3 -----X
 4 GEORGE GALLO, *
 5 Plaintiff, *
 6 vs. * Case No. 2022-CP-40-05305
 7 AUTUMNWOOD CROSSING, *
 8 Defendant. *
 -----X

February 12, 2025

B E F O R E:

The Honorable Daniel Coble, Presiding Judge

A P P E A R A N C E S:

Joe Thickens, Esq.
 Attorney for the Plaintiff
 Damon Wlodarczyk, Esq.
 Attorney for the Defendant

Recorded by: TEC Courtroom Recording

Court Transcriber: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

DESCRIPTION

PAGE

Proceedings

3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is not
known due to audio recording quality

P R O C E E D I N G S

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THE COURT: All right. No. 8 on the docket, George Gallo versus Autumnwood Crossing, 2022-5305.

Good afternoon. We have Defense's Motion for Summary Judgment.

MR. WLODARCZYK: May it please Your Honor, I'm Damon Wlodarczyk.

Your Honor, this is a Motion for Summary Judgment. This is a premises slip-and-fall that occurred at the apartment complex. Mr. Gallo, who is the plaintiff, was a resident at the time and currently is still a resident at the complex, which is located in Lexington County. The management company is located in downtown Columbia, which is why we're in this venue.

Mr. Gallo moved in, per the deposition testimony, in 2019 when the -- the property was opened in 2019; it's fairly new construction. He lived at the end of a hall/corridor. And if he would go out his front door and make -- turn right to go down the hall towards the elevators, there was a series of double fire doors that you'll see in the photos that we attached to the motion.

At the bottom left side of the left door, there was an area of the carpet that had buckled, just came up a little bit. And, apparently, Mr. Gallo was walking down the hall in 2022 and tripped on it. At the time, he had just recovered

1 from I think it was a right leg surgery. And, of course, he
2 fell and injured his left leg pretty significantly. So that's
3 essentially the facts of the accident.

4 Mr. Gallo was deposed. He testified that, in all his
5 years living there and walking this hallway, he never noticed
6 the issue with the buckled carpet.

7 His neighbor, who was the first one out, who was actually
8 going to go to Walmart, she was deposed about what she knew.
9 She testified that she did not see anything about the carpet.
10 This is all prior to the lawsuit.

11 The manager, Renee, whose deposition was attached, also
12 testified there was no issues brought to her about any
13 problems with the carpet buckling. And the same goes with the
14 maintenance person, Luis. He testified that he never observed
15 the carpet. He walks the premises routinely. No one ever
16 brought any concerns.

17 There's no evidence that any tenant or anyone else ever
18 brought any concerns about this carpet being buckled in this
19 area until after Mr. Gallo got out of the hospital and
20 returned home and was looking around to see what caused him to
21 trip.

22 And as you'll see in one of the photographs, he was in a
23 mobilized or motorized chair and took a picture from
24 waist-high that shows the ripple in the carpet, which was
25 subsequently repaired.

1 Your Honor, the basis of our motion is of the Residential
2 Landlord-Tenant Act. It is the sole remedy for any
3 landlord-tenant disagreement. Specifically, prior to the Act,
4 as I set forth in my memo, there was no common law claim
5 against a landlord for failure to maintain a premises in a
6 safe manner. That was changed, at least two residential
7 properties, with the enactment of the Residential
8 Landlord-Tenant Act. Specifically, we're looking at
9 27-40-440, which has landlord's obligations, one of which is
10 to keep all common areas in a reasonably safe condition.

11 Your Honor, the Supreme Court and various courts have all
12 said that the written notice provisions set forth in the Act,
13 which is under 27-46-10, requires -- the Act says written
14 notice of a condition complained of and then reasonable
15 opportunity for the landlord to repair it before any action
16 can be made. The courts have not said specifically "written
17 notice" but "notice" is generally used.

18 As I said in my memo, the vast majority of cases
19 regarding failure to maintain the premises goes to the actual
20 interior of the units. For example, I guess the most what we
21 would call egregious case was lack of a smoke detector. There
22 was one case with the banister that was loose on the exterior,
23 elevated porch.

24 Obviously, there was injuries, and the courts in both of
25 those cases said, absent the notice to the landlord, even

1 though, for example, the smoke detectors is a requirement
2 under the fire code in South Carolina, it says it's still not
3 a basis for a claim unless the landlord has notice.

4 There's only one case that I have found with regard to
5 the common area issue, and I have also cited that in my brief,
6 memo, and I think it's clearly on point in terms of what is
7 required. The case is Odom, and I'm referring to 394
8 S.C. 182. In that case, there was a dog that was chained up
9 in the common area. It was routinely there. The landlord
10 provided some water. He knew it was there. The dog bit a
11 person in the common area. And the Court had dismissed all
12 the actions under South Carolina common law saying the
13 landlord is not responsible for a tenant's dog's actions.

14 And they appealed. The Court then went through a
15 discussion saying, Well, there's a novel issue here because
16 this is not -- we have the Residential Landlord-Tenant Act
17 which says that a landlord has to maintain the property in --
18 or the common areas in a reasonable and safe condition.

19 And then, because it was novel, they analyzed various
20 cases in the United States, and the Court ultimately said a
21 landlord can be liable under the Act for allowing a dog to be
22 there if the landlord has actual knowledge of the vicious
23 propensities of the dog.

24 And what that goes to is the notice issue. If the
25 landlord has notice issue of something that is unsafe, then,

1 under the Landlord-Tenant Act, the landlord may have an
2 obligation to remedy the situation even though it's not a
3 common law.

4 So what we have here, Judge, is a situation where there
5 is no evidence of any prior knowledge of this condition
6 complained of. The only time it was first discovered was
7 after that.

8 In fact, interestingly, Mr. Gallo never reported the
9 issue after his fall even though personnel from the management
10 company were present. I asked him, "Did you ever report
11 this?" It was actually through his attorney as part of the
12 claim made that the issue first became aware about this
13 tripping on the carpet.

14 It doesn't comply with the Act. There's no actual
15 notice, so we're not even discussing whether it has to be
16 written or not. There's no notice from any other parties,
17 non-parties, construction workers, nothing.

18 So, in order to proceed to trial, the notice requirement
19 has to be met. It has been met, and we're asking for judgment
20 as a matter of law on those grounds.

21 THE COURT: All right. Thank you.

22 Yes, sir.

23 MR. THICKENS: Thank you, Your Honor. May it please the
24 Court.

25 I want to start, first of all, with the facts. I don't

1 disagree with most of the recitation of the facts that was set
2 forth by Mr. Wlodarczyk, but I did want to add that this
3 building -- this apartment complex, Autumnwood Crossing, is
4 specifically geared toward and limited to residents who are --
5 I don't want to say elderly but over 55. They cater their
6 services towards an older clientele and certainly know and
7 understand, in talking with the 30(b)(6) about this, that
8 they're dealing with people who might be mobility limited,
9 like Mr. Gallo was coming off of a surgery, as he was moving
10 through this hallway.

11 I have three main points that I want to talk about. I
12 want to address where this incident happened, some of the
13 documents and things that have been produced or not produced
14 in this case, and then Clea v. Odom.

15 First of all, we did plead this case as a common law
16 negligence case. We didn't specifically plead it under the
17 Landlord-Tenant Act because this happened in a common area.

18 So, at the very outset, we're not even conceding that
19 this falls under the RLTA because this is not part of the
20 premises that was leased to Mr. Gallo. This occurred
21 specifically in the common area, which was testified to by the
22 corporate designee for Autumnwood Crossing. And so this is
23 part of the premises that is under Autumnwood's control.

24 Regardless of that, whether -- without conceding that
25 even if the RLTA puts an initial duty on a resident to give

1 notice to a landlord of problems within the landlord's
2 property, the common area, Autumnwood -- we pled negligent
3 failure to maintain, inspect, and give notice to users of the
4 common area of the dangerous condition.

5 We took the 30(b)(6) deposition of Autumnwood.
6 Autumnwood, in fact, required inspections of this area. It
7 required inspections of all common areas. They require
8 biannual inspections by the regional manager. Obviously, we
9 asked for all these inspections, and they weren't produced by
10 Autumnwood. Autumnwood has not been able to come up with
11 these documents, I understand. We make no inference that
12 Mr. Wlodarczyk is holding back documents or anything.

13 Nevertheless, they testified that they do biannual
14 inspections at the regional manager level -- that's the
15 highest level they do inspections at -- that somebody from the
16 management company, who is actually going out to their various
17 properties and looking at it.

18 They create a written record of these inspections. They
19 testified that they have it. They maintain it for three to
20 five years. They create it in digital form. And it existed
21 in 2022 when this happened. And they only produced 2020
22 records.

23 One of the specific things that they're supposed to do is
24 walk through the common areas and look for safety issues.

25 The on-site staff is also supposed to do inspections.

1 There are quarterly inspections where they are supposed to
2 keep written records. There are zero written records of
3 those. We'd ask for those records. The 30(b)(6) designee
4 also says those should be kept for three to five years.

5 I asked why they do these inspections, and they said
6 partly for the owner of the property to understand whether
7 it's being kept in good condition. Obviously, it's an
8 investment asset. And it's also for resident safety.

9 In fact, the actual quote from the designee -- I'll read
10 that for you -- was -- I said, "Is it designed to benefit the
11 inspections at all, meaning" -- "Is it designed to benefit the
12 residents at all, meaning the inspections?"

13 And the 30(b)(6) testifying for the corporation, not just
14 this individual who worked for Intermark (ph), "Well, I mean,
15 of course. They're, I mean, to keep them safe and make sure
16 that they're happy with their home."

17 So they have undertaken a duty to walk through and ensure
18 that the common areas of these premises are safe. And, in
19 particular, the hallway carpet is something that the regional
20 manager or maintenance people or on-site people are supposed
21 to inspect.

22 So I would argue, as part of this, that they have
23 assigned a duty to inspect and look for dangerous issues on
24 the common area.

25 However, I understand that, if there's a -- if you found,

1 Your Honor, assuming -- looking at the Residential
2 Landlord-Tenant Act, that there was a duty to notify in
3 writing or otherwise prior to making a claim, that we're still
4 not there.

5 And so that's why I walk through what the requirements
6 are, their document retention policies and what's supposed to
7 be there, because we asked for all those things. We asked for
8 them in discovery. Like I said, they haven't been produced.

9 There was a consent order that was entered as part of the
10 discovery process after we filed the Motion to Compel to
11 obtain these things. We were able to reach a consent order,
12 and part of what was ordered to be turned over was "any and
13 all inspection records or other material which relates to
14 inspection of the common area and hallways for the preceding
15 five years, up to and including the subject incident."
16 There's zero but for the 2020 inspections that happened to be
17 kept.

18 And then "any and all records or other evidence regarding
19 the subject premises or incident which Defendant Autumnwood's
20 designee testified to the existence of during their 30(b)(6)
21 deposition." Again, we talked about these with them. They
22 don't exist. There's no records.

23 I sent a spoliation letter as soon as this happened in
24 July of 2022. This happened, I believe, July 15th of 2022.

25 July 25th, Mr. Gallo, who had already contacted us, we

1 immediately sent a spoliation letter and asked to inspect this
2 area.

3 We didn't receive a response to that spoliation letter,
4 and so I sent another one on September 9th of 2022. I asked
5 the 30(b)(6) designee about this spoliation letter. They
6 admitted that they received it as of September 15th of 2022.

7 On September 22nd, the 30(b)(6) designee, who is a
8 corporate representative of the company, ordered that the
9 carpet be repaired.

10 They admitted specifically to having my letter requesting
11 to inspect the area and to preserve any evidence prior to
12 conducting this repair; nevertheless, they did not contact us,
13 and we didn't get out there.

14 That's very important because, as Clea v. Odom discusses
15 -- and I'll talk a little bit more about Clea v. Odom --
16 actual notice is one of the ways that the landlord can be
17 required to make a repair of the property, particularly when
18 it involves a common area, if they either assume the duty or
19 have actual notice of a safety hazard, like a carpet bubble.
20 And this is characterized as carpet bubbling or rippling.

21 There was a work order that should have been created.
22 That has not been produced, but they had created them in
23 digital format and talk about the repairs they do. And we
24 don't -- so what we don't know, because we could've sent
25 somebody out there -- and I had somebody ready to go -- on the

1 go in July, no response; September, no response. Then we find
2 out through these emails that they actually repaired it
3 without letting us look at it.

4 That's very important because that goes straight to
5 notice. We could have looked at this area and carpet that
6 they characterize as having reglued and figured out has it
7 been glued before? Is this a known, recurring issue? We
8 don't know what the underlayment of this carpet is. Is it
9 wood? Did they cut out an area of wood that was sagging and
10 put in new wood? Is it concrete? Did they have to use
11 leveler to fix this floor? We don't know exactly what was
12 wrong with it because we were never afforded the opportunity
13 to look at it to see whether it had been previously repaired
14 or what caused this particular incident of the carpet bubbling
15 and rippling since Mr. Gallo's foot caught on it and he fell.

16 And so when we get to Clea v. Odom, which I think we both
17 have -- which is cited by the defendant and is the operative
18 case, the discussion of the spoliation issue and the actual
19 notice and the 30(b)(6) designee's testimony really comes
20 together.

21 Clea v. Odom does say that, if the landlord has actual
22 notice of a dangerous condition, then they can have a duty to
23 repair it. And here, they have undertaken a duty to inspect
24 these areas and find out if there were underlying issues, and
25 we can't see whether they knew about it because they have

1 destroyed the documents. There's been no wrongdoing on the
2 part of the plaintiff in connection with this, but they have
3 not -- they have neither produced the documents that they were
4 ordered to produce in the consent order nor produce the
5 documents that they say that they keep under their own record
6 retention policies. So we cannot evaluate that; therefore,
7 they must be charged with actual notice of this issue that
8 they have characterized this bubbling in their carpet.

9 Clea v. Odom, I think is also an interesting case to rely
10 on because it does state, even in the defendant's memo, that
11 there's really not a whole lot of case law discussing the
12 Residential Landlord-Tenant Act in the context of common
13 areas. That's because this is not leased premises. This is
14 the landlord's property.

15 But in the early case that we have where we're talking
16 about the landlord's duties in connection with leased
17 property, the Court of Appeals here -- or, I'm sorry, the
18 Supreme Court here notes that "whether a landlord can be
19 liable for injuries inflicted upon an invitee or licensee
20 where the attack" -- in this case, a dog bite -- "or injury"
21 -- I think we can say, since we're both using this case --
22 "occurs in a common area, is a novel issue in this state." So
23 they look at Georgia and they look at Alabama.

24 In both of those states, the Court held -- in Georgia,
25 the Court held that summary judgment was improper because the

1 landlord who retains control over the common areas of the
2 complex to which tenants and others were allowed access had a
3 duty under the statute similar to the RLTA to keep the common
4 areas safe. That's Georgia.

5 That's what we've got here. They're allowed access to
6 the common areas. They have a duty to keep it safe.

7 And then, Alabama, summary judgment was also improper
8 because a landlord must exercise reasonable care to prevent
9 injuries from such a dangerous condition but only to the
10 extent he was aware of its existence.

11 That, again, is why we're trying to prove actual notice
12 and do our own work to get those things, but we can't do it
13 because they've destroyed it or not turned it over.

14 And so, based on those two cases and their examination of
15 the available information under the Residential
16 Landlord-Tenant Act, our Supreme Court held that a landlord
17 can be liable where they have actual notice and failed to
18 remedy the situation. And so that's where we find ourselves
19 in those cases.

20 So we would respectfully submit that summary judgment is
21 improper due to the duties that they undertook themselves,
22 failure to preserve materials, the spoliation of evidence, and
23 Clea v. Odom, which is the only case we have, which has said
24 that summary judgment is improper based upon the other two
25 states that examined it and our state's law.

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. WLODARCZYK: Your Honor, in response, I'd note that,
4 in my brief, Watson v. Sellers specifically states, "The
5 exclusive remedy for negligence against a Defendant Landlord
6 is under the statute because, at common law, a landlord does
7 not owe a tenant any duty to maintain the premises in a safe
8 condition." Actually, that's Young, Your Honor; I apologize
9 for that.

10 Judge, it doesn't matter about documentation or whatnot.
11 The plaintiff himself, who lived there from 2019 through the
12 incident and continues to live there, said, "I never noticed
13 this problem."

14 The requirement is simple. They could have gone
15 door-to-door and knocked on every apartment or unit in the
16 complex and tried to find somebody to say, "Yeah, I noticed
17 the buckle. I reported it." It wasn't done.

18 They deposed the only manager from the time and place
19 opened until she switched properties after the fall. She had
20 no notice of it.

21 The maintenance person who works there every day, who
22 walks the property had no notice of it.

23 The fix was he took a knife, cut it open, put a little
24 glue underneath it, and then weighted it down to seal it.

25 The issue is not about documentation and special reports.

1 The report is, per the statute, did anybody report this issue
2 before the fall? That's it. There's no, "Okay, they're over
3 55. Sorry. Doesn't matter."

4 There's no qualification for the condition of a person in
5 an apartment complex. This is not one where you say, "Oh, you
6 have a heightened duty because you're running a retirement
7 community" or something like that. The same standard applies
8 to every resident of an apartment complex. You have to
9 maintain it to be reasonably safe, but if you want to bring an
10 action, you have to have actual notice.

11 In every case that is put forth on the Residential
12 Landlord-Tenant Act says actual notice. And I don't see how
13 you get around that statutorily without some evidence. It's
14 almost arguing like, "Well..." -- and there was no documents
15 destroyed.

16 The building was open and brand new in 2019, COVID hit in
17 2020, and the guy fell in 2022. There was a limited -- we
18 gutted everything. There was multiple Motions to Compel. I
19 gave them every policy and procedure, including the petty
20 change drawer policy. I mean, everything has been provided.

21 Two residents were deposed, and Plaintiff had every
22 opportunity from the time that he was retained to today to
23 interview or ask or get somebody from the apartment complex to
24 say, "Oh, no, that was open and obvious. I saw that and I
25 told the manager and they (indiscernible)." It isn't

1 happening. It didn't happen. It didn't happen with the
2 plaintiff. It didn't happen with his witness. It didn't
3 happen with the manager.

4 And the statute is black letter law, and the reason why
5 it's black letter law is because, before the statute, my
6 clients would have had no legal duty whatsoever to maintain
7 the premises. And when you abrogate common law and go, as the
8 case says in Sellers, and you've gone a whole new direction
9 creating liability, it's a strict interpretation of the
10 statute.

11 THE COURT: All right. Let me review that case law
12 before I make my decision and review the brief again and try
13 to get something to y'all shortly. Okay?

14 MR. WLODARCZYK: Well, Your Honor, I'm up for trial in
15 two weeks, Judge.

16 THE COURT: (Indiscernible). If I don't have a decision
17 by then, it will be continued, but --

18 MR. WLODARCZYK: Fair enough.

19 MR. THICKENS: Thank you.

20 THE COURT: (Indiscernible). All right. Thank y'all.
21 (The above hearing concluded.)
22
23
24
25

Certificate of Transcriber

CASE NAME: Gallo v. Autumnwood Crossing

DATE OF HEARING: 2/12/25

RECORDING METHOD: TEC Courtroom Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 5/12/25

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

George Gallo,

Plaintiff,

v.

**Autumnwood Crossing, L.P., and
Intermark Management Corporation,**

Defendants.

IN THE COURT OF COMMON PLEAS
THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-40-05305

**MOTION TO RECONSIDER ORDER
GRANTING SUMMARY JUDGMENT**

Plaintiff respectfully submits this Motion for Reconsideration pursuant to Rule 59(e), SCRPC. A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the Court to ‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). As a result, “a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is “one final chance not only to call the court’s attention to a possible misapprehension of an *earlier* argument, but also to revisit a *previously raised* argument.” *Id.* (emphasis added). In support of this Memorandum, Plaintiff shows the Court as follows:

PROCEDURAL POSTURE

Plaintiff filed suit in this matter on October 11, 2022, alleging the Defendants were negligent or grossly negligent with respect to, among other things, their failure to warn of dangerous conditions and their failure to maintain and inspect common areas. Plaintiff's Summons and Complaint, Pp. 4-6, Paragraphs 11-19. Thereafter on December 21, 2022, Plaintiff issued his initial discovery requests to the Defendants. See Exhibit A to Plaintiff's December 7, 2023, Motion to Compel. Receiving no responses, Plaintiff transmitted a Rule 11 letter requesting responses on January 27, 2023. *Id.* Receiving no response to his Rule 11 letter, Plaintiff filed his first Motion to Compel on February 8, 2023. Nearly six months would pass before Plaintiff's *first* Motion to Compel was scheduled for a hearing. Plaintiff finally received notice for a hearing on his Motion to Compel for the week of August 9, 2023, and just prior to the hearing the Defendants agreed to provide discovery responses according to the terms of a Consent Order. See Exhibit D to Plaintiff's December 07, 2023, Motion to Compel.

Inexplicably, the Defendant's failed to file the agreed upon Consent Order and further failed to fully respond. As a result, Plaintiff transmitted another Rule 11 letter on October 20, 2023. See Exhibit F to Plaintiff's December 07, 2023, Motion to Compel. The Defendants persisted in their failure to fully and adequately respond until this Court signed a Consent Order requiring the Defendants to fully respond within thirty (30) days of entry of the Order on July 10, 2024. On July 24, 2024, the Defendant's refusal to respond to discovery necessitated the entry of a Consent Scheduling Order. On October 22, 2024, the Defendant's filed their Motion for Summary Judgement. Ultimately, the Defendant's Motion for Summary Judgement was heard on February 9, 2025, and the Court held the matter under advisement pursuant to it February 13, 2025 Form 4 Order. The Court advised in an informal Order on February 18, 2025, that it intended

to grant summary judgement and Ordered the Defendant to submit an Order within ten (10) days from the Order's entry. The Defendants filed their proposed Order on February 28, 2025, this Court accepted and entered the formal Order Granting Summary Judgement on March 3, 2025, and this Motion pursuant to Rule 59(e), SCRPC follows.

FACTS

On March 22, 2022, Plaintiff signed an agreement with the Defendants to lease, "the apartment known as 306 a 2 bedroom apartment (Premises) located at 207 Topsider Court #306, Lexington, SC, 29072...." Exhibit 1 (Autumnwood-Gallo Lease) P. 1. In referring to "common areas" the agreement expressly carves out the Defendants' exclusive right of control and authority with respect to all common areas. First, the agreement permits the Defendants to charge tenants for the cost of repair and cleaning of the common areas. *Id.* at P. 2, Paragraph 14. Second, the agreement forbids tenants from leaving any personal items in the common areas. *Id.* at P. 5, Paragraph 8. Next, the agreement prohibits tenants from covering or obstructing the floors, skylights, doors, and windows that reflect or admit light into passageways, or into the common areas of any Landlord's buildings. *Id.* at P. 5, Paragraph 19. Fourth, the agreement prohibits the circulation of handbills, circulars, advertisements or papers which, if discarded, would tend to litter common areas. *Id.* at P. 5, Paragraph 21. Also contained within the agreement is a provision which governed the use of common areas which the Defendants refer to as "facilities." *Id.* at Pp. 5-6, Paragraph 2. Specifically, the agreement provides that a tenant may:

[u]se all facilities which Landlord provides for Tenant's comfort, (if any, including laundry, swimming pool, parking areas and storage areas, none of which facilities are included in the rent) solely at Tenant's own risk, and Tenant agrees that Landlord shall not be responsible for any injury to person or loss or damage to property arising out of Tenant's use thereof, unless the same is caused solely by Landlord's gross negligence or willful misconduct...Use of any of these facilities may be revoked by the Landlord without affecting the remainder of the lease. *Id.*

The Defendants' own admitted actions in investigating and responding to Plaintiff's fall are also important. First, Defendant Autumnwood's 30(b)(6) testimony makes clear that the Defendants spoiled the condition which led to Plaintiff's fall *after* receiving a request from Plaintiff's counsel to inspect the condition. Exhibit 2, 30(b)(6) Deposition of Defendants Autumnwood/Intermark, Pp. 65-66, ll. 21-3, and Pp. 72-76, ll. 21-25. Specifically, the cited testimony demonstrates that the Defendant had actual notice of Plaintiff's request to inspect prior to the date that the repairs were ordered and conducted. *Id.* Defendant Autumnwood also acknowledges that its employees conducted and retained records of bi-annual, quarterly and daily inspections designed to discover the type of condition which caused Plaintiff's fall. *Id.* at P. 41, ll. 3-16, P. 43, ll. 2-14, P. 44, ll. 8-24, Pp. 46 -47 , ll. 4-25, P. 48, ll. 15-24. Despite the rigorous inspection protocol and corresponding record requirements supposedly employed, the Defendants have only produced one inspection form, completed a month and a half *after* Plaintiff fell. Exhibit 3 (Defendants' Fourth Supplemental Responses to Plaintiff's Request for Production and Autumnwood 153). The Defendants did not offer an explanation as to why they only produced one inspection report from forty-five days after the subject fall, and have heretofore failed to produce any responsive documents despite admitting to possession of the same. Exhibit 4 (E-Mail from Defense Counsel Confirming Only One Inspection Report), Exhibit 2, 30(b)(6) Deposition of Defendants Autumnwood/Intermark at P. 41, ll. 3-16, P. 43, ll. 2-14, P. 44, ll. 8-24, Pp. 46 -47 , ll. 4-25, P. 48, ll. 15-24 . In addition to the testimony and admissions of the Defendants regarding their spoliation and refusal to disclose documents, the Defendants also admitted to constructing the subject area. Exhibit 2 Defendant Autumnwood/Intermark's 30(b)(6) Deposition, May 23, 2024, P. 83, ll. 22-25.

LEGAL STANDARD

Summary judgement should not be granted when there exists a genuine dispute of material facts and the moving party has not demonstrated that he is entitled to judgement as a matter of law. See *Miller v. Blumentahl Mills Inc.*, 616 S.E.2d 722, 732 (Ct. App. 2005), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). In order to be entitled to summary judgement, the movant must demonstrate that there is no genuine dispute of material fact. *Id.*, citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). In deciding whether there is a genuine issue of material fact, the Court must determine there is more than a mere scintilla of evidence to frustrate the motion. *Id.* However, to defeat it, the party opposing summary judgement need only present evidence of specific facts from which the finder of fact could reasonably find for him. *Id.*, citing *Anderson*, 477 U.S. 252. Ultimately, in deciding whether to grant Summary Judgement the court must take the evidence, and the inferences that can be drawn therefrom, in the light most favorable to the non-moving party. See *Mclanahan v. Richland County Council*, 567 S.E.2d 240, 242 (2002), citing *Garvin v. Bi-Lo Inc.*, 541 S.E.2d 831 (2001) (citation omitted).

ARGUMENT

Plaintiff respectfully requests that this Court vacate the Order Granting Summary Judgement dated February 18, 2025, because there is a genuine issue of material fact as to the whether the Defendants had actual notice of the condition that caused Plaintiff's injury and because there are genuine issues of material fact as to whether the Defendants owed Plaintiff duties which were independent of his lease agreement and the protections afforded by the South Carolina Residential Landlord-Tenant Act.

I. Viewing the record evidence, and the inferences that can be drawn therefrom, in the light most favorable to Plaintiff, there is inarguably a genuine issue of material fact as to whether the Defendants had actual notice of the condition which caused Plaintiff's fall.

In their Motion for Summary Judgement, the Defendants pointedly acknowledge the Supreme Court's holding in *Clea v. Odom*, 714 S.E.2d 542, 546 (2011), stands for the proposition that landlords may be liable to tenants where there is evidence that a landlord had actual knowledge of a dangerous condition or danger within the common area, but argue the Defendants lacked *any* notice of the condition and are therefore not liable for Plaintiff's injury. See Defendant's Motion for Summary Judgement, October 22, 2024, P. 5, Paragraph 3. Plaintiff contends that the Defendants' argument, and by extension this Court's Order, misconstrue the nature of the record evidence concerning the Defendants' actual knowledge of the subject condition.

While the Defendants' argued, and this Court found that a "tenant" must give "written notice to the landlord specifying the condition before being availed of his right to sue the landlord for injuries sustained in connection therewith, the Supreme Court in *Odom* imposed no such requirement. Compare Order Granting Summary Judgment, March 3, 2025, Coble, J., and Defendants' Motion for Summary Judgement, October 22, 2024, P. 4, Paragraph 4, with *Odom*, 714 S.E.2d 542, 547 (2011) (finding circuit court *erred* in granting summary judgement because there was evidence that respondent had actual knowledge of the dangerous condition and despite such knowledge failed to remedy the same). In creating this novel standard, the Court relied on the Court of Appeals' holding in *Robinson v. Code*, 682 S.E.2d 495, 497 (Ct. App. 2009), when it held that a tenant has a duty to notify a landlord of dangerous conditions or defects *in a common area* that is solely under the control of the landlord. Put plainly, *Code* has a limited, if any, factual nexus

with the issues present in this case and is in no way illustrative of Plaintiff's burden with regard to the notice that he must demonstrate in the instant case.

In *Code*, Appellant filed suit when an upholstered chair caught fire in a single-family rental home causing the death of her decedent and another house-member. *Id.* Appellant filed two complaints, one in her individual capacity and one in her capacity as personal representative. *Id.* In her complaints, Appellant alleged that Respondent was negligent for failing to supply and install smoke detectors within the leased premises. *Id.* In upholding the Circuit Court's grant of summary judgement, the Court of Appeals found that, "[t]raditionally, under the law of South Carolina, a landlord owes no duty to maintain *leased premises* in a safe condition," but the Residential Landlord-Tenant Act required a landlord to comply with applicable housing codes materially affecting health and safety and to "make all repairs and do whatever is reasonably necessary to put and keep *the premises* in a fit and habitable condition. *Code*, 682 S.E.2d at 586 (citation omitted) (emphasis added). The Court noted that the Landlord-Tenant Act provides for a recovery of actual damages as a result of any material noncompliance by the landlord, but that the tenant's rights "do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time." *Id.* (citation omitted).

The Court of Appeals' holding in *Code* is clearly distinguishable from the instant case. In *Code*, the failure to provide smoke detectors all occurred within the interior portion of a single-family rental home, not the hallway of an apartment complex. *Id.* at 584. The interior of *leased premises* is clearly not an area of the property which would be subject to the landlord's direct control, as a landlord must relinquish control over leased premises when he delivers their possession. There, the landlord could not reasonably be expected to discover the need for remedy,

whereas in the case at bar, the Defendants are the only person endowed with the authority to maintain and operate the common area.

Where this holding makes logical sense to the facts presented in *Code*, it creates nothing but absurdity when applied to the instant case. In this case the Defendant expressly reserved control over the area in which Plaintiff fell and went so far as to implement inspection protocols over the subject area. Interpreting the Court of Appeals' holding in *Code* to impose a duty upon leasees to inspect and notify a landowner or landlord of dangerous, and in some cases concealed, conditions on land which they do not control, cannot access without permission, and cannot alter is clearly absurd. Regardless of the extent to which this Court attempts to stretch *Code* to justify its novel standard, it's clear *Odom* established that a showing of actual notice was sufficient to anchor an invitee or licensee's prayer for relief on a theory of common law negligence. *Odom*, 714 S.E.2d at 547. Actual notice is precisely what Plaintiff can show in this case, and what entails him to relief from this Court's prior Order.

As discussed above, it is generally well understood that summary judgement is only appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgement as a matter of law. *Baird v. Charleston County*, 511 S.E.2d 69, 74 (1999) (citations omitted). In ruling on a motion for summary judgement, the evidence *and the inferences which can be drawn therefrom* must be viewed in the light most favorable to the nonmoving party. *Id.* (emphasis added). Looking to the record evidence *and the inferences which can be drawn therefrom* requires the Court to recognize: that the Defendants repaired the condition which led to Plaintiff's fall *after* receiving a request from Plaintiff's counsel to inspect, Exhibit 2, 30(b)(6) Deposition of Defendant Autumnwood, Pp. 65-66, ll. 21-3, and Pp. 72-76, ll. 21-25; that Defendants acknowledged their employees conducted and retained records of bi-annual, quarterly

and daily inspections prior to Plaintiff's fall, *Id.* at P. 41, ll. 3-16, P. 43, ll. 2-14, P. 44, ll. 8-24, Pp. 46 -47 , ll. 4-25, P. 48, ll. 15-24; that Defendants only produced one inspection form completed a month and a half *after* Plaintiff fell, Exhibit 3 (Defendants' Fourth Supplemental Responses to Plaintiff's Request for Production and Autumnwood 153), and finally, that the Defendants have not produced the documents, though they admit possessing them, that would prove or disprove actual notice, **despite being specifically ordered by this Court to do so after two motions to compel filed by Plaintiff.** Exhibit 4 (E-Mail from Defense Counsel Confirming Only One Inspection Report) (emphasis added). The inference(s) which can be drawn, and which Plaintiff would contend are the actual answers to such inquiry, are simple, that the records which they refuse to produce and the condition they spoiled would have established actual notice.

It is well settled that the doctrine of spoliation allows the jury to draw an adverse inference against a party who "fails to preserve [or otherwise disclose] material evidence for trial." *See Garrison v. Target Corp.*, 838 S.E.2d 18, 25 at FN 4 (Ct. App. 2020), citing *Stokes v. Spartanburg Reg'l Med. Ctr.*, 629 S.E.2d 675, 679 (Ct. App. 2006). Ultimately, our courts have opined that it is for the jury "to determine whether the party has offered a satisfactory explanation for [the] failure [to preserve or disclose]," and if the jury "find[s] the explanation unsatisfactory, [it is] permitted to draw the inference that the evidence would have been unfavorable to the party's claim." *Id.* Thus, taking the inferences which a jury could reasonably draw from the record evidence, in the light most favorable to Plaintiff, requires the Court to recognize the existence of genuine issues of material fact as to whether the Defendants intentionally spoiled and withheld evidence in an effort to relieve themselves of liability by creating the illusion that they did not have actual notice of the subject condition.

Because the applicable legal standard, requires the Court to examine the evidence *and the inferences which can be drawn therefrom* in the light most favorable to Plaintiff, the Court erred in granting Summary Judgement and should reverse its Order. The permissible inference(s) which the Court's Order inexplicably ignores, present the very definition of genuine issues of material fact. A jury is entitled to consider why the Defendants repaired the subject condition *after* they received Plaintiff's request to inspect and why the Defendants refuse to turn over documents they admit they have. Regardless of the answers to those questions, summary judgement is precluded precisely because those questions exist, and this Court should reverse its prior ruling.

Finally, in failing to enforce the discovery order in this case by excusing the Defendants from production of documents they admittedly have which may establish the element of this case upon which this Court grants summary judgment, the discovery rules and enforcement mechanisms are gutted for future cases in this County. Likewise, by giving the Defendants a pass for spoliating evidence, after admittedly receiving requests to inspect, this behavior is encouraged in the future. Summary judgment in this case is a reward for evidence spoliation and discovery abuse.

II. The Defendants owed Plaintiff a duty to maintain the common areas which was independent from any which arose pursuant to the lease agreement and the Residential Landlord-Tenant Act.

It is also important to note that *Odom* expressly addressed the question of “whether a landlord can be liable for injuries inflicted upon an invitee or licensee when the injury occurs in the common area of an apartment complex. See *Odom*, 714 S.E.2d at 546. The Supreme Court noted that, while it is true that a landlord is typically not liable for injuries on *leased property*, [*Odom*] was distinguishable because, similar to the case at bar, the subject injury occurred in a common area. *Id.* at 546-47. Inarguably, *Odom* held that a landlord could be found liable for

injuries to an invitee or licensee suffered in the common area where the landlord had actual knowledge of the danger which caused the injury. *Id.* Despite this acknowledgment, there is nothing to suggest that the Supreme Court, in its holding, imposed a requirement of written notice upon a select classification of persons merely because an invitee or licensee of a common area also happens to be a tenant. See *Odom*, 714 S.E.2d at 546-47. Controlling authority supports the proposition that an individual can occupy multiple statuses or classifications in analogous factual presentations. See *Landry v. Hilton Head Plantation Property Owners Ass'n*, 452 S.E.2d 619, 621 (Ct. App. 1994) (finding a homeowner occupied the status of an invitee when on common areas which were maintained and controlled by property owner's association).

While South Carolina law only recognizes four classes of persons who enter upon premises, adult trespassers, invitees, licensees, and children, *Sims v. Giles*, 541 S.E.2d 857, 861 (Ct. App. 2001), much like the Court of Appeals observed in *Landry*, there is no need to assess whether Plaintiff is a child or adult trespasser. *Landry*, 452 S.E.2d at 621. An invitee is defined as a person who enters onto the property of another at the express or implied invitation of the property owner, *Giles*, 541 S.E.2d at 861-62, citing *Good v. St. Stephens United Methodist Church*, 494 S.E.2d 827, 831 (Ct. App. 1997), and the classification is limited to those persons who enter or remain on property upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make them safe for their reception. *Id.* at 862, citing Restatement (Second) of Torts § 33, comment a (1965).

Within the category of invitees there are public invitees and the business visitors. While a public invitee is one who is invited to enter or remain on the land as a member of the public for a purpose which the property is held open to the public, a business visitor is a person whose purpose for being on the property is directly or indirectly connected with business dealings with the owner.

Compare Giles, 541 S.E.2d at 717, citing *Goode*, 494 S.E.2d at 831, and Restatement (Second) of Torts § 332(2) (1965), and *Creech v. South Carolina Wildlife and Marine Res. Dep't*, 491 S.E.2d 571 (1997), with *Goode*, 494 S.E.2d at 831, *Parker v. Stevenson Oil Co.*, 140 S.E.2d 177, 279-280 (1965), *Hoover v. Broome*, 479 S.E.2d 62, 65 (Ct. App. 1996), Restatement (Second) of Torts § 332(3) (1965). Licensees, on the other hand, are persons privileged to enter or remain upon land by virtue of the possessor's consent. *Giles*, 541 S.E.2d at 863, citing *Neil v. Byrum*, 343 S.E.2d 615 (1986), Restatement (Second) of Torts §330 (1965). When a licensee enters onto the property of another, the primary benefit is to the licensee, not the possessor. *Hoover v. Broome* 479 S.E.2d 62 (Ct. App. 1996), *Landry v. Hilton Head Plantation Prop. Owner's Assn, Inc.*, 452 S.E.2d 619 (Ct. App. 1994).

Ultimately, the question of whether Plaintiff's independent status is that of an invitee or licensee is a question of fact for the jury, *See Giles*, 541 S.E.2d at 870-71, citing *Philibert v. Benjamin Ansehl Co.*, 119 S.W2d 797 (1938). However, the facts of this case support Plaintiff's status as an invitee and there is certainly, at least, a genuine issue of material fact as to whether Plaintiff was an invitee or licensee. The subject lease only provided Plaintiff a right to possess and occupy the internal confines of "the apartment known as 306 a 2 bedroom apartment (Premises) located at 207 Topsider Court #306, Lexington, SC, 29072.". Exhibit 1 (Autumnwood-Gallo Lease) P. 1. Further review of the lease demonstrates that the Defendants reserved sole authority and control of all common areas for themselves. *Id.* at P. 2, Paragraph 14, P. 5, Paragraph 8, P. 5, Paragraph 19, and P. 5, Paragraph 21. Through the subject lease Defendants mandated that Plaintiff would not, "obstruct or use for any purpose other than ingress and egress the sidewalks, entrances, passages, courts, vestibules, stairways and halls. Exhibit 1, P. 5, Paragraph 10. Taken as a whole, these provisions of the subject lease make clear that Plaintiff possessed either an

express or implied invitation to utilize the subject common area despite the fact that the Defendants reserved total authority and control over the area.

That the subject common area carried with it an implied assurance that reasonable care was used to ensure Plaintiff's safety is also clear. The Defendants own advertising statements entice active adults over age fifty-five (55), to come and live their best life at their *care free* facility. Exhibit 5 (Defendants' Facebook Post). In addition to the Defendants' advertisements, the subject lease provides that Defendants will be responsible for completing repairs to common areas while Plaintiff may be made to bear the cost. Exhibit 1, P. 2, Paragraph 14, ll. 4-5. Taken together, the Defendants' statements and the promises made to him in the subject lease make clear that there is at least a genuine issue of material fact as to whether Plaintiff's invitation to utilize common areas carried an implied assurance of reasonable care.

An invitor owes to an invitee the duty of exercising reasonable or ordinary care for his safety, to warn invitees of latent or hidden dangers of which the landowner has knowledge or should have knowledge and is liable for injuries resulting from the breach of such duty. See *Giles*, 541 S.E.2d at 863, citing *Larimore*, 531 S.E.2d 535 (Ct. App. 2000); See also *Giles*, 541 S.E.2d at 863, citing *Callander v. Charleston Doughnut Corp.*, 406 S.E.2d 361 (1991). Whereas a licensor must use reasonable care to discover the licensee, to conduct activities upon the land so as not to harm the licensee, and to warn the licensee of any concealed dangerous conditions.... *Singleton v. Sherer*, 659 S.E.2d 196, 204 (Ct. App. 2008), citing *Landry v. Hilton Head Plantation Property Owners Ass'n Inc.*, 452 S.E.2d 619, 621 (Ct. App. 1994), and *Neil v. Bynum*, 343 S.E.2d 615 (1986); *c.f. Sherer*, 659 S.E.2d at 204, citing 18 S.C. Jur. Negligence § 44 (2007).

In *Cook v. Food Lion, Inc.*, 491 S.E.2d 690 (1997), the Court of Appeals considered the question of whether an invitor could be held liable for an invitee's fall on a floor mat which was

placed by the invitor's employees. *Id.* at 691. In *Cook*, the Court of Appeals opined that an invitee must either show that the possessor created the condition or had notice of it. See *Id.* citing *Anderson v. Racetrac Petroleum, Inc.*, 371 S.E.2d 530, 531 (1988) (citations omitted). Given that the Supreme Court did not expressly alter common law classifications through its holding in *Odom*, if Plaintiff's contention that he is an invitee is correct, Plaintiff need only demonstrate that the Defendants created the condition or possessed actual or constructive notice of the condition. See *Odom*, 714 S.E.2d at 546-47, and *Cook*, 491 S.E.2d at 691 (citations omitted).

It is notable the Defendants' through their 30(b)(6) testimony, admitted to constructing the subject common area. Specifically, in response to questioning regarding the production of drawings or schematics of the subject hallway, Defendants represented that they "could ... obtain [the schematics] from the construction company. Exhibit 2 Defendant Autumnwood/Intermark's 30(b)(6) Deposition, May 23, 2024, Pp. 49-50, ll. 22-3. Pushed further, the Defendants crucially admitted that, "...the owner [of the subject property] is the construction company as well..." *Id.* at P. 83, ll. 22-25. A review of the Lexington County GIS Map establishes that the owner of the subject common area is the named Defendant, Autumnwood Crossing, L.P. Exhibit 6 (Printout of GIS Information).

Viewing the record evidence in the light most favorable to Plaintiff results in the inevitable conclusions that there are genuine issues of material fact as to whether Plaintiff was an invitee or licensee, whether Defendants invitation to Plaintiff for common area utilization carried an implied assurance of reasonable care, which duty the Defendants owed to Plaintiff as either an invitee or licensee, whether the Defendants created the condition, whether the Defendants had actual or constructive notice of the condition, and whether the Defendants breached the respective and independent duties owed to Plaintiff by virtue of his status as a invitee or licensee. The well-

founded existence of these questions of material fact inarguably preclude the grant of Summary Judgment which this Court afforded Defendants and should thus be overturned.

III. The code sections cited by this Court do not impose a requirement for actual or written notice upon Plaintiff, because he did not seek to invoke the remedies available to him under the same.

Plaintiff also argues that this Court's Order misapplies the notice requirements imposed upon the remedies available to Plaintiff under S.C. Code §§ 27-40-610 and 630, (1976) *as amended*, to Plaintiff's action for negligence. Section 610 and 630's notice requirements are limited in scope by the plain text of the statutes and are inapplicable because Plaintiff never sought remedies stemming from these statutory grounds. Additionally, Plaintiff did not sue Defendants for breach in their capacity as his landlords under the subject lease agreement. See generally Plaintiff's Summons and Complaint.

S.C. Code § 27-40-610, (1976), *as amended*, only permits a tenant to terminate their lease if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with S.C. Code § 27-40-440, (1976) *as amended*, which materially affects health and safety or the physical condition of the property. S.C. Code § 27-40-610 (1976), *as amended*. However, before the tenant may terminate his lease, he must first deliver written notice to the landlord specifying the acts and omissions constituting the breach and advising that the rental agreement will terminate upon a date not less than fourteen days after receipt should the specified breach not be remedied. *Id.* S.C. Code § 27-40-630, (1976), *as amended*, simply provides tenants with the ability to "procure reasonable amounts of required essential services," or "recover damages based upon the diminution in the fair-market rental value of the dwelling unit" where a landlord is negligent or wilful in failing to provide essential services as required by the rental agreement or S.C. Code § 27-40-440 (1976), *as amended*.

In this case, Plaintiff never sought to terminate his lease, or to procure reasonable services on the grounds of a breached lease or failure to comply with the mandates of Section 440 of the Residential Landlord-Tenant Act. See generally Plaintiff's Summons and Complaint. Nor did Plaintiff seek to recover damages based upon the diminution in the fair-market rental value of the dwelling unit for a breach of the lease or a failure under Section 440 of the Residential Landlord-Tenant Act. *Id.* Conversely, Plaintiff sought monetary damages for a negligent failure of the Defendants' duty to inspect, discover, warn, and maintain the common areas which were adjacent to the leased premises in his capacity as an invitee to the Defendants' common areas. *Id.*

Because Plaintiff did not seek the remedies provided for by S.C. Code §§ 37-40-610 and 630, the notice requirement provided by those code sections simply did not apply. The plain text of S.C. Code § 37-40-630(d) provides evidence of the limitation of the scope of the notice requirements provided by Sections 610 and 630. Specifically, under Section 630, subsection (d), the text clearly provides that the "[r]ights of the tenant under this *section* do not arise until notice is given...." S.C. Code § 27-40-630(d) (1976), *as amended*. Even if Plaintiff's suit did arise solely under the Residential Landlord-Tenant Act, a fact Plaintiff does not concede, nowhere in the text of Section 630, subsection (d) does the statute condition the rights of the tenant under "the Act" as a whole, upon receipt of some written notice as this Court's Order, would suggest. This Court should not read into law, where it clearly does not exist, a requirement that tenants engage in the inspection and notification of dangerous conditions, in some cases which are concealed, on property they do not own, control or have a legal right to access absent invitation or license. Such a holding would create a plainly absurd result that runs contrary to good public policy and well-established law in this State.

IV. The Court granted summary judgment on grounds not moved upon by Defendant, thereby depriving the Plaintiff of adequate opportunity to argue and defend the motion.

The Defendants moved for summary judgment on the grounds that:

In the present case, Defendants did not have actual notice of the condition complained of prior to the Plaintiff's fall. Therefore, under the explicit terms of the Act, Defendants are entitled to judgment as a matter of law in their favor."

Defendant's Motion for Summary Judgment (emphasis added). This motion correctly stated the applicable standard from *Clea v. Odom*, which is actual notice, and which the Plaintiff was utterly deprived of the opportunity to prove due to the spoliation and discovery issues discussed above. However, in the Order signed by the Court, the Court reads a written notice requirement which was (a) not the subject of the Defendant's motion, (b) not the standard set forth in the law the parties agreed controls – *Clea v. Odom*, and (c) not argued to the Court as exclusive to actual notice. Accordingly, the Court's Order has gone beyond the scope of the grounds moved upon by Defendants and this Court should rescind its Order to grant a new hearing to consider argument on this new theory for summary judgment.

CONCLUSION

For the reasons outlined above, Plaintiff respectfully requests the Court vacate the Order Granting Summary Judgement pursuant to Rule 59(e), SCRCp, and permit this matter to be tried to a jury for resolution of the aforementioned issues of fact and such other relief as deemed fair and just by a jury and the Court.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,

s/Joseph O. Thickens

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
March 13, 2025

EXHIBIT 1

AUTUMNWOOD-GALLO LEASE

INTERMARK MANAGEMENT CORPORATION

Section 42 Lease Agreement

STATE OF SC

COUNTY OF LEXINGTON

This agreement (Lease) is entered into this 03/14/2022 whereby Autumnwood Crossing, (Landlord) hereby leases unto George L Gallo (Tenant) both jointly and severally the apartment known as 306 a 2 bedroom apartment (Premises) located at 207 Topsider Court #306, Lexington, SC, 29072, Lexington, SC 29072 for a period of 12 months commencing on the 04/01/2022 and ending on the 03/31/2023 for a total sum of \$8,700.00 including base rent plus options (see addenda) payable in advance, without notice, deduction, set off, or demand on the first day of each month in equal monthly installments of \$725.00. A pro-rated rent amount of \$ 725.00 will be paid for the period to 04/01/2022 to 04/30/2022. The rent is payable to Autumnwood Crossing. After the close of business on the 5th day of the month, a late fee of \$ 75.00 will be charged. **IF RENT IS NOT PAID BY THE CLOSE OF BUSINESS ON THE 10TH OF THE MONTH, LANDLORD MAY PROCEED TO TERMINATE THIS AGREEMENT FOR NON-PAYMENT OF RENT, IN WHICH CASE, COSTS INCURRED BY SUCH ACTION SHALL BE CONSIDERED ADDITIONAL FEES TO BE PAID BY THE TENANT. ALL PAYMENTS MUST BE PAID IN ELECTRONIC FORM AND INITIATED IN THE ONLINE PORTAL SYSTEM.**

Resident agrees that the above specified rent may be increased during the initial term and/or any renewal term of this Lease. Landlord agrees that the resident will be provided with a thirty (30) day written notice of any such increase. Any such increase will be based on allowable landlord tenant law.

Concession Agreement: Tenant is receiving \$ as a concession. In the event of early lease termination in which a concession was given, tenant acknowledges and understands that they will be required to reimburse total concession amount. This amount is due in full upon vacating.

This Lease is subject to the following terms, covenants, community policies, rules and regulations which the Landlord and Tenant (collectively referred to as "The Parties") agree to keep and perform.

LANDLORD AND TENANT AGREE:

1. Security Deposit: Landlord hereby acknowledges receipt from Tenant the sum of \$ 250.00 paid prior hereto, to be held as security for the faithful performance by the Tenant of the covenants, conditions, community policies, rules and regulations contained herein. The Security Deposit, or any portion thereof, may be withheld for unpaid rent, damage due to default of Lease or for damage to the Premises by the Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access in excess of ordinary wear and tear. It is understood and agreed, however, that irrespective of said Deposit, rent shall be paid when due, in accordance with the terms hereof. The Tenant shall have the right to be present and Landlord hereby recommends Tenant do so when the Landlord inspects the Premises after the Tenant quits and surrenders the Premises. The amount withheld for damages or cleaning charges will be based on Addendum D - Move-out Cost Schedule and/or reasonable charges determined by the Landlord for cleaning or repairs. After Tenant vacates the Premises, thus returning possession to the Landlord, the Landlord will not allow the prior Tenant the option of contracting out cleaning or repairs to the Premises for any reason. The Security Deposit or remaining portion thereof may be refunded after Premises are vacated by Tenant provided that (a) Tenant remains in possession of the Premises for full term of the Lease, (b) Tenant gives Landlord the proper sixty-day written notice of intent to vacate, c) Premises are left in the condition existing at the commencement of this Lease, ordinary wear and tear excepted, (d) all keys are returned to Landlord, and (e) all rent and utility fees due are paid in full. Tenant shall not be entitled to any interest on said Security Deposit unless agreed to. In the event of a sale of the Premises by Landlord, the Landlord shall have the right to transfer the Security Deposit to the vendee, or other transferee. The Security Deposit shall not be mortgaged, assigned or encumbered by Tenant without the prior written consent of Landlord and any attempt to do so shall be void. Security Deposits may be held in a non-interest bearing escrow account. Any refund of the Security Deposit will be mailed to the address given in writing by Tenant and made payable to **all parties** listed as Tenant. Any variation from this policy **must** be requested in writing by Tenant(s).

2. Possession Prior to Commencement of Lease: If permission is given to Tenant to enter into possession of the Premises prior to the date specified for the commencement of the term of this Lease, and/or to occupy any apartment of Landlord other than the Premises at any time, Tenant agrees that such occupancy shall be deemed to be under all of the terms, covenants, community policies, rules and regulations of this Lease, with the rent provided for under this Lease to be apportioned for such period of occupancy unless otherwise agreed to between the Parties.

3. Bank Returned Checks: Rent payments made by ACH or check which do not clear the bank subject the Landlord to additional expenses for bookkeeping and clerical services. Therefore, Tenant will pay to Landlord Autumnwood Crossing \$35.00 for each bank returned item along with late charges and legal fees. Tenant may be subject to delinquent rent proceedings as well as criminal prosecution for the unpaid bank returned items. Certified funds will be required on all future payments, unless documentation is provided of error on the part of the bank.

4. Definition of Rent: The periodic monthly payment shall be \$ 725.00 per month and is comprised of the following: Base Rent of \$ 725.00 per month and options (see addenda) of \$ per month. The Base Rent on the Premises is determined based upon the median income for LEXINGTON County, which is adjusted annually by HUD. All other payments from Tenant to Landlord required under the terms of this Lease, including attorneys' fees and court costs, shall be deemed additional fees due and payable upon request. Upon promulgation by HUD of the new income tables, Landlord may increase rents pursuant to the program limits upon 30 days notice to Tenant of any such increase.

5. Administrative and Attorney Fees: In the event Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access violate any term or provision of this Lease, the community policies or the rules and regulations thereof, and the Landlord pursues legal action because of any such violation, the Tenant shall pay such reasonable administrative or attorney fees, as allowed by the site's applicable governing program regulations. Tenant shall be liable for such filing fees, whether or not Landlord institutes legal proceedings, as allowed by the site's applicable governing program regulations. However, where legal proceedings are instituted by Landlord against Tenant, and said proceedings result in a monetary judgement in favor of the Landlord, those reasonable fees for which Tenant shall be liable to Landlord shall not be less than 15% of said

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6. Alterations: No repairs, alterations or changes in or to said Premises or the fixtures or appliances contained therein, shall be made except after the written consent of Landlord. Tenant shall not paint or wallpaper any portion of the Premises without prior written consent of Landlord and shall be responsible for the cost of restoring said Premises to the original condition if any modifications are made.

7. Compliance with Community Policies or Rules and Regulations: The Tenant acknowledges receipt of the community policies or rules and regulations and further acknowledges that the same shall be considered a part of this Lease. The Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access will observe and comply with the community policies or rules and regulations set forth in this Lease, and with such further community policies or rules and regulations as the Landlord may adopt. It is further agreed that the Landlord may modify these community policies or rules and regulations, and that a violation of the community policies or rules and regulations is a default under this Lease.

8. Waiver: The failure of the Landlord to insist upon strict compliance with any of the covenants, policies, rules or regulations of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, policy, rule, regulation or option, but that all covenants, policies, rules, regulations or options shall remain in full force and effect. Landlord shall not be liable or responsible to Tenant for the violation of any covenant, policy, rule or regulation in any other Lease by any other Tenant, nor does knowledge by Landlord of violation or breach constitute a waiver.

9. Lease Violations: If any of the representations made in Tenant's Lease Application are misleading or untrue, or if Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access violate any provision of this Lease (including the covenant to pay rent) or any rule or regulation herein imposed, then Landlord may treat such representation or Lease violation as a default under the terms of this Lease, with Tenant's possession of the Premises terminating on the date specified in Landlord's notice. Under such circumstances, Landlord may re-enter and take possession of the Premises by utilizing applicable law. If Tenant's possession of the Premises should be so terminated, or if the Premises should otherwise become vacant during the term of this Lease, or any renewal or extension hereof, the Tenant will remain liable to the Landlord for the rent through what would have been the expiration date of this Lease, or any renewal or extension thereof, had Tenant's possession not been so terminated; and shall further remain liable for such other damage sustained by the Landlord due to Tenant's breach of Lease and/or Tenant's termination of possession of the Premises so long as such liability is not expressly prohibited by applicable law. Such other damages shall include, but are not limited to costs incurred in recovering possession of the Premises, costs incurred in reletting the Premises (such as rental commissions, administrative expenses and proportionate share of advertising expense), utility costs of the Premises while same remain vacant, and costs incurred in maintaining and redecorating the Premises.

10. Interruption of Service: The Tenant will receive no rent reduction, nor will Landlord be liable to Tenant, due to repairs or interruption of services to utilities, appliances or equipment in or about the Premises or due to defects in the Premises not caused by Landlord's fault, negligence or other misconduct; or due to the inability of Landlord to obtain proper fuel, utilities, or repair/replacement parts. In case it shall become necessary at any time, from accident or repairs, or to improve the condition or operation of the Premises, or any equipment or utilities appertaining thereto, Landlord may stop or curtail the operation of said equipment or utilities, but in such case due diligence shall be used to complete the work.

11. Right of Entry: The Landlord has the right to enter the Premises without notice to Tenant any time by master key or by force, for emergency purposes, if necessary, to inspect the Premises, to make repairs/alterations in the Premises or elsewhere on Landlord's property, or to enforce any provision of this Lease. A 24-hour written notice of entry will be provided to Tenant to show the Premises to prospective tenants or purchasers without being liable for prosecution therefore, or damages by reason thereof. Tenant's refusal of Landlord's right of entry will constitute a violation of the Lease.

12. Re-entry of Premises: In the event Tenant abandons the Premises or is required to vacate the Premises due to Landlord exercising right of re-entry upon Tenant's default of Lease, then the Landlord shall have the right to enter the Premises for the purpose of making alterations and repairs, and may re-let the Premises for a term which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, or any renewal or extension thereof, all without relieving the Tenant of the liabilities imposed by applicable law and this Lease. Landlord shall further have the right, without further notice, to sell or otherwise dispose of any personal property left in or about the premises or storage area by the Tenant after the Tenant has vacated in accordance with applicable state and local law.

13. Abandonment: The abandonment of the Premises shall be deemed to have occurred when the Tenant has removed the bulk of Tenant's furnishings from the Premises and utilities have been terminated.

14. Repairs: The Landlord shall be responsible for repairs to the Premises, its equipment and appliances furnished by Landlord, except that Tenant agrees to pay the cost for all labor and materials for repairs or replacement if the damage or malfunction to the Premises, its equipment or appliances or any other part of the apartment complex is due to the fault, omission, negligence or other misconduct of Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access. Cost may include damages and cleaning for common areas.

15. Damage to Premises By Fire or the Elements: In case of injury to the Premises by fire or the elements, (not caused by the fault, omission, negligence or other misconduct of Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access) the Landlord will repair the damage, the rent being suspended only for such time as the Premises, in the sole opinion of Landlord, shall remain untenable; but if the Premises are so damaged that the Landlord shall decide that it is not advisable to repair, this Lease shall terminate and the Tenant shall only be liable for rent to the date of injury.

Tenant shall be responsible for insuring their own possessions against damage or loss of any kind. Tenant hereby releases Landlord from liability for loss or damage occurring on or to the Premises of which they are a part or to the contents of either caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and waives all right of recovery for such loss or damage. Misconduct lawfully attributable to Landlord, which causes the casualty-giving rise to the loss or damage, shall not be excused under the foregoing release and waiver.

16. Condemnation: Tenant hereby waives any injury, loss or damage, or claim therefore against Landlord resulting from any exercise of a power of eminent domain of all or any part of the Premises or surrounding grounds of which they are a part. All awards of the condemning authority of the taking of land, parking areas, or buildings shall belong exclusively to Landlord. In the event substantially all of the Premises shall be taken, this Lease shall terminate as of the date the right to possession vests in the condemning authority and rent shall be apportioned as of that date. In the event any part of the property

and/or buildings of which the Premises are a part (whether or not the Premises shall be affected), shall be taken as the result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of the Landlord, constitute an economically feasible operating apartment. Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Lease as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date.

17. Utilities/Appliances: Charges for utilities used or consumed in the Premises during the term of this Lease, and any renewal or extension thereof, shall be paid as follows:

Utilities

Electricity: Tenant

Gas: N/A

Water: Landlord

Sewage: Landlord

Cable: Tenant

Trash: Landlord

Appliances

Range: Landlord

Range hood: Landlord

Refrigerator: Landlord

Dishwasher: Landlord

Microwave: Landlord

Other: N/A

For those utilities, the cost of which is the Tenant's responsibility, the Tenant shall promptly pay all charges for their use or consumption in the Premises together with all taxes, levies, or other charges on such utilities. If the Tenant fails to establish personal utility accounts for the above selected utilities on or before the date of the initial lease contract, Tenant will be charged for all services used and a minimum \$25.00 service fee per month until accounts are established. Tenant will not be permitted to continue occupancy without continued electricity, water, sewer and/or gas service.

18. Default: In addition to Landlord's remedies pursuant to Section 9 herein, in the event Tenant shall vacate or abandon the Premises at a time when rent is due and unpaid, or in the event of non-payment of rent by the close of business on the 10th day of the month or any breach of the provisions, conditions or covenants of this Lease by Tenant as set forth herein, Tenant's right of possession of the Premises shall terminate forthwith, with or without notice or demand, and the retention of the Premises thereafter by Tenant shall constitute an unlawful detainer, trespass and/or holding over the Premises. In such event, at the election of the Landlord, this Lease shall terminate. Tenant shall become a "holdover tenant" thereby permitting Landlord the option to declare the entire rent for the balance of the remaining term of this Lease, or any part thereof, due and payable and to proceed to collect the same by distress or by the exercise of other available legal remedies or in addition, exercise any or all remedies provided for in this Lease, including, but not limited to, the retention of Tenant's Security Deposit. Tenant shall be obligated and liable to Landlord for all court costs and reasonable attorneys' fees incurred by Landlord in the enforcement of this Lease and the provisions thereof. All rights of Landlord shall be cumulative and no right shall operate as a waiver or an exclusion of any other right afforded Landlord hereunder, or by applicable state or local law.

19. Notice As Required By Law: Service of notice from Landlord to Tenant as referred to herein shall be mailed or delivered to Tenant at the Premises or may be posted on the front door of the Premises. Notice shall be deemed given one (1) day after mailing or on the date of delivery or posting.

20. Agency: If any employee of Landlord's at Tenant's request, moves, handles, or stores anything, or drives or parks Tenant's motor vehicle, then and in every case, such employee shall be deemed Tenant's agent, and Landlord shall not be liable for any loss, damage or expense in connection therewith.

21. Termination or Renewal: Except as otherwise set out herein, Tenant may terminate this Lease only by hand delivering or sending by registered mail, return receipt requested, to the property address on Page 5 of this lease, written notice at least sixty (60) days before the expiration of the Lease of an intention to vacate or terminate at the end of this Lease. Upon the termination of this Lease, whether by Tenant, Tenant agrees to quietly and peacefully surrender possession of the premises to Landlord. Should tenant not surrender the premises upon termination or expiration of the lease term, tenant will become a holdover tenant and be subject to all Landlord remedies prescribed under state law for such holdover status. Tenant is responsible for returning keys upon move-out. A pro-rata rent amount will be charged until date keys are returned to Landlord or it is determined, according to Section 13, that the premises are abandoned.

In case any tenant shall give notice in writing of his intention to vacate or quit the premises rented by him and shall not accordingly deliver up the possession at the time in such notice contained, the tenant, his executors or administrators, shall pay to the landlord a fee double the rent which he otherwise would have been liable to pay. But nothing herein contained shall be construed to give such tenant a right to discontinue or determine his tenancy by such notice in any other manner than according to the laws of force at the time of giving such notice.

22. Peaceful Enjoyment: The Landlord covenants that the Tenant on paying the rent and performing the covenants hereof, shall and may peaceably and quietly have, hold and enjoy the Premises for the term mentioned, without hindrance or interruption by the Landlord except as provided for herein.

23. Buy-out Clause: In the event the Tenant cannot fulfill the Lease term obligations, the Landlord will release the Tenant provided that the Tenant satisfies all of the following conditions: 1) provide sixty (60) days written notice, 2) pay rent through the notice period, 3) pay a break lease fee equal to one month's rent, 4) forfeit the Security Deposit, 5) complies with #1 (c) (d) (e). Tenant will be billed on all possible damage and cleaning charges as the Security Deposit has been forfeited as a condition of Lease buy-out. In the event of a military transfer the break lease fee and the forfeiture of the Security Deposit will be waived if official documentation verifying the transfer is provided.

24. Liens: At the expiration of this Lease, or any extension hereof, or upon its earlier termination for any cause whatsoever, all rent due, or to become due during the term, must be paid in full before any goods or chattels may be removed from the Premises. Such rents due or to become due shall constitute a lien upon such goods and chattels as state law applies.

25. Occupants: Only those persons designated in this Lease or as agreed to in writing by Landlord shall reside in the Premises. For purposes of this Lease designated occupants are:

Occupants: George L Gallo

26. Liability: Landlord shall be under no liability to the Tenant for damages or losses due to the discontinuance or interruption of heat, water, hot

water, or of any other service, or of the inoperability of any appliance or fixture provided by the Landlord. Landlord shall not be liable for loss or damage to property of Tenant caused by rain or water that may leak or flow from any part of the Premises through any defects in roof, plumbing, or any other source; and Landlord shall not be responsible for loss or damage to any property that is stored in any storage area or storage facility furnished by Landlord for the convenience of the Tenant. Tenant shall be liable for and shall hold Landlord harmless from and against any claims, damages, liability, attorneys' fees and expense due to loss of life, personal injury, and/or property damage of said Tenant, Landlord, other Tenant, or anyone else, if such loss of life, damage or injury is due to the act or neglect of Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access or if such loss of life, damage or injury be due to any failure of the Tenant to report in writing to the Landlord any defective condition which the Landlord would be required to repair under the terms of this Lease on notice from Tenant. Tenant shall be responsible for damage caused by Tenant's misuse or negligence in the operation or use of any appliances, plumbing, electrical or mechanical equipment provided on the Premises. A personal property of Tenant upon the Premises shall be there at the risk of Tenant only, and Landlord shall not be liable for any damage thereto or the thereof.

27. Tenant Indemnification: Tenant agrees to indemnify and save Landlord harmless from all liability, damage or expense including attorney's fees incurred by Landlord as a result of death or injury to person, or damage to property (including the Premises) unless the same is caused by Landlord's gross negligence or willful misconduct or for which Landlord has legal obligation.

28. Tenant requirements for Section 42 of the IRS code: Tenant acknowledges that the Autumnwood Crossing are operated pursuant to the rules and regulations of the Federal Low Income Housing Tax Credit program (the "Program"). The Program provides for a specific maximum monthly rent which may be charged for the Premises, which amount is subject to annual adjustment based upon median incomes as determined by HUD. The Program also requires that the Property be leased to "Qualified Households" as defined by Section 42 of the IRS. At this property, Qualified Households must meet certain income limitations. Tenant agrees to notify Landlord immediately of any material changes in income or number of persons residing within the Premises.

It is specifically agreed that each obligation of the Lease, Application and Certification is material, and that violation of any obligation or misrepresentation of any information shall constitute a breach of the Lease.

Tenant agrees that 120 days prior the expiration, Tenant will submit to Landlord all documentation required by Landlord necessary to insure that Tenant remains a Qualified Household. In the event that Tenant failed to deliver such information or Landlord determines (whether in connection with renewal or otherwise) that Tenant is no longer a Qualified Household under the Program, Tenant agrees to vacate the Premises upon the earlier of the Expiration or upon 30 days written notice from Landlord of non-qualifying status.

Tenant acknowledges that the Autumnwood Crossing are operated pursuant to the rules and regulations of the Federal Low Income Housing Tax Credit program (the "Program"). The Program provides for specific qualification restrictions with respect to occupancy of Program units by full-time students. Tenant acknowledges that qualification to remain as a resident is at all times dependent upon the household meeting all student status requirements. Should Tenant fail to meet all student status requirements, Tenant will be deemed an unqualified tenant and will be subject to immediate eviction. Tenant agrees to notify Landlord immediately of any change in student status by any member of the household.

Tenant acknowledges that the Rent is determined based upon the median income of the LEXINGTON County area as determined by HUD on an annual basis. Allowable rents are published annually by HUD usually in February or March. Upon promulgation of annual allowable rents, Landlord will provide notice to Tenant of any change in the Rent under this Lease Agreement. Such notice shall be at least 30 days in advance of the next rental due date.

RULES AND REGULATIONS:

TENANT AGREES:

1. Vehicle Parking: To obey all parking and speed regulations which Landlord may post and to park only properly tagged, functioning passenger motor vehicles in legal street operable condition in designated parking areas and will not permit nor maintain any commercial vehicles, trucks, trailers, campers or boats in or about the property without written authorization of Landlord. Tenant shall not use any parking areas on Landlord's property for the storage or repair of any motor vehicle and will remove any such vehicles from said parking areas promptly at the request of Landlord. If Tenant shall fail to do so, Landlord may have said vehicle towed away and stored at Tenant's risk and expense. Tenant does hereby further irrevocably constitute and appoint Landlord as Tenant's attorney in fact to remove any vehicle parked in violation of this Lease, and to store the same at the expense of Tenant in such place or places as Landlord may deem proper. Any vehicle parked so as to block or inhibit access to any dumpster or fire lane will be towed at its owner's risk and expense.

2. Noise and Behavior: Not to make or permit any unseemly or disturbing noises or conduct by the Tenant, Tenant's family, agents, employees or guests, and other persons on the Premises with Tenant's permission or whom Tenant allowed access; nor permit any illegal or immoral conduct or obstruct or interfere with the rights, comforts or convenience of other Tenants. Tenant will not knowingly permit to enter the Premises or to remain therein any person of bad or loose character or improper behavior. Tenant further agrees not to conduct, give or permit vocal or instrument instruction or practice in the Premises.

3. Use of Premises: Premises may only be used for residential purposes and not for any type of business. At the end of the term of the Lease, Tenant agrees to surrender the Premises in as good a condition as received, ordinary wear and tear excepted.

4. Surrender of Premises: If the Tenant does not surrender the Premises at the end of the lease term, or any renewal or extension thereof, the Tenant will reimburse the Landlord for all of the damages which the Landlord suffers as a result thereof, and will further indemnify the Landlord against all claims made by any succeeding Tenant against the Landlord founded upon delay by the Landlord in delivering possession of the Premises to said succeeding Tenant, so far as such delay is caused by the failure of Tenant to surrender the Premises.

5. Ceilings: No action may be taken to disturb ceiling material in any way as some apartments may contain a small percent of asbestos containing material.

6. Smoke Detector: The Landlord has installed a minimum of one smoke detector in the Premises. Tenant further acknowledges said detector is in good condition and proper working order as of the beginning of the Lease term. Tenant agrees not to obstruct or tamper with said detector or otherwise permit the detector to be obstructed or tampered with for any reason whatsoever. Tenant further agrees to test the said detector periodically and to report any

malfunction therewith promptly to Landlord. Tenant assumes all liability to test the detector and hereby waives and exonerates Landlord from any and all liability resulting from any defective detector, which Tenant shall not have specifically reported to Landlord.

7. Move-out Damages: Tenant will be liable to Owner for the cost of cleaning and repair or replacement of soiled, missing or damaged items (excluding normal wear and tear) in an amount as described in the Move-out Schedule - Addendum #D to this Lease. Tenant further agrees that the charges set forth in this schedule are reasonable charges for the work or items described therein.

TENANT WILL NOT:

- 1. Pets:** Keep any pets in or about the Premises without the written permission of the Landlord and without paying applicable pet fee and applicable, pet deposit.
 - 2. Appliances:** Install any dishwashers, air conditioners or other appliances on the Premises.
 - 3. Furniture:** Keep any water-containing furniture in the Premises unless documentation provided to Landlord of Renter's Insurance with appropriate coverage for water containing furniture.
 - 4. Walls and Woodwork:** Drive nails into the woodwork or walls of the Premises, so as to cause extensive damage.
 - 5. Wallpaper, Paint and Mirrors:** Apply contact paper, adhesive-backed items, wallpaper or mirrors to the Premises and will not change the type or color of paint within the Premises from that utilized by Landlord without the prior written permission of the Landlord.
 - 6. Portable Heaters:** Store, install or operate, in or about the Premises, unvented, portable, kerosene-fired heaters.
 - 7. Locks:** Change the locks on the doors of the Premises or install additional locks, chains or other fasteners without the prior written permission of the Landlord. The Landlord will retain a passkey to the apartment door. Upon termination of the tenancy, all keys to the Premises must be returned to the Landlord. If Tenant shall fail to comply with this rule, Tenant shall pay Landlord \$35.00 for reimbursement of the cost of re-keying the locks.
 - 8. Personal Belongings:** Leave any personal belongings (including lawn furniture) in the parking areas, public halls, sidewalks, in elevators (if any), lawn areas or other common areas of the apartment community.
 - 9. Appliances & Utilities:** Misuse or overload appliances or utilities furnished by the Landlord.
 - 10. Obstructions:** Obstruct or use for any purpose other than ingress and egress the sidewalks, entrances, passages, courts, vestibules, stairways and halls.
 - 11. Advertising:** Display any advertisement, sign, or notice, inside or outside the Premises.
 - 12. Wires and Antennas:** Install any wire, cable or antenna for radio, television or other appurtenances in or on the Premises.
 - 13. Fire Risk:** Store in the Premises or any storage areas any material of any kind or description that is combustible or would increase the risk of fire.
 - 14. Litter:** Litter or obstruct the public halls or grounds.
 - 15. Law and Insurance:** Do anything that would violate any law or increase the insurance rates on the building in which the Premises are situated.
 - 16. Throwing of Articles:** Throw or allow to be thrown, anything out of the windows or doors or down the passages of the building or from the balconies or patios.
 - 17. Window Sills:** Place anything on the inner or outer edges of the sills of windows.
 - 18. Automobiles:** Hose wash automobiles, except in designated areas. Tenant will not perform mechanical work on boats, automobiles, vehicles, trailers, lawn mowers or any other such item of this nature.
 - 19. Obstruction of Floors, etc.:** Cover or obstruct the floors, skylights, doors, and windows that reflect or admit light into passageways, or into the common areas of any of Landlord's buildings.
 - 20. Cleaning of Rugs, Mops, etc.:** Shake or clean any tablecloths, rugs, mops or other articles in any of the public halls or from any of the windows, doors, or landings of any of Landlord's premises.
 - 21. Canvassing:** Cause the distribution in common areas of the apartment complex, or under apartment doors, of handbills, circulars, advertisement, papers or other matter which, if discarded, would tend to litter such areas. Canvassing, soliciting and peddling in the apartment complex is prohibited. The foregoing shall not prohibit Tenant from using direct mail solicitation or advertising in the regular communications media.
-  (Tenant Initials)
- 22. Sublease:** Assign or sublet said premises, or any part thereof. Only persons listed herein and temporary guests registered with the management office and residing for less than fourteen days may occupy the Premises. Landlord may permit changes of one tenant with the full release of such tenant only upon application by a replacement tenant, verification of credit and income, and written modification of the Lease.
 - 23. Weapons:** The use of rifles, BB guns, pellet guns, slingshots, firecrackers, or any comparable weapon or noisemakers on the Premises are strictly prohibited.
 - 24. Transfers:** Tenant will not move from one apartment to another in the complex without permission of the Landlord.
 - 25. Pianos** will not be allowed in apartments located on second floors. Music lessons are not permitted, and musical instruments will be played in due consideration of other residents.
 - 26.** Tenant shall neither deliberately nor negligently destroy, deface, damage, impair, or remove any part of the Unit or Premises, or permit or to fail to prevent any person in the Unit or on the Premises to do so (whether known or unknown by the Tenant). Tenant shall not permit residents or guests to play or loiter in public halls, stairways, elevators (if any), laundry rooms, or storage areas. Parents, guardians or caretakers are responsible for the appropriate supervision of household members and guests, particularly in areas in which they may endanger themselves. Tenant shall immediately notify the Landlord as to any damages, which occur and shall reimburse the Landlord for damages, which occur within thirty (30) days of receipt of written statement from Landlord.

TENANT WILL:

- 1. Garbage & Rubbish:** Place Tenant's garbage and rubbish for disposal only as Landlord directs.
- 2. Use of Facilities:** Use all facilities which Landlord provides for Tenant's comfort, (if any, including laundry, swimming pool, parking areas and storage areas, none of which facilities are included in the rent) solely at Tenant's own risk, and Tenant agrees that Landlord shall not be responsible for any injury to person or loss or damage to property arising out of Tenant's use thereof, unless the same is caused solely by Landlord's gross negligence or willful misconduct. Use of any of these facilities may be revoked by the Landlord without affecting the remainder of this Lease. If Landlord should provide a

swimming pool for Tenant's use in common with others, Tenant agrees to comply with, and to cause Tenant's family and guests and other persons on the Premises with Tenant's permission or whom Tenant allowed access to comply with, all community policies, rules and regulations relating to the use thereof, which Landlord posts at or near the pool or mails to Tenant. A failure to comply with said community policies, rules and regulations may result, at Landlord's option, in Landlord revoking Tenant's use of the pool.

3. Storage Areas: Only utilize such storage areas, if any, which are assigned to Tenant and shall allow Landlord to enter any storage area improperly utilized by Tenant and to remove the contents thereof, and to dispose of or store the same at the expense and risk of Tenant. Tenant will provide a lock for the storage area utilized by Tenant when applicable.

4. Condition of Premises: Keep the Premises in a neat, clean, good and sanitary condition.

5. Balconies and Patios: Maintain only lawn furniture thereon, provided the same is maintained in a neat and orderly manner. Nothing is to be placed on top of balcony railings, which could fall, inflicting damage to the structure or injury to persons. Use of any charcoal grills or any open cooking on balconies or patios is not permitted.

6. Draperies: Utilize only draperies and window shades, which present a white exterior coloration.

7. Lock-out: Pay a \$100.00 service charge to Landlord each time Tenant locks his or herself out of the Premises, and requests Landlord's assistance in gaining entrance to the Premises after hours posted as of close of business, weekdays, and at any time on weekends and holidays.

8. Crime: Take note that any member of the household being charged and/or found guilty of a crime may result in eviction proceedings.

Tenant hereby acknowledges and agrees the following addendums are part of the Lease agreement:

LIHTC Annual Tenant Income Certification

Addendum A - Community Policies Form #5

Addendum B - Pet Agreement Form #49

Addendum C - Move-in/Move-out Checklist Form #17

Addendum D - Move-out Cost Schedule Form #40

Addendum E - Welcome Letter/Alert List Form #191

Addendum F - Smoke Free Addendum Form #21

Addendum G - Options Addendum Form #226

Addendum H - Drug Free Housing Form #70

Addendum I - Package Agreement Form #120

Addendum J - Mold and Mildew Form #39

Addendum K - Lead Disclosure Form #56

Addendum R Garage/Storage Form #165

Addendum L - VAWA HUD Form #306

Addendum M - Money Order Form #308

Addendum N - Bed Bugs Form #301

Addendum O Satellites Form #267

Addendum P Entrance Authorization Form #27

1. Severability/Partial Invalidity. If any provision of this Lease is held to be illegal, invalid or unenforceable (the "Offending Provision"), the Offending Provision shall be fully severable; this Lease shall be construed and enforced as if the Offending Provision had never comprised a part of this Lease and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the Offending Provision or by its severance from this Lease. Furthermore, in lieu of the Offending Provision, there shall be added automatically as a part of this Lease, a provision as similar in terms to the Offending Provision as may be possible and be legal, valid and enforceable.

2. Entire Lease; Amendment. This Lease, including all Addendums, is the sole and entire agreement and understanding of the parties. All prior agreements, representations or understandings, whether written or oral, shall be merged herein and shall not be construed to change, amend, alter, repeal, or invalidate this Lease. This Lease may be amended only by a written instrument executed by the party against whom enforcement is sought.

3. Captions, Gender and Number. Captions contained in this Lease are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Lease or the intent of any provision hereof. Whenever the context so require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

The provisions of this Lease shall be binding upon and inure to the benefit of the Landlord and the Tenant, and their respective successors, legal representatives and assigns.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written. ATTEST:

LANDLORD

DATE

TENANT

DATE

TENANT

DATE

WITNESS

DATE

PROPERTY ADDRESS:

TELL US
tellus@intermarkmgt.com

09/01/2021

AUTUMNWOOD 006

EEETRONICALLY FILED - 2025 Mar 13 1:41 PM - RICHLAND - COMMON PLEAS - CASE#2022-014005305

EXHIBIT 2

30(b)(6) Deposition of Defendants Autumnwood/Intermark

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) CASE NO: 2022-CP-40-05305
3

4 George Gallo,)
5 Plaintiff,) 30(b)(6)
6 vs.) Deposition of
7 Autumnwood Crossing, LP, and) ANDREA BRADHAM
8 InterMark Management) May 23, 2024
9 Corporation,)
10 Defendants.)
11

12 30(b)(6) Deposition on oral examination of
13 ANDREA BRADHAM, reported by Jennifer L. Cash, Court
14 Reporter and Notary Public in and for the State of
15 South Carolina; said deposition taken pursuant to
16 notice of deposition and in accordance with the
17 South Carolina Rules of Civil Procedure, at
18 Cavanaugh & Thickens, LLC, 1717 Marion Street,
19 Columbia, South Carolina, commencing on Thursday,
20 May 23, 2024, at the hour of 10:01 a.m.
21
22
23
24
25

ANDREA BRADHAM 5/23/2024

1 APPEARANCES

2 Representing the Plaintiff:

3 JOSEPH O. THICKENS, ESQUIRE
4 STEPHEN F. KRZYSTON, ESQUIRE
5 Cavanaugh & Thickens, LLC
1717 Marion Street
Columbia, South Carolina 29201

6
7 Representing the Defendants:

8 DAMON C. WLODARCZYK, ESQUIRE
9 Howser Newman & Besley, LLC
1508 Washington Street
Columbia, South Carolina 29201

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ANDREA BRADHAM 5/23/2024

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18 Plaintiff's Exhibit Number 4

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22 Plaintiff's Exhibit Number 6

23 (July 25, 2022 Letter) 71

24 Plaintiff's Exhibit Number 7

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ANDREA BRADHAM 5/23/2024

1 A. I don't believe he was instructed to do
2 any investigation.

3 Q. All right. All right. Down on 19, which
4 is on page 6, we asked whether there were any
5 policies or procedures for inspection of the
6 premises for the purpose of keeping residents safe
7 while shopping or entering or exiting the mall.
8 Obviously, this is not a mall and so that was a -- a
9 poor question that was probably copy pasted from
10 somewhere else. Let me ask you this. Are there any
11 policies or procedures for inspection of the
12 apartment complex to identify whether there's any
13 unsafe conditions that might trip up a resident?

14 A. Yes. The -- our -- I mean, our policy
15 says that managers and maintenance should walk the
16 property to look for any hazards.

17 Q. All right. Is that a written policy?

18 A. I believe it's in the job description or a
19 policy. Yes. I'm sure it's written somewhere.
20 Yes.

21 Q. Is the job description like something that
22 you post when you're hiring new people for the
23 complex?

24 A. I don't know that it's actually posted
25 anywhere. I mean, there's probably some of it or

ANDREA BRADHAM 5/23/2024

1 Other resources that are there.

2 Q. I understand. Okay. Is anybody from
3 InterMark specifically tasked with going out to the
4 various properties to inspect them?

5 A. Yes. The regional manager is a -- she
6 does two. It's a biannual inspection that she would
7 walk all of the common area and even interiors of
8 selected apartments as well, but, yes.

9 Q. Was that Cheryl Lyons at this time?

10 A. It was.

11 Q. Does the regional manager create any sort
12 of written record of their inspections?

13 A. Yes. Now, it's electronic. At that time,
14 I think it would've been written.

15 Q. All right. How are those records stored?

16 A. We keep them on our drive at the corporate
17 office.

18 Q. In the 2022 timeframe, was that done
19 biannually?

20 A. I believe so. Yes.

21 Q. All right. And how about in 2021?

22 A. I'm going to say I bel- -- yes. There was
23 some sort of an inspection. I know with COVID we
24 were a little bit more lenient with the interior
25 inspections, going into actual residents homes, but

ANDREA BRADHAM 5/23/2024

1 the common area and the exterior of the apartments
2 still should've been documented on an inspection.

3 Q. All right. In 2021?

4 A. Yes.

5 Q. Okay. Was the area where this fall
6 occurred considered a common area?

7 A. Yes.

8 Q. All right. Was the -- were those records
9 that we're talking about, prior to, you know, being
10 kept in the online system, are they in like a file
11 cabinet in paper format or were they scanned in and
12 uploaded to something?

13 A. I don't remember what year we went to more
14 of an electronic format, but they -- like even this
15 one, yes. She would have filled out an inspection
16 form, it would've been scanned in and then saved
17 onto our -- the drive.

18 Q. Okay. And I don't have the written policy
19 in front of me that, you know, kind of sets forth
20 the biannual inspections, but just generally, what
21 is the purpose of those?

22 A. To I mean, make sure that the property is
23 being maintained and upkeep and obviously, to make
24 sure we're aware of any hazards on the property.

25 Q. Okay. And is it -- who are those -- you

ANDREA BRADHAM 5/23/2024

1 hallway that they would be required to check and
2 make sure that there's toilet paper and, you know,
3 other things in there for the residents, so.

4 Q. And I know that is a certain amount of
5 daily walk-throughs. Is there any periodic more
6 formal walk-through or inspection that's performed
7 at those properties?

8 A. Other than the regional manager
9 inspection?

10 Q. Yes, ma'am.

11 A. Are you asking about onsite staff are you
12 asking about outside agencies?

13 Q. Onsite staff.

14 A. There -- like I said, there is a typical
15 -- quarterly our maintenance is responsible for
16 going in and doing preventative maintenance, so that
17 is done every three months where they go into each
18 individual unit and then also, if there were common
19 area -- like common area filters, where they would
20 need to change a filter, that would be documented on
21 that quarterly inspection. There is a daily check
22 where the maintenance checks off that he has picked
23 up the grounds, that he's, you know, checked the
24 laundry vents. I'm using just vagues because I
25 don't have a copy of it in front of me, but there

ANDREA BRADHAM 5/23/2024

1 are some other checklists that say, this is what
2 needs to be done and that they would sign off saying
3 that they're doing those.

4 Q. Okay. For the daily walk-throughs that
5 you've described, are there any like written records
6 created in those walk-throughs?

7 A. Not by the manager.

8 Q. Okay. For the quarterly walk-throughs
9 that were described, there are.

10 A. Yes.

11 Q. And are those records stored anywhere?

12 A. In the same way that I addressed the
13 quarter- -- or other regional inspection. Prior to
14 -- and I'd have to look at the exact date. We
15 actually switched software in 2021, 2022, our
16 property management software, so prior to the new
17 software, they were doing inspections on paper and
18 then just scanning and uploading them into the
19 software. Now, they actually do an electronic form
20 that they fill out and check off, so I actually
21 think that there's probably an electronic form on
22 this property because it's a -- this was only two
23 years ago.

24 Q. Do those things still exist?

25 A. Yes.

ANDREA BRADHAM 5/23/2024

1 Q. I mean, are they kept?

2 A. Yes.

3 Q. Okay. The pre new software and post new
4 software forms, both are still in existence?

5 A. They should be. I don't know how long --
6 three to five years, and especially if there's a
7 lawsuit, we wouldn't have destroyed anything. So
8 there should definitely be copies and then the site
9 -- onsite staff should have the copies too, even if
10 they were on paper, they should've kept the paper.

11 Q. Okay. And I understand that InterMark and
12 Autumnwood don't consider this condition to be
13 dangerous, so I'm asking more of a general question.

14 A. Sure.

15 Q. Is the hallway carpeting in the common
16 areas something that the -- whether it's the
17 maintenance staff, the onsite property manager or
18 even the regional manager, is expected to look at
19 while they're out at the property?

20 A. I don't have a copy of the inspection in
21 front of me, so I can't say that it says exactly
22 those words, you know, make sure that the carpet
23 looks okay, but can I assume that they would, yes.
24 Do I think that they should, yes.

25 Q. Okay.

ANDREA BRADHAM 5/23/2024

1 A. But I don't know that that's on the sp- --
2 on the inspection.

3 Q. Fair enough. All right. Number 20 on the
4 next page, this one I just want to clear up. We
5 asked for all, you know, videotapes and surveillance
6 of this area and it states that all photographs are
7 being produced, which I believe we've talked about
8 the photographs, and it says there is video
9 surveillance of the fall. Are you aware of whether
10 there is video surveillance of this fall?

11 A. I am not aware. I have not seen a video.
12 I was told that there was a video of the property
13 that day, but that it didn't catch the fall.

14 Q. Okay.

15 A. I believe that and -- and again, I may
16 need to go review, but that's -- I am -- I don't
17 know that I have seen a video.

18 Q. Okay. And I know you haven't been inside
19 there, so I'm not going to ask you like, you know,
20 where are the cameras?

21 A. Sure.

22 Q. But are there -- are there schematics or
23 plans that show where cameras are within your
24 properties?

25 A. I'm sure that there are. That would have

ANDREA BRADHAM 5/23/2024

1 -- I mean, this property is not that old, so it is
2 definitely something that I could probably obtain
3 from the construction company.

4 Q. Okay. I noticed that it looked like this
5 wing was actually added in 2019. Is that your
6 understanding?

7 A. The building was constructed.

8 Q. The whole building?

9 A. Yeah. There have not been any
10 modifications to the building since construction.

11 Q. Okay. Got it. So has InterMark been the
12 manager for this property the whole time since it
13 was constructed?

14 A. Yes.

15 Q. All right. Does InterMark actually have
16 access to the, you know, the plans for the building
17 and the contractors who participated in constructing
18 the building?

19 A. Sure. We may not have them at our office,
20 but can obtain them through the ownership in the
21 construction company.

22 Q. Okay. And I guess that's where the
23 Autumnwood Crossing portion comes in. You also have
24 access to the Autumnwood records?

25 A. Definitely.

ANDREA BRADHAM 5/23/2024

1 you have seen that he performed any repairs, other
2 than securing the carpet?

3 A. No.

4 Q. Okay. Do you know whether there was any
5 sort of testing performed to determine whether the
6 bubbled carpet was a hazard to pedestrians prior to
7 it being repaired?

8 A. No.

9 Q. Okay. Did any sort of person who --
10 person who has any expertise in human factors or
11 like the perception of conditions on carpet or other
12 flooring examined the area prior to it being
13 repaired?

14 A. Not that I'm aware of.

15 Q. Okay. Are you aware of whether there was
16 any opportunity presented to Mr. Gallo or anyone on
17 his behalf to perform an inspection of the area
18 prior to the repairs being done?

19 A. I am not aware.

20 Q. Okay. Who would that have been signed off
21 on by?

22 A. I mean, anything like that might've gone
23 to the owner because he is directly involved. His
24 -- the owner is the construction company as well, so
25 we might have gone there in that way to get

ANDREA BRADHAM 5/23/2024

CERTIFICATE OF REPORTER

I, Jennifer L. Cash, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and the time and location stated
on Page 1 of this transcript; that the deponent was
duly sworn to testify to the truth, the whole truth
and nothing but the truth; that the testimony of the
deponent and all objections made at the time of the
examination were recorded by me and were thereafter
transcribed; that the foregoing deposition as typed is
a true, accurate, and complete record of the testimony
of the deponent and of all objections made at the time
of the examination to the best of my ability.

I further certify that I am neither related
to nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 9th day of July, 2024, at Lexington
County, South Carolina.

Jennifer L. Cash, Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires: 04/18/2033

EXHIBIT 3

Defendants' Fourth Supplemental Responses to Plaintiff's Request for Production and Autumnwood 153

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George Gallo.

Plaintiff,

v.

Autumnwood Crossing, L.P., and InterMark
Management Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-40-05305

**DEFENDANTS' FOURTH
SUPPLEMENTAL RESPONSES TO
REQUESTS FOR PRODUCTION OF
DOCUMENTS REGARDING
CONSENT ORDER**

TO: STEPHEN F. KRZYSTON, ESQ., Attorney for Plaintiff:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure and the Consent Order filed on July 10, 2024, Defendants hereby provide the following supplemental documents:

- a. Any and all pictures taken of the condition, either before or after the subject fall, by Sheryl Lyons or any other employee, agent or other servant;

RESPONSE: See documents produced AUTUMNWOOD 0099-0102, and 0154-0155

- b. Any and all emails which discuss the existence, inspection, or repair of the subject area;

RESPONSE: See documents produced AUTUMNWOOD 0099-0102.

- c. Any and all emails which discuss the subject fall or condition in any respect;

RESPONSE: See documents produced AUTUMNWOOD 0099-0102.

- d. Any and all data, including but not limited to pictures, measurements, or other material created while assessing the subject condition;

RESPONSE: See documents produced AUTUMNWOOD 0099-0102, 0153.

- e. Any and all checklists (completed or incomplete) which employees, agents or other servants are required or should complete as part of their job or employment and which relate to the subject incident/condition;

RESPONSE: To the extent the documents may be responsive, see documents produced AUTUMNWOOD 0103-0104, 0112-0130, 0146-0148

- f. Any and all inspection, records or other material which relates to inspection of the common areas and hallways for the preceding five years up to and including the subject incident;

RESPONSE: See documents produced AUTUMNWOOD 0103-0104, 0112-0130, 0146-0148.

- g. Any and all schematics or plans showing cameras within the property;

RESPONSE: See documents produced AUTUMNWOOD 0149-0152.

- h. Any and all work orders and their corresponding documentation, communications, or other associated materials which relate to the subject or similar conditions on the property for five years preceding the date of the subject incident, and including the submission, consideration and completion of the subject incident;

RESPONSE: See documents produced AUTUMNWOOD 0153.

- i. Any and all policies and procedures which apply to any employee, agent or other servant of the Defendant which are either stored on the Defendant's LMS, or in any other format and/or maintained by any other means.

RESPONSE: See documents produced AUTUMNWOOD 0156-0165 for a complete list of all available policies. Per conversation with counsel, any specific applicable policy will be produced.

SUPPLEMENTAL RESPONSE: 41 requested policies have been produced.

- j. Any and all records or other evidence regarding the subject premises or incident which Defendant Autumnwood's designee testified to the existence of during their 30(B)(6) deposition.

RESPONSE: None.

HOWSER, NEWMAN & BESLEY, LLC

s/Damon C. Wlodarczyk

Damon C. Wlodarczyk, SC Bar 70460
1508 Washington Street
Columbia, South Carolina, 29201
E-mail damonw@hnblaw.com
Attorneys for Defendants

Columbia, South Carolina
September 11, 2024

VERIFICATION

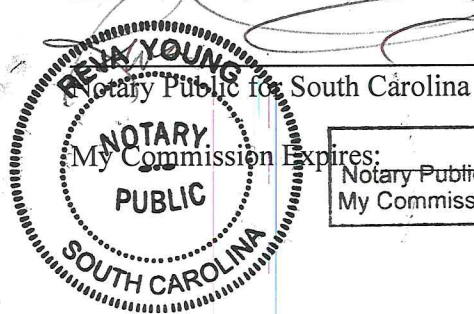
PERSONALLY, appeared before me Andrea Brabham who being duly sworn says that she has read the **DEFENDANTS' FOURTH SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS REGARDING CONSENT ORDER** and that the responses therein are true and complete to the best of her own knowledge.

Andrea Brabham

Andrea Brabham
Director of Operations
Intermark Management

SWORN to before me this

11th day of September, 2024.



(L.S.)

Notary Public for South Carolina

Reva Young
Notary Public, State of South Carolina
My Commission Expires Nov. 19, 2031

EXHIBIT 4

(E-Mail from Defense Counsel Confirming Only One Inspection Report)

Thursday, March 13, 2025 at 09:14:07 Eastern Daylight Time

Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.
Date: Thursday, September 12, 2024 at 3:02:57 PM Eastern Daylight Time
From: Damon Wlodarczyk
To: Joe Thickens, Steve Krzyston
CC: Aaron Strickland, Amanda Cristaldi
Attachments: image001.jpg, image002.png, image003.png, image004.png, image005.jpg, image006.png, image007.png, image008.png, Autumnwood for Damon.pdf

All-

Attached are the verified Fourth Supplemental responses. I added the policies we previously produced. Per my conversation with Steve, and Andrea's email to me today, she double checked regarding any additional inspections performed by Intermark and the ones previously produced are the only ones located.

Let me know if this resolves the pending Motion to Compel. Thanks for your patience.

Damon C. Wlodarczyk
 Attorney and Counselor at Law
 Office: (803) 758-6000
 E-mail: damonw@hnblaw.com

From: Joe Thickens <joe@ctlawsc.com>
Sent: Thursday, September 12, 2024 6:27 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>; Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

If Tuesday works for George it is good with me—we'll let you know as soon as we can check with him.

Who do you want to mediate? Maybe we can find someone who has availability on those October dates.

From: Damon Wlodarczyk <DamonW@hnblaw.com>
Sent: Thursday, September 12, 2024 5:16:28 AM
To: Joe Thickens <joe@ctlawsc.com>; Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Good seeing everyone yesterday. I'm open Tuesday (all-day) if you'd like to knock out Plaintiff's deposition. I think that would be enough to for the farm to mediate the case. If that doesn't work, I have the 26th, and October 2-3.

Let me know if any of these dates work for you. Thanks,

Damon C. Wlodarczyk
 Attorney and Counselor at Law
 Office: (803) 758-6000
 E-mail: damonw@hnblaw.com

From: Joe Thickens <joe@ctlawsc.com>
Sent: Thursday, July 18, 2024 10:37 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>; Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon, are you going to circulate a proposed SO? We are still on the trial roster 7/29

Joseph O. Thickens
 Cavanaugh & Thickens, LLC
 1717 Marion Street (29201)
 P.O. Box 2409

Columbia, SC 29202
803-888-2200

From: Damon Wlodarczyk <DamonW@hnblaw.com>
Date: Tuesday, July 9, 2024 at 12:41 PM
To: Steve Krzyston <steve@ctlawsc.com>, Joe Thickens <joe@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>, Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Hey Steve –

Happy to work with you on this as I discussed with Joe. In looking at the discovery requests, my responses, and the October Rule 11 letter. First, following the deposition, I emailed Andrea confirming docs that she was going to look for (I emailed her again this morning). Here is the list I had and asked for:

A schematic of where the video cameras are located;
 Copies of any bi-annual inspections by maintenance or the regional manager until September 2022;
 Copy of work order for repair of carpet (September 2022?)

I'll just go through the proposed order –

Items 2(a)-(d) have been produced. If something came up in the depo that I missed, please let me know. Otherwise, I'll just confirm that the documents were previously produced.

2(e) – all checklists which should have been completed and which relate to the subject incident/condition. *I agree to this as it seems responsive to RTP 6 but I think it should be limited to 2019 inception to 30 days after the fall.*

2(f) - Any and all inspection, records or other material which relates to inspection of the common areas and hallways for the preceding five years up to and including the subject incident. *RTP 3 asked for inspection or cleaning of the floor performed 90 days before or 30 days after the incident, to which there were none. I don't have any issue asking for any inspections reports of the building, but I believe this should be a supplemental RTP if it is going to involve the entire complex since its 2019 inception and I think it should end at 30 days after the fall.*

2(g) – schematics showing repair cameras. *I've requested and will produce in 15 days if available. Of course, we can make the premises available for inspection to see the cameras and the corresponding video screens which are in the office.*

2(h) – work orders on the area and the other area on a different floor– *requested and will produce in 15 days.*

2(i) – policies and procedures – RTP 6 was limited to policies and procedures to how the employees should have been conducting themselves in the general time preceding the fall. Do you want every policy and procedure or just the ones related as set forth in the RTP? This one might need a short confidentiality order but I need to confirm first the extent of the request.

Let me know your thoughts. Again, I think it's really just a matter of the timeframe to locate and produce and the breadth of the policies and procedures.

Damon C. Wlodarczyk
 Attorney and Counselor at Law
 Office: (803) 758-6000
 E-mail: damonw@hnblaw.com

From: Steve Krzyston <steve@ctlawsc.com>
Sent: Tuesday, July 9, 2024 11:43 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>; Joe Thickens <joe@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon: Enclosed is the Consent Order which you and Joe discussed yesterday. We will file it as soon as you let me know you are good to go with it.

Let us know when you guys have the SO drafted and we can approve. Look forward to seeing you later, take care.

--

Stephen F. Krzyston
 Attorney, Cavanaugh & Thickens, LLC



o 803.888.2200 | f 803.888.2219

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From: Damon Wlodarczyk <DamonW@hnblaw.com>
Date: Monday, July 8, 2024 at 8:39 AM
To: Joe Thickens <joe@ctlawsc.com>, Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>, Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Sure. I'm at the office until 12 today. My direct dial is 803-888-1497.

Damon C. Wlodarczyk
Attorney and Counselor at Law
Office: (803) 758-6000
E-mail: damonw@hnblaw.com

From: Joe Thickens <joe@ctlawsc.com>
Sent: Monday, July 8, 2024 6:59 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>; Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon, do you have a few minutes for a call on this one this morning?

Joseph O. Thickens
Cavanaugh & Thickens, LLC
1717 Marion Street (29201)
P.O. Box 2409
Columbia, SC 29202
803-888-2200

From: Damon Wlodarczyk <DamonW@hnblaw.com>
Date: Friday, July 5, 2024 at 2:30 PM
To: Joe Thickens <joe@ctlawsc.com>, Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>, Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Joe-

This popped up on the roster for the end of the month. I'll need to depose your client. Do you want to depose the maintenance guy, former regional and property managers? If so, I can circulate a scheduling order. I would prefer a trial after October 1 due to a date certain federal case starting 9/9.

Please let me know. Thanks,

Damon

Damon C. Wlodarczyk

Attorney and Counselor at Law
Office: (803) 758-6000
E-mail: damonw@hnblaw.com

From: Joe Thickens <joe@ctlawsc.com>
Sent: Thursday, May 23, 2024 9:41 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>; Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon – are you designating Ms. Brabham for all topics or for certain ones? If not for all of them, it would be helpful to know prior to starting. Thanks,
Joe

Joseph O. Thickens
Cavanaugh & Thickens, LLC
1717 Marion Street (29201)
P.O. Box 2409
Columbia, SC 29202
803-888-2200

From: Damon Wlodarczyk <DamonW@hnblaw.com>
Date: Thursday, May 23, 2024 at 9:32 AM
To: Steve Krzyston <steve@ctlawsc.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>, Joe Thickens <joe@ctlawsc.com>, Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Some people who received this message don't often get email from damonw@hnblaw.com. [Learn why this is important](#)

Steve-

Andrea Brabham will be the designee for today. While she is familiar with the operations of Intermark, her specific knowledge about Autumnwood is limited. Rene and the regional manager Cheryl are the ones with the most knowledge of Autumnwood and neither work for the company anymore.

Also, in preparing Andrea, she told me about the attached inspection performed in 2020. The property is a Section 42 tax credit property, so it is supposed to be inspected annually by the Housing Authority, but Covid changed that. The 2020 inspection was the last inspection by the Housing Authority prior to the fall.

See you at 10. Thanks,

Damon

Damon C. Wlodarczyk
Attorney and Counselor at Law
Office: (803) 758-6000
E-mail: damonw@hnblaw.com

From: Steve Krzyston <steve@ctlawsc.com>
Sent: Wednesday, April 24, 2024 8:04 AM
To: Damon Wlodarczyk <DamonW@hnblaw.com>
Cc: Aaron Strickland <aaron@ctlawsc.com>; Joe Thickens <joe@ctlawsc.com>; Amanda Cristaldi <acristaldi@hnblaw.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon: Hope you're well. Just wanted to circle back on whether you had been able to confirm dates with your designee(s). Thanks,

--

Stephen F. Krzyston
Attorney, Cavanaugh & Thickens, LLC



o 803.888.2200 | f 803.888.2219

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From: Steve Krzyston <steve@ctlawsc.com>

Date: Wednesday, April 17, 2024 at 11:50 AM

To: Damon Wlodarczyk <DamonW@hnblaw.com>

Cc: Aaron Strickland <aaron@ctlawsc.com>, Joe Thickers <joe@ctlawsc.com>, Amanda Cristaldi <acristaldi@hnblaw.com>

Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Sounds good. We'll place a hold on those dates and get back with you towards end of this week beginning of next to confirm and send notice. Thanks,

Stephen F. Krzyston

Cavanaugh & Thickers, LLC

On Apr 17, 2024, at 10:51, Damon Wlodarczyk <DamonW@hnblaw.com> wrote:

It would need to be 5/22 or 5/23. Let me get with my client and find out the designees.

Damon C. Wlodarczyk
Attorney and Counselor at Law
Office: (803) 758-6000
E-mail: damonw@hnblaw.com

From: Steve Krzyston <steve@ctlawsc.com>

Sent: Wednesday, April 17, 2024 9:09 AM

To: Aaron Strickland <aaron@ctlawsc.com>; Damon Wlodarczyk <DamonW@hnblaw.com>; Joe Thickers <joe@ctlawsc.com>

Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon: I hope you are well. I would like to move forward with the 30(b)(6) of Autumnwood. I've got 5/6, 5/8, 5/22, and 5/23, which work right now. Please let me know if any of those work for you guys. The list of topics are pasted below. I look forward to hearing back. Thanks,

1. Allegations in the Complaint;
2. Defendant's Answer;
3. Discovery responses and documents provided;
4. Discovery request to Defendants;
5. Defendant's policies and procedures;
6. Safety procedure and policies;
7. Management training, management duties, and management responsibilities regarding the Defendant's oversight of Autumnwood Crossing, LP;
8. Subject Incident
9. Defendant's policies and procedures regarding the maintenance and provision of liability insurance which covers Autumnwood Crossing, LP;
10. Investigation into the incident giving rise to this litigation, including the preparation of any and all forms/reports required to be completed;
11. Post-accident investigation and procedures, specifically related to this incident and prior incidents of this kind;
12. Any and all policies and/or procedures for maintaining the premises.

13. Acquisition and installation of floor tiling and/or carpeting at the subject location.
14. Video surveillance system at the subject location.
15. Internal records keeping practices for records related to employment, safety, training, and supervision of agents and/or employees.

--

<image001.jpg>

Stephen F. Krzyston

Attorney, Cavanaugh & Thickens, LLC

o 803.888.2200 | f 803.888.2219

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<image002.png>

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<image004.png>

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From: Aaron Strickland <aaron@ctlawsc.com>

Date: Friday, December 1, 2023 at 1:49 PM

To: Damon Wlodarczyk <damonw@rplfirm.com>, Monique Trifos <mtrifos@rplfirm.com>

Cc: Steve Krzyston <steve@ctlawsc.com>

Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon,

Following up on the status of the status of this.

Thanks,

From: Steve Krzyston <steve@ctlawsc.com>

Date: Tuesday, November 21, 2023 at 2:47 PM

To: Damon Wlodarczyk <damonw@rplfirm.com>

Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon, hope you are well. Just wanted to follow up with you to see if your clients could resolve this short of a motion. I know you're loading up for trial so don't want to heap on, but this one has some age on it, and I need to at least clear this hurdle. Thanks,

--

<image005.jpg>

Stephen F. Krzyston

Attorney, Cavanaugh & Thickens, LLC

o 803.888.2200 | f 803.888.2219

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<image007.png>

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[<image008.png>](#)

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From: Aaron Strickland <aaron@ctlawsc.com>
Date: Thursday, November 9, 2023 at 3:40 PM
To: Damon Wlodarczyk <damonw@rplfirm.com>, Monique Trifos <mtrifos@rplfirm.com>
Cc: Steve Krzyston <steve@ctlawsc.com>
Subject: Re: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon,

Following up on the status of these deficiency responses.

Thanks,

From: Damon Wlodarczyk <damonw@rplfirm.com>
Date: Friday, October 20, 2023 at 11:49 AM
To: Aaron Strickland <aaron@ctlawsc.com>, Monique Trifos <mtrifos@rplfirm.com>
Cc: Steve Krzyston <steve@ctlawsc.com>
Subject: RE: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Thanks. I look into this. Also, Cheryl Lyons doesn't work for Intermark any longer. The last known contact information is

840 Sparkleberry Lane Apt 1212
 Columbia, SC 29229

We know that she is not that address anymore because that is an apartment community that my client runs and she left there when she left the position.

706-830-6086 is her phone number.

Finally, we need to rework the depositions on November 2. I have a federal case that the plaintiffs ticked off the district judge when we were asked that we consent to having the magistrate try the case. Plaintiffs objected and offered to have her transfer the case to another federal judge. In response, the judge issued an order with jury selection on 12/6 and all pre-trial matters throughout November. Another mediation was ordered on November 2 is the only date the multiple attorneys and adjuster had available.

Thanks

Damon

<image009.jpg> **Damon C. Wlodarczyk | Attorney and Counselor at Law**
Riley Pope & Laney, LLC – Columbia | Charleston | Charlotte
Office: 803.799.9993
Email: damonw@rplfirm.com

From: Aaron Strickland <aaron@ctlawsc.com>
Sent: Friday, October 20, 2023 11:27 AM
To: Damon Wlodarczyk <damonw@rplfirm.com>; Monique Trifos <mtrifos@rplfirm.com>

Cc: Steve Krzyston <steve@ctlawsc.com>

Subject: 2022CP4005305: Gallo v. Autumnwood Crossing et al.

Damon,

Attached please find our letter in response to your discovery responses in the above referenced matter.

Thanks,

<image010.png> Aaron C. Strickland
Paralegal, Cavanaugh & Thickens, LLC
o 803.888.2200 | d 803.888.2335 | f 803.888.2219
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EXHIBIT 5

Defendants' Facebook Post



Autumnwood Crossing Apartments

February 15, 2020 · 🌐

Your new home awaits. Come by today, we are here until 4pm to reserve your brand new apartment.

Live your best life at our carefree, active adult 55+ community!

2 bedrooms with 2 full bathrooms \$650 per month. Income restrictions apply.



3



Like



Comment



Share

EXHIBIT 6

Printout of GIS Information

Layers

- ☒ Address Points
- ☐ Building Footprints
- ☐ GeodeticControl
- ☒ Roads
- ☐ Road Maintenance
- ☒ Parcels
- ☐ Planning and Zoning
- ☒ Subdivisions and Tax Map Labels
- ☐ Contours 2ft 2010
- ☐ Water and Sewer
- ☒ Government Services and Facilities
- ☐ Emergency Services
- ☐ Economic Development
- ☒ Environmental and Recreation
- ☐ Historic Parcels Since 2000 - Last Year
- ☒ Orthophotos 2023

(1 of 3)

Parcel

Tax Map Number: [004300-07-169](#)
Owner: AUTUMNWOOD CROSSING LP

Property Address
207 TOPSIDER COURT
(Notice: Please view the address points for the most accurate addressing info)

Mailing Address
125 OLD CHAPIN RD
LEXINGTON , SC 29072

Other Attributes for tax year 2026
Property Type: APARTMENT (UNITS > 4)
Tax District: 1L
Acres: 3.21
Taxed as Lots: 0.00
Year Built: 0
Square Foot Living Area: 0
Sales Date: June 9 2017
Sales Price: \$750,000.00
Sales Price Type: NOT VALID
Legal Residence: LR NO
Agricultural: AG NO
Description: PARCEL 1B & OTHER
Homestead: NO

2024 Taxable Values
Taxable Land Value: \$744,700
Taxable Building Value: \$1,234,400
Total Taxable Value: \$1,979,100

Market Value: \$1,979,100
[Link to Property Card](#)

Deed: [19263 - 0257](#) *
Plat: [20863 - 4011](#) *
[Zoom to](#)

ELECTRONICALLY FILED - 2025 Mar 13 1:41 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4005305

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2022-CP-40-05305

GEORGE GALLO.

PLAINTIFF,

V.

AUTUMNWOOD CROSSING, L.P., AND
INTERMARK MANAGEMENT
CORPORATION,

DEFENDANTS.

**DEFENDANTS' RESPONSE IN
OPPOSITION TO MOTION TO
RECONSIDER**

Now come the Defendants, by and through their undersigned counsel, and by way of response oppose the Plaintiff's Motion to Reconsider the Court's Order granting Defendants judgment as a matter of law in their favor.

STANDARD

Defendants agree with the purpose and standard of review for a Rule 59(e), SCRCP motion set forth in Plaintiff's motion. However, in addition to the law set forth by Plaintiff, the law is also clear that the Court may not consider documents submitted for the first time with a Rule 59(e) motion. *See Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding this court could not consider a document that was submitted to the family court "only as an attachment to [the father's] Rule 59(e) motion"); *see also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.")

It is well established that in ruling on a summary judgment motion, in determining whether any triable issues of fact exist, *the evidence and all inferences which can be reasonably drawn from the evidence* must be viewed in the light most favorable to the non-moving party. *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000) (emphasis added). To resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues

necessitating trial. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). *Id.*

“[T]he non-moving party may not circumvent the grant of summary judgment through the argument of counsel alone. *See Ex Parte Morris*, 367 S.C. 56, 624 S.E.2d 649 (2006) (“It is well established that counsel’s statements regarding the facts of a case and counsel’s arguments are not admissible evidence.”); *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (appellate courts repeatedly have held “that statements of fact appearing only in arguments of counsel will not be considered”); *South Carolina Dep’t of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (“[a]rguments made by counsel are not evidence”); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (“Arguments of counsel are also not evidence.”); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence).

ARGUMENT

I. Plaintiff’s first argument that a genuine issue of material fact as to whether Defendants had actual notice of the condition complained of fails as a matter of law.

On October 22, 2024, Defendants filed their six-page Motion for Summary Judgment, which fully briefed the arguments, as well as deposition testimony and photographs as exhibits. The deposition testimony clearly established that the Plaintiff did not know of or report the condition complained of prior to his fall.

This Court heard the motion for summary judgment on February 12, 2025. Prior to the hearing, no response to the motion was filed and no exhibits were filed by the Plaintiff. After the hearing, no request was made to submit a brief or supporting exhibits. The only matter presented to the Court in opposition to Defendants’ motion was Plaintiff counsel’s arguments to the Court.

Plaintiff's Motion to Reconsider contains eighteen pages briefing the arguments and thirty-seven pages of exhibits.

Plaintiff failed to submit any brief or documents for the Court to consider in response to summary judgment. The submission of thirty-seven pages of documents in an attempt to set aside the Order granting summary judgment is not proper and, the documents must not be considered by the Court. *See Spreew*, 385 S.C. at, 68-69, 682 S.E.2d 843, 855 (finding this court could not consider a document that was submitted to the family court "only as an attachment to [the father's] Rule 59(e) motion"); *see also Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

Also, any arguments presented by counsel at the summary judgment hearing may not be considered in the Motion for Reconsideration as the initial arguments were not supported by any documents. *See Ex Parte Morris*, 367 S.C. 56, 624 S.E.2d 649 ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence.").

Accordingly, Plaintiff's argument should be denied as it relies on new documents not submitted in response to the motion but available at the time the Motion for Summary Judgment was heard.

II. Plaintiff's second argument that a genuine issue of fact exists as to Plaintiff's legal status fails as a matter of law.

Plaintiff cites to documents submitted in the motion that were not submitted to the Court in response to summary judgment. For the reasons set forth above, those documents cannot be considered and any argument supported by those documents should be denied.

Plaintiff discusses the general duties owed to various classes of individuals under traditional premises liability, e.g. invitee, licensee, trespasser, etc. Plaintiff argues "[u]ltimately,

the question of whether Plaintiff's independent status is that of an invitee or licensee is a question of fact for the jury." [Motion, p. 12].

"Traditionally, under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition. Absent an express warranty or fraudulent concealment, he is not liable for any defect in the leased premises." *Young v. Morrissey*, 285 S.C. 236, 239, 329 S.E.2d 426, 428 (1985).

However, in *Watson v. Sellers*, the S.C. Court of Appeals held "that the preamble and the [Residential Landlord Tenant] Act clearly convey an intent on the part of the Legislature to provide for a cause of action for injuries resulting from the failure of the landlord, after notice, to keep rented residential premises in repair" *Watson v. Sellers*, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989)

The Court further held,

the preamble to the Act expressly states that it was the intent of the Legislature to provide for the obligations and liabilities of the landlord; by Section 27-40-50, the Legislature provided, *inter alia*, that the liability of the landlord may be enforced by legal proceedings. And finally, Section 27-40-610 provides that the tenant may recover actual damages and, if the landlord's noncompliance is willful, the tenant may recover reasonable attorney fees. These provisions in plain words reflect the intent of the Legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair.

Id.

While Plaintiff presents a well-versed recitation of the general law of premises liability as to non-residential landlord tenant cases involving invitees and licensee, none of the cases cited treat a residential tenant who is injured on the tenant's rented premises as an invitee or licensee.

Even in the case of *Cleo v. Odom*, discussed at the beginning of argument II involved a plaintiff who was injured in a common area by a tenant's dog when she was visiting her sister, who was a tenant at the property. *See Clea v. Odom*, 394 S.C. 175, 178, 714 S.E.2d 542, 544 (2011) (stating "Respondent owned an apartment complex . . ., one of respondent's tenants, owned a dog

that he kept chained to a tree . . . [and] appellant had taken her three children to visit her sister, who lived at the apartment complex”]. Accordingly, the case does apply to a claim by a tenant against the landlord.

Regardless, the S.C. Supreme Court has addressed a prior attempt to extend the obligations of a landlord to a tenant beyond the Act.

In *Cramer*, a claim was brought on behalf of a deceased tenant who was murdered in her apartment. The question before the Court was whether a landlord had a duty to protect a tenant from the criminal acts of third parties. The plaintiff asked the Court to recognize a “relationship between the landlord and tenant which is analogous to that of the innkeeper and guest relationship.”

The plaintiff claimed that the landlord’s duty was derived from common law. The Court opined the plaintiff’s argument was “based on the assumption that the landlord/tenant relationship is analogous to innkeeper/guest and store owner/invitee relationships.”

The Court concluded there was “a fundamental distinction between the relationships of landlord/tenant and store owner/invitee and innkeeper/guest” . . . and declined to find that landlords owed an affirmative duty to protect tenants from criminal activity merely by reason of the relationship. *Cramer v. Balcor Prop. Mgmt.*, 312 S.C. 440, 441-43, 441 S.E.2d 317, 317-19 (1994)

Also, the plaintiff conceded that there was no statutory duty upon the landlord to protect a tenant from the criminal acts of third parties under the S.C. Residential Landlord Tenant Act. The Court agreed, stating “the South Carolina Residential Landlord-Tenant Act does not impose a duty upon landlords to protect tenants from criminal activity of others. While section 27-40-440 imposes a duty on a landlord to keep the premises in a fit and habitable condition, the statute does not impose a duty on a landlord to provide protection to tenants against criminal activity by third parties” *Id.*

As the Act expressly states the legal duties owed by a landlord as well as the legal remedies available to a tenant, an analysis of the summary judgment motion under traditional premises liability classifications is improper and the motion should be denied.

III. Plaintiff's third argument that he did not seek relief under the Act and, therefore, granting summary judgment pursuant to the provisions of the Act was in error, fails as a matter of law.

Plaintiff argues he did not seek remedies under any provision of the Act, but rather he "sought monetary damages for a negligent failure on the Defendant's duty to inspect, discovery, warn, and maintain the common areas which were adjacent to the leased premises as an invitee to Defendant's common areas." [Motion, p. 16].

"An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. . . . The existence of a duty owed is a question of law for the courts." *Doe v. Greenville Cty. Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

While the Plaintiff may have intended to plead the cause of action under a common law negligence claim involving an invitee, Defendants raised in their sixth and eighth defenses failure to state a claim and failure to provide notice, written or otherwise, under the S.C. Residential Landlord Tenant Act as a bar to the cause of action. [Answer, p. 3].

For the reasons previously set forth, the Act is the sole remedy for a tenant's claim against a landlord for money damages related to failing to keep a common area in a reasonably safe condition. Therefore, the motion should be denied.

IV. Plaintiff's fourth argument that the Court granted summary judgment on grounds not moved upon by the Defendant fails as well.

Plaintiff contends the Motion for Summary Judgment stated Defendants' did not have "actual notice" of the condition complained of, but the Order provides a "written notice

requirement.” [Motion, p. 17]. Plaintiff argues the Order goes beyond the scope of the grounds moved upon by the Defendants.

Defendants’ Motion for Summary Judgment fully briefed the issues argued. Page four of the motion stated, to bring a claim under the Act, the Court has found a tenant must give “written notice” to the landlord specifying the acts and omissions constating the breach and failure of the landlord to make the necessary repairs after notice.

Page five of the motion further states, “Courts have made clear that rights under the Act do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time . . . and the Act requires this notice must be given in writing and allow the landlord a reasonable amount of time to repair the allege defect.”

Additionally, the issue of written notice was presented by the undersigned to the Court. In fact, the undersigned argued that despite the written notice requirement in the Act, there was no notice in this case of the condition complained of.

The written notice is the applicable law, it was raised in the motion, and the issue was raised at the hearing. Therefore, the argument should be denied.

CONCLUSION

For the reasons set forth, Defendants respectfully request the Motion for Reconsideration be denied.

HOWSER, NEWMAN & BESLEY, LLC

s/Damon C. Wlodarczyk
Damon C. Wlodarczyk, Esquire
Attorney for Defendants

Columbia, South Carolina
March 13, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No.: 2025-000757

George Gallow,.....Appellant,

v.

Autumnwood Crossing LP and Intermark Management Corporation,....Respondents,

CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's **MOTION TO STRIKE APPELLANT'S DESIGNATIONS OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND REQUEST FOR ORDER INSTRUCTING APPELLANT TO FILE AN AMENDED INITIAL BRIEF COMPLYING WITH THE SOUTH CAROLINA RULES OF APPELLATE PROCEDURE AND TO STAY BRIEFING DEADLINES PENDING A RULING ON THE MOTION** has been served on counsel via electronic mail to the AIS e-mail address of the following attorneys:

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Columbia, South Carolina
September 12, 2025