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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Daniel Coble, Circuit Court Judge

Lower Court Case No. 2022-CP-40-05305

George Gallo, Appellant,

v.

Autumnwood Crossing LP and Intermark Management Corporation,
Respondents.

Appellate Case No. 2025-000757

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in granting summary judgment to the Defendants where there was a genuine issue of material fact as to whether the Defendants had notice of the dangerous condition which caused Mr. Gallo's injuries?

STATEMENT OF THE CASE

This is an appeal from an order granting the Defendants' motion for summary judgment.

George Gallo filed a summons and complaint for negligence against Autumnwood Crossing, L.P. and InterMark Management Corporation. The Defendants answered the complaint and filed a joint motion for summary judgment. The circuit court heard arguments on the motion on February 12, 2025. At that hearing, Joe Thickens appeared on behalf of Mr. Gallo, and Damon Wlodarczyk appeared on behalf of Autumnwood Crossing and InterMark. (R. p. 137).

The court granted the Defendants' motion for summary judgment and denied Mr. Gallo's motion to reconsider.

STANDARD OF REVIEW

"Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure." *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024) (citing *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (citing *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)).

Summary judgment is not proper "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Middleborough Horizontal Prop. Regime Council of Co.-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston Cty. Parks & Rec. Comm'n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004).

STATEMENT OF FACTS

George Gallo lived at the Autumnwood Crossing Senior Apartments in Lexington County, which was owned by Defendant Autumnwood Crossing, LP. Defendant InterMark was the property management company for the apartment complex. (R p. 23). While walking through the hallway, a common area of the apartment complex, Mr. Gallo tripped on a dangerous condition created by improperly maintained or installed carpeting. (R. p. 23). Mr. Gallo sustained significant personal injuries because of his fall. (R. p. 24).

Lease Agreement

Mr. Gallo leased from the Defendants "the apartment known as 306 a 2 bedroom apartment (Premises) located at 207 Topsider Court #306, Lexington, SC, 29072." (R. p. 93). In referring to "common areas" the lease expressly carved out the Defendants' exclusive right of control and authority with respect to all common areas. For example, the lease prohibited Mr. Gallo from leaving any personal items in the common areas. (R. p. 97). In fact, the lease prohibited Mr. Gallo from using the common areas for "any purpose other than ingress and egress." (R. p. 97).

More specifically, the lease prohibited Mr. Gallo from littering or obstructing "the public halls or grounds" and from covering or obstructing the floors, skylights, doors, and windows "that reflect or admit light into passageways, or into the common areas of any of [Defendants'] buildings." (R. p. 97). The lease also prohibited Mr. Gallo from cleaning anything in the "public halls" or circulating "handbills, circulars, advertisements, papers, or other matter which, if discarded, would tend to litter [common areas]." (R. p. 97). In sum, Mr. Gallo had no control over the common areas; the Defendants had full control over the common areas.

Discovery

In December of 2022, Mr. Gallo issued his initial discovery requests to the Defendants. (R. p. 32). The Defendants did not respond to this request, so Mr. Gallo's Counsel sent a Rule 11 letter requesting responses. (R. p. 44). The Defendants did not respond to this letter either, forcing Mr. Gallo to file a motion to compel in February of 2023. (R. p. 30). A hearing was scheduled for the motion to compel but was continued because, just prior to the hearing, the Defendants agreed to provide discovery responses according to the terms of a consent order.[1] (R. p. 49).

Despite having agreed to comply with Mr. Gallo's discovery requests prior to the hearing on the first motion to compel, the Defendants still failed to fully respond. As a result, Mr. Gallo's Counsel sent another Rule 11 letter in October of 2023. (R. p. 56). When the Defendants still did not fully respond, a second motion to compel was filed in December of 2023. (R. p. 46).

In May of 2024, Defendant Autumnwood's 30(b)(6) designee was deposed. (R. p. 99). Defendant Autumnwood admitted in its 30(b)(6) deposition that it required regional managers to conduct biannual inspections of the common areas of the apartment complex and to keep written records of those inspections. (R. p. 104, ll. 2 – 20). Autumnwood also admitted in this deposition that the on-site staff were required to do quarterly inspections of the common areas and to keep written records of those inspections. (R. p. 106, l. 4 – p. 107, l. 10).

In light of the revelations made in Autumnwood's 30(b)(6) deposition, the circuit court issued a consent order finding that "Defendant Autumnwood testified in depositions as to the existence of the materials which have been sought by [Mr. Gallo] and which are listed below." (R. p. 16). The order listed several specific items that the Defendants were required to produce within thirty days, including "[a]ny and all inspection, records or other material which relates to

[1] This consent order was never filed.

inspection of the common areas and hallways for the preceding five years up to and including the subject incident." (R. p. 17). The circuit court ordered Autumnwood to produce all the items listed in the order within thirty days. (R. p. 18).

Despite the circuit court's order, the Defendants still failed to produce all their inspection reports. (R. pp. 113 – 125). The Defendants did not offer an explanation as to why they failed to produce all of their quarterly and bi-annual inspection reports despite admitting in their 30(b)(6) deposition to the existence of those documents. (R. pp. 117 – 125).

Summary Judgment Arguments and Rulings

The Defendants filed a motion for summary judgment arguing that the South Carolina Residential Landlord and Tenant Act—found in Title 27, Chapter 40 of the South Carolina Code—provided the exclusive avenue under which a tenant can recover damages from his landlord. The Defendants further argued that the Act requires a tenant to give notice to his landlord of any alleged dangerous condition upon the property before the tenant can sue the landlord for damages caused by the dangerous condition. (R. p. 59). In their motion for summary judgment, the Defendants acknowledged that the Act requires them to "keep all common areas" in a "reasonably safe" and "reasonably clean" condition. (R. p. 62). The Defendants also acknowledged that the dangerous carpet ripple was visible in the photograph taken by Mr. Gallo after his fall. (R. p. 60).

Mr. Gallo was admittedly unaware of the dangerous carpet ripple in the common area until after he tripped and fell on it. Because Mr. Gallo was unaware of the dangerous condition, he had not notified the Defendants of the condition. The Defendants relied on this Court's decision in *Robinson v. Code*, 682 S.E.2d 495 (Ct. App. 2009), to argue that Mr. Gallo's failure to discover, and thereby failure to notify them of the dangerous condition, precluded his ability to recover damages for the injuries he sustained as a result of the dangerous condition. (R. pp. 62 – 63). The

Defendants also pointed to our Supreme Court's decision in *Clea v. Odom*, 714 S.E.2d 542, 546 (2011), to support their argument that a tenant is required to provide written notice of a dangerous condition to his landlord before he is able to sue under the Act even when the dangerous condition is in a common area over which the tenant has zero control. (R. p. 63).

At the summary judgment hearing, Counsel for the Defendants acknowledged that Mr. Gallo tripped and fell on an "area of the carpet that had buckled" which was in a common area of the apartment complex. (R. p. 139, ll. 15 – 25). Counsel further acknowledged that at the time of the fall, Mr. Gallo was recovering from right leg surgery and that the fall caused significant injuries to Mr. Gallo's left leg. (R. p. 139, l. 25 – p. 140, l. 3).

Counsel for the Defendants maintained that the deposition testimony from each of the witnesses indicated that nobody was aware of the dangerous carpet ripple until after Mr. Gallo's fall. Specifically, Mr. Gallo, the manager of the property, Renee, and the maintenance worker, Luis, all testified in their depositions that they were unaware of the carpet ripple and that no one had mentioned it before Mr. Gallo's fall. (R. p. 140, ll. 4 – 21). Counsel argued that there was no evidence that the Defendants had prior knowledge of the carpet ripple, and that no written notice was given to them of the carpet ripple. As such, Counsel argued that the Defendants were entitled to summary judgment under the Residential Landlord and Tenant Act. (R. p. 141, l. 11 – p. 143, l. 20).

Counsel for Mr. Gallo pointed out that Autumnwood admitted in its 30(b)(6) deposition that it required regional managers to conduct biannual inspections of the common areas of the apartment complex and to keep written records of those inspections. (R. p. 145, ll. 5 – 22; R. p. 104, ll. 2 – 20). Counsel also pointed out that the Defendants had failed to produce the written records of these inspections, even though they had been ordered to do so during discovery. (R. p.

145, ll. 5 – 22). Additionally, the on-site staff at the apartment complex were required to do quarterly inspections of the common areas to check for safety hazards and to keep written records of those inspections. (R. p. 145, l. 23 – p. 146, l. 4; R. p. 106, l. 4 – p. 107, l. 10). The Defendants also failed to produce these written records during discovery, even though they had been ordered to. (R. p. 145, l. 23 – p. 146, l. 4).

The 30(b)(6) designee for the Defendants acknowledged in her deposition that the inspections of the common areas were required for the purpose of keeping their residents safe. (R. p. 146, ll. 5 – 16). Despite a consent order requiring the Defendants to turn over "any and all inspection records or other material which relates to inspection of the common area and hallways for the preceding five years, up to and including the subject incident," the Defendants had failed to provide all these inspection reports. (R. p. 147, ll. 5 – 17).

Counsel for Mr. Gallo sent a spoliation letter to the Defendants in July of 2022, just ten days after Mr. Gallo's fall. After the Defendants failed to respond to that letter, Counsel sent another spoliation letter in September of 2022. The Defendants 30(b)(6) designee admitted that the Defendants received the spoliation letter on September 15, 2022, but instead of preserving the carpet as it was, the carpet was repaired on September 22, 2022. (R. p. 147, l. 23 – p. 148, l. 13). Because the Defendants repaired the carpet before Counsel was able to physically inspect it, Counsel was deprived of the opportunity to examine the carpet.

Counsel for Mr. Gallo argued that the Defendants undertook a duty to inspect the common areas for safety hazards and then failed to produce their records after having been ordered to do so. This spoliation of evidence was enough to create a genuine issue of material fact as to whether the Defendants had actual notice of the dangerous carpet ripple. R. p. 149, l. 4 – p. 150, l. 8).

Counsel for the Defendants responded by claiming that "there [were] no documents destroyed," and that after multiple motions to compel, the Defendants gave Mr. Gallo "every policy and procedure, including the petty change drawer policy. . . . everything has been provided." (R. p. 153, ll. 14 – 20). Counsel for the Defendants did not acknowledge their failure to produce the inspection reports that their 30(b)(6) designee said they had. Counsel sought to minimize the fact that the Defendants repaired the carpet after receiving the spoliation letter and prior to allowing Counsel for Mr. Gallo to inspect the carpet by saying that "[t]he fix was he took a knife, cut it open, put a little glue underneath it, and then weighted it down to seal it." (R. p. 152, ll. 23 – 24). Defendants' Counsel maintained that the Act was not strictly complied with because Mr. Gallo had not given notice to the Defendants of the dangerous condition which entitled the Defendants to summary judgment. (R. p. 153, l. 11 – p. 154, l. 10).

The circuit court granted summary judgment in favor of the Defendants because Mr. Gallo nor anyone else had given notice of the dangerous carpet ripple to the Defendants prior to Mr. Gallo's fall. In its order granting summary judgment, the circuit court did not address Mr. Gallo's argument that the spoliation of evidence created a genuine issue of material fact as to whether the Defendants had actual knowledge of the dangerous carpet ripple. Order granting summary judgment.

Counsel for Mr. Gallo filed a motion to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure urging the circuit court to rule on his argument that the Defendants' spoliation of evidence created an inference that the Defendants had actual knowledge of the dangerous carpet ripple. (R. pp. 81 – 83). Counsel again pointed to the 30(b)(6) deposition of the Defendants in which they admitted that they repaired the carpet ripple after receiving a spoliation letter requesting to inspect it and that its employees conducted both quarterly and bi-

annual inspections of the common areas and kept written records of those inspections. (R. pp. 81 – 83). Despite their admission to keeping written records of these inspections, and despite being ordered to produce these records, the Defendants only produced one inspection report which was conducted after Mr. Gallo's fall. (R. pp. 81 – 83).

Counsel for Mr. Gallo argued that the Defendants' spoliation of evidence would permit a jury to draw an inference that the records the Defendants failed to produce would have been unfavorable to them. Taking this evidentiary inference into consideration at the summary judgment stage, the granting of summary judgment was improper. (R. pp. 81 – 83).

The circuit court denied Mr. Gallo's motion to reconsider without a hearing and again without specifically ruling on the spoliation argument. Order denying motion to reconsider.

ARGUMENT

The circuit court erred in granting summary judgment to the Defendants because there was a genuine issue of material fact as to whether the Defendants had notice of the dangerous condition which caused Mr. Gallo's injuries.

A. A tenant is not required to give written notice of a dangerous condition in a common area to his landlord before being allowed to sue for personal injuries under the Act where there is evidence that could support a finding that the landlord had actual notice of the dangerous condition.

In *Watson v. Sellers*, this Court considered whether a landlord's breach of the Residential Landlord and Tenant Act gives rise to a tort action for personal injuries. 299 S.C. 426, 427, 385 S.E.2d 369, 369-70 (Ct. App. 1989) (citing S.C. Code § 27-40-10, et seq.). Prior to the adoption of the Act, there was no duty on a landlord to "keep in repair leased residential premises under the control of the tenant." *Watson*, 299 S.C. at 433, 385 S.E.2d at 372 (citing *Conner v. Farmers and Merchants Bank*, 243 S.C. 132, 132 S.E.2d 385 (1963)). However, this Court found that the Act "clearly convey[s] 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." *Id*. at 436, 385 S.E.2d at 374. This Court pointed to several specific provisions of the Act in coming to this conclusion:

> [T]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 wilful, 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.

The facts underlying this Court's decision in *Watson* were that a landlord provided a set of wooden steps so that her tenant could access her trailer. The stairs collapsed under the tenant causing her serious personal injuries. *Id*. at 427, 385 S.E.2d at 370. The tenant had asked the landlord to check on the steps prior to her injury and the landlord hired a woman named Rufus to replace one of the steps. *Id*. at 428, 385 S.E.2d at 370. The landlord testified that she checked the stairs approximately two months prior to the tenant's fall and that the stairs seemed to be "fine" and "solid." The landlord further testified that the tenant "nor anybody else had brought any problem with the stairs to her attention prior to [the tenant's] fall." *Id*. at 429, 385 S.E.2d at 370.

The trial judge in *Watson* quoted the language from section 27-40-440(a)(2) in his instruction to the jury telling them that "if the landlord does attempt to make repairs but the repairs are done in a negligent fashion, then the landlord is also liable for anyone injured as a result of the negligent repairs undertaken by the landlord." *Id*. at 430, 385 S.E.2d at 371. In upholding the trial judge's instruction, this Court found that (1) tenants are members of a class which the Act was designed to protect, (2) the Act explicitly created a cause of action in tort against a landlord who fails to repair a defect after notice is given, and (3) this conclusion was "consistent with the expressed and underlying purposes of the legislative scheme to create a remedy for residential tenants in cases such as this one." *Id*. at 436-37, 385 S.E.2d at 375.

This Court subsequently considered whether notice was an element of a landlord's liability under the Act in *Robinson v. Code*, 384 S.C. 582, 584, 682 S.E.2d 495, 496 (Ct. App. 2009)—a case involving a landlord's failure to install smoke detectors *inside of leased premises*. In *Robinson*, an upholstered chair caught fire in a single-family rental home causing injuries to the plaintiff and death to two of her family members. *Id*. at 584-85, 682 S.E.2d at 496. The plaintiff sued the landlord, alleging that the landlord was negligent for failing to supply and install smoke

detectors within the leased premises. *Id*. The circuit court granted the landlord's motion to strike the plaintiff's causes of action regarding the smoke detectors because the plaintiff did not allege she had given notice to the landlord of the missing smoke detectors. This Court affirmed.

In upholding the circuit court's ruling, this Court found that, although the Act requires 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," the tenant's right to bring an action against the landlord for breaching his obligations 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*.

Importantly, this Court concluded that written notice had to be given to the landlord based on two distinct provisions under the Act—sections 27-40-610(a), and 27-40-630(d). This Court noted that section 27-40-610(a) "mentions" written notice to the landlord. *Robinson*, 384 S.C. at 586, 682 S.E.2d at 497. And while this section does *mention* written notice, it does not require written notice. Instead, section 27-40-610(a) reads:

> Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 27-40-440 *materially affecting health and safety or the physical condition of the property*, *the tenant may deliver* a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days.

Id. (emphasis added). "[T]he tenant *may* deliver written notice." *Id*. (emphasis added). This section does not say the tenant must deliver written notice. Furthermore, this section applies to a lawsuit brought by a tenant for those violations of section 27-40-440 that materially affect health, safety, and the physical condition of the property.

The second subsection this Court relied on in reaching its conclusion in *Robinson* was section 27-40-630(d). *Robinson*, 384 S.C. at 586, 682 S.E.2d at 497. That section provides that the "[r]ights of the tenant *under this section* do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time." *Id*. (emphasis added). But this section—section 27-40-630—is different from section 27-40-610. Specifically, section 27-40-630, the section that requires a tenant to give notice to his landlord, is about a landlord's "failure to provide essential services" that are required under section 27-40-440.

To put this in better prospective, section 27-40-440 imposes several distinct responsibilities on landlords. Some are things that affect health, safety, and the physical condition of the property. *See* S.C. Code §§ 27-40-440(a)(1) – (3). Others are "essential services" like running water, gas, electrical, and plumbing connections. *See* S.C. Code §§ 27-40-440(a)(4) – (5). If a landlord's violation of the Act is the failure to provide essential services, the tenant must give notice. S.C. Code § 27-40-630(d). But if the landlord's violation of the Act is one that materially affects the health, safety, or physical condition of the property, notice by the tenant is not required. S.C. Code § 27-40-610(a); *but see Robinson*, 384 S.C. at 587-88, 682 S.E.2d at 497-98.

Furthermore, sections 610 and 630 provide for different remedies. Section 610 permits a lawsuit for "actual damages," while section 630 provides that the tenant may "procure reasonable amounts of the required essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or . . . recover damages based upon the diminution in the fair-market rental value of the dwelling unit and reasonable attorney's fees." *Compare* S.C. Code § 27-40-610(b), *with* S.C. Code §§ 27-40-630(a)(1) – (2). And finally, section 630 explicitly prohibits a tenant from suing a landlord under both 610 and 630. *See* S.C. Code §

27-40-630(b) ("[i]f the tenant proceeds under this section, he may not proceed under Section 27-40-610 as to that breach").

In sum, a lawsuit for personal injury damages against a landlord is governed by section 610 whereas a lawsuit for failure to provide essential services, like running water, is governed by section 630. Mr. Gallo's lawsuit falls under section 610 which does not require notice prior to suing. Respectfully, to the extent this Court's decision in *Robinson* can be read to suggest that a tenant must give notice to a landlord before bringing any type of action against a landlord under the Act, this aspect of *Robinson* should be reconsidered in light of the different language used in the different statutory subsections.[2]

The circuit court in this case relied on this Court's holding in *Robinson* in concluding 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. Respectfully, the circuit court's reliance on this Court's decision in *Robinson* was misplaced. The holding in *Robinson* is clearly distinguishable from Mr. Gallo's case. As already mentioned, in *Robinson*, the plaintiff's lawsuit was based on the landlord's failure to provide smoke detectors inside of a single-family home, not the hallway of an apartment complex. The interior of leased premises is 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 this case, the Defendants have exclusive authority to maintain and operate the common area where Mr. Gallo was injured.

[2] This Court's decision in *Robinson* also discusses Article 11 of the Building Codes and Fire Prevention found in sections 5-25-1310 through 1380 of the South Carolina Code. Section 5-25-1330(b) specifically requires tenants to provide written notice to landlords in instances where there is any deficiency in the smoke detectors. *Robinson*, 384 S.C. at 586-87, 682 S.E.2d at 497.

The circuit court interpreted this Court's holding in *Robinson* to impose a duty upon tenants to inspect and notify a landlord of dangerous, and in some cases concealed, conditions on land which they do not control, cannot access without permission, and cannot alter. Respectfully, this interpretation of *Robinson* is not justified.

Additionally, the Supreme Court's holding in *Clea v. Odom*, 394 S.C. 175, 183, 714 S.E.2d 542, 546 (2011) makes clear 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. The Defendants in this case argued in their motion for summary judgment that a tenant must give written notice to the landlord specifying the dangerous condition before being allowed to sue the landlord for injuries sustained as a result of the dangerous condition. However, the Supreme Court in *Odom* imposed no such requirement. *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. As will be further explained below, actual notice is precisely what Mr. Gallo can show in this case due to his entitlement to a spoliation of evidence instruction. *See Major v. City of Hartsville*, 410 S.C. 1, 3, 763 S.E.2d 348 (2014) ("Constructive notice is a legal inference, which substitutes for actual notice").

Under the plain language of section 27-40-610, written notice to a landlord is not required in personal injury cases arising from a dangerous condition in a common area under the Act. S.C. Code § 27-40-610(a) (T]he tenant *may* deliver written notice) (emphasis added); *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning").

Furthermore, the Act imputes notice of a fact to someone where "(1) the person has actual knowledge of it . . . or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists." S.C. Code § 27-40-240(A). Therefore, a tenant is not required to provide notice to a landlord in a case in which the landlord already has notice of the dangerous condition. It would be absurd to require a tenant to provide written notice of a dangerous condition in a common area which the landlord is already on notice of prior to that tenant being permitted to bring a lawsuit for damages. This is especially true since the Act was designed to protect tenants, not harm them. *Ranucci*, 409 S.C. at 500, 763 S.E.2d at 192-93 (2014) ("The statutory language must be construed in light of the intended purpose of the statute. This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless"); *Watson*, 299 S.C. at 436, 385 S.E.2d at 375 ("a tenant of leased residential premises, is a member of a class for whose special benefit the [Act] was enacted"); *see also* S.C. Code § 27-40-50 ("the remedies provided by this chapter must be so administered that an aggrieved party may recover appropriate damages").

B. The Defendants' repeated refusal to disclose the written records of its quarterly and bi-annual inspections of the common areas of the apartment complex support an inference that the Defendants had actual notice of the dangerous carpet ripple.

As an initial matter, despite the circuit court not specifically ruling on Mr. Gallo's argument that the Defendants' spoliation of evidence created a genuine issue of material fact as to whether they had actual notice of the dangerous carpet ripple, granting summary judgment to the Defendants was at least an implicit rejection of this argument. Furthermore, once an issue has been raised to the circuit court below, and again in a Rule 59(e) motion, and the circuit court has refused to rule both times, the appealing party need not file a second Rule 59(e) motion to preserve the issue. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) ("Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved

and a second motion is not required if the trial court does not specifically rule on the issue so raised").

In *Kershaw Cty. Bd. of Educ. v. United States Gypsum Co.*, our Supreme Court endorsed a trial judge's decision to instruct the jury that "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party." 302 S.C. 390, 393, 396 S.E.2d 369, 372 (1990); *see also Welsh v. Gibbons*, 211 S.C. 516, 523, 46 S.E.2d 147, 150 (1948) ("[T]he unexplained failure of a party to produce evidence peculiarly within his control and properly a part of his case . . . justifies an inference that such evidence, if presented, would be unfavorable to him.") It is now well settled in South Carolina that the doctrine of spoliation allows a 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.*, 429 S.C. 324, 338 n.4, 838 S.E.2d 18, 25 n.4 (Ct. App. 2020) (overruled on other grounds) (citing *Stokes v. Spartanburg Reg'l Med. Ctr.*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006).

Our Courts have made clear 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 finds "the explanation unsatisfactory, [it is] permitted - but not required - to draw the inference that the evidence would have been unfavorable to the party's claim. *Stokes*, 368 S.C. at 522, 629 S.E.2d at 679. "[T]he party seeking the inference must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder." *Pringle v. SLR, Inc.*, 382 S.C. 397, 405, 675 S.E.2d 783, 787 (Ct. App. 2009) (internal quotations and citations omitted).

In *Stokes v. Spartanburg Reg'l Med. Ctr.*, a man died shortly after undergoing surgery at a hospital. 368 S.C. 515, 629 S.E.2d 675 (Ct. App. 2006). The personal representative of the man's estate sued the hospital for medical malpractice and a jury ultimately rendered a verdict in favor of the hospital. On appeal, this Court considered whether the trial judge erred in refusing to instruct the jury that they could draw a negative inference from the hospital's failure to preserve two pieces of medical evidence. *Id*. at 516, 629 S.E.2d at 676. The specific pieces of evidence at issue in *Stokes* were blood test results and a nurse's chart which detailed the patient's vital signs. *Id*. at 519, 629 S.E.2d at 677.

In *Stokes*, the hospital suggested that the blood may have never been sent to the lab for testing and that the nurse's chart may have been lost during the code. *Id*. at 521, 629 S.E.2d at 678-79. This Court noted that "[w]hile the jury may well have accepted the Hospital's explanations, it was also in its province to draw a negative inference from the Hospital's failure to produce those pieces of evidence." *Id*. As such, this Court found that the trial judge erred in refusing to instruct the jury on the doctrine of spoliation of evidence. *Id*. at 520, 629 S.E.2d at 678. This Court also found that the trial judge's failure to instruct the jury on spoliation was prejudicial because Stokes' malpractice claim "hinged on the jury believing Stokes died from lack of oxygen rather than from a sudden and unexpected heart attack," and that both missing pieces of evidence would have helped determine Stokes' cause of death. *Id*. at 522, 629 S.E.2d at 679.

More recently, this Court considered the doctrine of spoliation in *Garrison v. Target Corp.*, 429 S.C. 324, 838 S.E.2d 18 (Ct. App. 2020) (*Garrison I*) (affirmed in part and reversed in part by *Garrison v. Target Corp.*, 435 S.C. 566, 869 S.E.2d 797 (2022) (*Garrison II*)). The *Garrison* case was a complex cross appeal involving several different issues, one of which was Target's argument that it was entitled to a JNOV based on insufficient evidence that it had knowledge of the dangerous

condition on its premises which caused the plaintiff's injuries—a syringe in the parking lot. *Garrison I*, 429 S.C. at 335, 838 S.E.2d at 24. Target lost the syringe, and the plaintiffs lost pictures they had taken of the syringe. Accordingly, the trial judge instructed the jury on spoliation of evidence. *Id*. at 338, 838 S.E.2d at 25. The jury found in favor of the plaintiff and the trial judge denied Target's motion for JNOV as to liability. *Id*. This Court concluded that there was sufficient evidence of Target's knowledge based on testimony that the syringe appeared "old, dirty, and nasty" and seemed to have "been there a long time." *Id*. at 341, 838 S.E.2d at 27. The Supreme Court in *Garrison II* affirmed this Court on this issue but additionally held that "the spoliation of the syringe while in Target's possession supports the jury's finding of constructive notice." *Garrison II*, 435 S.C. at 579, 869 S.E.2d at 804.

In this case, the circuit court granted summary judgment based on its view that there was no evidence showing the Defendants had notice of the dangerous carpet ripple. However, the Defendants repeatedly refused to disclose evidence in their possession which would have helped to determine whether they had notice. (R. p. 16; R. pp. 113 – 125). The written records of the quarterly and bi-annual inspections performed on the common areas of the apartment complex should have indicated any problems with the carpet. The Defendants admitted to the existence of these records at the 30(b)(6) deposition. However, the Defendants failed to disclose these records even after having been ordered to by the circuit court. Accordingly, Mr. Gallo would have unquestionably been entitled to a spoliation of evidence jury instruction in which the jury would have been charged that they could infer that the records would have been unfavorable to the Defendants. Under these circumstances, the circuit court erred in granting summary judgment to the Defendants because the spoliation of evidence created a genuine issue of material fact as to whether the Defendants had actual notice of the dangerous carpet ripple.

Because the applicable legal standard requires the circuit court, and this Court, to examine the evidence and the inferences which can be drawn therefrom in the light most favorable to Mr. Gallo, the circuit court erred in granting summary judgment. This Court should reverse the circuit court's order granting summary judgment and remand this case for a jury trial.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the circuit court's order granting summary judgment in favor of the Defendants and remand for a jury trial.

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This 2nd day of February 2026.