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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 Gallo,……..……………………………………………………….Appellant,

v.

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

RESPONDENTS' FINAL BRIEF

HOWSER, NEWMAN & BESLEY, LLC

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STATEMENT OF ISSUES ON APPEAL

I. TENANT FAILED TO COMPLY WITH RULE 56, SCRCP, BY NOT PROVIDING ANY AFFIDAVITS OR OTHER EVIDENCE PRIOR TO OR AT THE MOTION HEARING AND DID NOT SEEK LEAVE TO SUBMIT ANY DOCUMENTS PRIOR TO THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT WAS ENTERED AND, THEREFORE, CERTAIN ARGUMENTS NOW PRESENTED AND THE DOCUMENTS SUBMITTED WITH THE RULE 59(e) MOTION CANNOT BE CONSIDERED BY THIS COURT.

II. THE CIRCUIT COURT CORRECTLY GRANTED LANDLORD'S MOTION FOR SUMMARY JUDGMENT WHERE THERE WAS NO NOTICE OF THE CONDITION COMPLAINED OF.

A. Tenant's argument is not preserved for appellate review.

B. Tenant's argument fails on the merits.

STATEMENT OF THE CASE

This premises liability action commenced with the filing of the Summons and Complaint on October 11, 2022. [Docket; Complaint]. Respondents Autumnwood Crossing, L.P., who owned the property and Intermark Management Corporation, who managed the property (hereinafter collectively "Landlord") filed and timely served an Answer. [R. pp. 27-29, 161-164].

Discovery took place with the exchange of written interrogatories, requests for production, and depositions. On October 22, 2024, Landlord filed and served a Motion for Summary Judgment and memorandum, supported with excerpts from Appellant's (hereinafter "Tenant") deposition and deposition exhibits. [R. pp. 59-73, 161-164].

On October 25, 2022, a Consent Order was filed waiving the mandatory mediation requirement as the parties represented mediation would serve no useful purpose. [R. pp. 161-164].

A hearing on Landlord's Motion for Summary Judgment was heard before the Honorable Daniel Coble (hereinafter "circuit court") on February 12, 2025. [R. p. 137]. The hearing was attended by Joseph Thickens for Tenant and the undersigned for Landlord. [*Id*.]. Prior to the motion hearing, no responsive brief, documents, or other evidence were filed in opposition to the Motion for Summary Judgment. [R. pp. 161-164]. Tenant's counsel never filed an affidavit as allowed by Rule 56(f), SCRCP, or otherwise sought to continue the hearing. [Docket]. *See* Rule 56(f), SCRCP, (stating "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be

obtained or depositions to be taken or discovery to be had or may make such order as is just").

On February 13, 2025, the circuit court issued a Form 4 Order stating the motion was taken under advisement. [R. pp. 13, 161-164].

On March 3, 2025, the circuit court issued a final Order granting Landlord summary judgment. [R. pp. 4-9, 161-164].

On March 13, 2025, Tenant filed a Rule 59(e), SCRCP, Motion for Reconsideration with exhibits that were presented to the circuit court for the first time. [R. pp. 74-129, 161-164].

On March 13, 2025, Landlord filed a Response in Opposition to the Motion for Reconsideration. [R. pp. 130-155, 161-164].

The circuit court issued its Order denying the Rule 59(e) motion on March 20, 2025. [R. pp. 1-3]. This appeal was filed and timely served.

STATEMENT OF FACTS

The only facts before the circuit court are contained in the deposition excerpts and exhibits filed with Landlord's Motion for Summary Judgment. The following facts are based upon Tenant's deposition testimony.

This is a premises liability case at an apartment complex owned and managed by Landlord. 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.

Tenant has resided as the complex since approximately 2019, when the complex first opened. [R. p. 66, lines 17-21]. Tenant's unit was the first unit on the left past the fire doors. [R. pp. 70-72]. The photo was taken *after* Tenant's fall when he was investigating what allegedly caused him to fall. The photo was taken by Tenant 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. [R. p. 67, line 13-p. 69, line 7]. However, the ripple was not visible in Exhibit 3 to Tenant's deposition. [R. p. 73].

Tenant confirmed that prior to his fall, he did not notice the ripple on the carpet. [R. p. 67, lines 1-3]. Tenant never reported the issue with the ripples in the carpet before his fall. [R. p. 67, lines 4-10]. Tenant never heard anybody who lived in the complex complain of the ripple on the carpet where Tenant fell. [R. p. 67, lines 11-15]. Tenant testified he only discovered the ripple *after* he fell when he went back to investigate what could have caused him to fall. [R. p. 67, line 26-p. 69, line 7].

Tenant's statement of facts concerning the lease agreement, discovery, and alleged evidence not presented to the circuit judge are not before this Court and cannot be considered. [App. Final Brief, p. 4 (Lease Agreement), pp. 5-6 (Discovery), pp. 8-9 (Arguments).[1]

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[1] Landlord's memorandum in support of summary judgment also presented the following deposition testimony for the trial court's consideration, but the transcripts had not been received by the undersigned at the time of filing.

> In addition to [Tenant], 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 [Tenant's] fall and she was not aware of the ripple prior to [Tenant's] fall. [Deposition transcript to be provided upon receipt]. Ms. Bryant took photographs of the area before the carpet was repaired. [R. p. 61].
>
> Louis Rodriguez, who at all times relevant to the case was the maintenance person at the complex. Mr. Rodgriguez 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]. [R. p. 61].
>
> 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

The circuit court granted Landlord summary judgment for the reasons set forth in its Order. [R. pp. 4-9].

STANDARD OF REVIEW

On an appeal from an order granting summary judgment, this Court applies the same standard as that which the circuit judge applied in determining whether to enter the order. *Jones v. Doe*, 372 S.C. 53, 60-61, 640 S.E.2d 514, 518 (Ct. App. 2006). This 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." *Id*.

The circuit court applied the following standard in ruling on the Motion for Summary Judgment. [R. p. 4]. 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) SCRCP; *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. Ravoira*, 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

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her the ripple after his fall. [Deposition transcript to be provided upon receipt]. [R. p. 61].

nonmoving party must come forward with specific facts showing genuine issues. *Id.* In fact, Rule 56 explicitly states the following:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for circuit. If he does not so respond, summary judgment, if appropriate, shall be entered against him

Rule 56(e), SCRCP.

ARGUMENTS

I. TENANT FAILED TO COMPLY WITH RULE 56, SCRCP, BY NOT PROVIDING ANY AFFIDAVITS OR OTHER EVIDENCE PRIOR TO OR AT THE MOTION HEARING AND DID NOT SEEK LEAVE TO SUBMIT ANY DOCUMENTS PRIOR TO THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT WAS ENTERED AND, THEREFORE, CERTAIN ARGUMENTS NOW PRESENTED AND THE DOCUMENTS SUBMITTED WITH THE RULE 59(e) MOTION CANNOT BE CONSIDERED BY THIS COURT.

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]; *Brailsford v. Brailsford,* 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008) (holding issue is not preserved for appeal where it was never presented to the circuit court prior to

the filing of the motion to alter or amend); *Eaddy v. Oliver,* 345 S.C. 39, 44, 545 S.E.2d 830, 833 (Ct. App. 2001) (a party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at circuit).

At the summary judgment hearing, Tenant's counsel orally presented three (3) arguments to the circuit court: (1) Tenant argued he pleaded the case under common law negligence and not pursuant to the S.C. Residential Landlord Tenant Act (hereinafter the RLTA") [R. p. 144, line 11-p. 145, line 4]; (2) whether Landlord inspected the property and maintained records of those inspections based upon the deposition testimony of Landlord's 30(b)(6) witness [R. p. 145, line 5-p. 147, line 22]; and (3) Landlord repaired the issue complained of prior to Tenant's counsel being able to inspect the area pursuant to a spoilation letter. [R. p. 147, line 23-p. 151, line 13].

Tenant's first argument will be addressed in a separate section.

Tenant's second argument is not supported by any evidence presented to the circuit judge prior to the filing of the Order granting summary judgment. Tenant did not file or otherwise submit to the circuit court or ask to submit to the circuit court for consideration after the hearing, any portion of Landlord's 30(b)(6) deposition argued at the hearing. No discovery requests or discovery responses were filed or otherwise submitted to the circuit court, and Tenant did not seek leave to submit said documents to the circuit court for consideration.

Based upon Tenant's failure to submit any evidence to support his arguments prior to the summary judgment Order being issued, only counsel's arguments were presented for the circuit court's consideration. Accordingly, the circuit court correctly granted Landlord's Motion for Summary Judgment as the 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. Ivev,* 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (the circuit court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence).

Tenant's third argument is not supported by any evidence presented to the circuit judge prior to the filing of the Order granting summary judgment. Tenant did not file or otherwise submit to the circuit court or ask to submit to the circuit court for consideration after the hearing, any spoilation letter, affidavit of counsel, or any portion of Landlord's 30(b)(6) deposition argued at the hearing. No discovery requests or discovery responses were filed or otherwise submitted to the circuit court, and Tenant did not seek leave to submit said documents to the circuit court for consideration.

Based upon Tenant's failure to submit any evidence to support his arguments prior to the summary judgment Order being issued, only counsel's arguments were presented for the circuit court's consideration. Accordingly, the circuit court correctly granted Landlord's Motion for Summary Judgment as the non-moving party may not circumvent the grant of summary judgment through the argument of

counsel alone. *Id.* Accordingly, the Order granting Landlord summary judgment should be affirmed.

Turning to Tenant's arguments in its brief, Tenant argues the circuit court erred in granting summary judgment due to Landlord's alleged failure to disclose written records of its inspections of the common areas, thereby inferring Landlord had actual knowledge of the condition complained of. [App. Brief, pp. 17-21]. Tenant's argument is based solely on evidence not presented to the circuit judge, but only on the arguments of counsel at the hearing. [App. Brief, pp. 17, 24].

As set forth in detail above, Tenant's failure to submit any evidence to support his arguments prior to the summary judgment Order being issued, only counsel's arguments were presented for the circuit court's consideration. Accordingly, the circuit court correctly granted Landlord's Motion for Summary Judgment as the non-moving party may not circumvent the grant of summary judgment through the argument of counsel alone. *Id.* Therefore, the Order granting Landlord summary judgment should be affirmed.

II. THE CIRCUIT COURT CORRECTLY GRANTED LANDLORD'S MOTION FOR SUMMARY JUDGMENT WHERE THERE WAS NO NOTICE OF THE CONDITION COMPLAINED OF.

Tenant contends the circuit court erred in granting Landlord summary judgment as there is no requirement for a tenant to provide written notice of a dangerous condition in a common area pursuant to the RLTA. [App. Brief, pp. 11-17].

A. Tenant's argument is not preserved for appellate review.

As an initial matter, Tenant's arguments were not presented to the circuit court prior to the Order granting summary judgment and, therefore, the argument is not preserved for appellate review.

As evidenced from the motion hearing transcript, Tenant's only arguments as to the RLTA is that a "landlord can be liable where they have actual notice and failed to remedy the situation." [R. p. 151, lines 14-19]. Again, Tenant's arguments were not supported by any evidence as discussed above.

At no time did Tenant make any arguments concerning whether the RLTA requires written notice of a condition complained of. The first time this argument was raised is in Tenant's Motion to Reconsider. [R. pp. 88-89]. Accordingly, the argument now raised is not preserved for appellate review. *Brailsford,* 380 S.C. at 448, 669 S.E.2d at 345 (holding issue is not preserved for appeal where it was never presented to the circuit court prior to the filing of the motion to alter or amend); *Oliver,* 345 S.C. at 44, 545 S.E.2d at 833 (a party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at circuit). Therefore, the Order granting Landlord summary judgment should be affirmed.

B. Tenant's argument fails on the merits.

"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. Morrisey,* 285 S.C. 236, 239, 329 S.E.2d 426, 428 (1985).

In 1986, South Carolina enacted the RLTA as set forth in Title 27, Chapter 40 of the South Carolina Code of Laws. S.C. Code § 27-40-10 *et. seq.*

The RLTA specifically sets for the following obligations for a landlord concerning maintaining the rented property:

(a) A landlord shall:

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) ***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;

(4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

S.C. Code § 27-40-440 (emphasis added).

The RLTA provides the following remedies for the tenant under S.C. Code § 27-40-610 for a landlord's noncompliance in general:

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with § 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. The rental agreement shall terminate as provided in the notice except that:

(1) The rental agreement shall not terminate by reason of the breach:

(i) if the breach is remedial by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice; or

(ii) if such remedy for a breach not affecting health and safety cannot be remedied within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

(b) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief in a magistrate's or circuit court, without posting bond, for any noncompliance by the landlord with the rental agreement or § 27-40-440. If the landlord's noncompliance is wilful, the tenant may recover reasonable attorney's fees.

S.C. Code § 27-40-610.

Finally, the RLTA defines what constitutes "notice" as used in the statute:

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with § 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. The rental agreement shall terminate as provided in the notice except that:

(1) The rental agreement shall not terminate by reason of the breach:

(i) if the breach is remedial by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice; or

(ii) if such remedy for a breach not affecting health and safety cannot be remedied within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

(b) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief in a magistrate's or circuit court, without posting bond, for any noncompliance by the landlord with the rental agreement or § 27-40-440. If the landlord's noncompliance is wilful, the tenant may recover reasonable attorney's fees.

S.C. Code § 27-40-240.

In *Watson v. Sellers,* the Court of Appeals first addressed whether the RLTA, which was then recently enacted, provided for a private cause of action in tort for the breach of duty owed by a landlord to a tenant. The *Watson* court set forth the following holdings:

> We conclude, therefore, that the General Assembly of South Carolina directed this court by Section 27-40-20 to implement its intent to modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants by enforcing the RLTA in cases such as the one presently before this court. We therefore reject Sellers' contention that the Legislature did not intend to abrogate the existing law on this subject. It was the intent of the Legislature to cause the law of this state to be consonant with the modern trend as set forth above; and we so hold.
>
> Next, and with reference to the intent of the Legislature, we hold that the preamble and the 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. As noted it was the intent of the Legislature to modernize landlord and tenant law; 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.

Watson v. Sellers, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989) (emphasis added).

It is important to note that the *Watson* court and courts subsequently addressing the RLTA and "notice" refer to the "premises." The RLTA defines "premises" as "a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose

use is promised to the tenant." S.C. Code. § 27-40-210(10). Accordingly, premises would include the area at issue in this case, a common area hallway.

The notice requirement of the RLTA was next addressed in *Robinson v. Code*. In Robinson, a case involving in part an argument that the circuit erred in finding "notice was an element of a landlord's liability for failing to maintain a rental premises[,]" the Court of Appeals concluded for a second time that the RLTA creates a cause of action for a tenant of residential property against the landlord, "for failure, ***after notice***, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition."[2] *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009) (emphasis added).

In *Cleo v. Odom*, a plaintiff was injured in a common area by a tenant's dog when she was visiting her sister, who was also a tenant at the property. *Clea v. Odom*, 394 S.C. 175, 178, 714 S.E.2d 542, 544 (2011). The S.C. Supreme Court concluded that the RLTA created a new duty to maintain a common area in a reasonably safe condition which did not exist at common law. Accordingly, the *Odom* court ruled that 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. *Id.* (emphasis added).

[2] The *Robinson* court concluded the circuit court did not err in finding a claim under the RLTA was not plead because the Complaint did not allege the tenant provided notice of the issue complained of to the landlord and then landlord failed to correct the problem after notice.

Finally, while not published but illustrative of the opportunity to address the issue, the Court of Appeals revisited the notice requirement in *Salek v. Nirendblatt et al.* The Court of Appeals affirmed summary judgment in the landlord's favor because the tenant failed to establish the landlord had notice of any defect in the in the condition complained of and concluded without notice the landlord had no duty to make any repair. *Salek v. Nirenblatt, Nirenblatt & Hoffman, L.L.P.*, No. 2011-UP-326, 2011 S.C. App. Unpub. LEXIS 394, at *5 (Ct. App. June 27, 2011).[3]

Since the inception of the RLTA, South Carolina state and federal courts have concluded that notice to the landlord of a condition complained of is a prerequisite to recovering damages in a tort action against a landlord. Tenant has presented no evidence in the present matter to warrant deviating from over thirty-six years of precedent. Accordingly, the Order granting Landlord summary judgment should be affirmed.

CONCLUSION

For the reasons set forth, Respondents respectfully request that the circuit court's Order granting Respondents summary judgment be affirmed.

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[3] Federal courts have adopted the notice requirement of the RLTA as illustrated in the unpublished Fourth Circuit opinion in *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).