

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 KOMONICK SINCLAIR,)
)
 Plaintiff,)
)
 v.)
)
 ALLEN'S FOOD BASKET INC.,)
 GABRIEL'S BREAKFAST AND GRILL)
 AT ALLEN'S FOOD BASKET, LLC)
 D//B/A GABRIEL'S GRILL, ALLEN'S)
 FOOD BASKET A/K/A ALLEN'S FOOD)
 BASKET GRILL, WESLEY ALLEN)
 A/K/A J. WESLEY ALLEN, PATRICIA)
 A. BLANTON, J. WESLEY ALLEN)
 REVOCABLE LIVING TRUST, J)
 WESLEY ALLEN TR, PATRICIA A)
 BLANTON TR, GABE JACKSON A/K/A)
 GABRIEL JACKSON, JAMES D. LEWIS,)
 AND SHIRLEY A. LEWIS,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2023CP2603658

**MEMORANDUM OPINION AND
 ORDER GRANTING WESLEY
 ALLEN, PATRICIA A. BLANTON,
 AND THE J. WESLEY ALLEN
 REVOCABLE LIVING TRUST'S
 MOTION FOR SUMMARY
 JUDGMENT**

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 SC Court of Appeals

This matter is before the Court on the Defendants Wesley Allen, Patricia A. Blanton, and the J. Wesley Allen Revocable Living Trust's Motion for Summary Judgment.¹ The Trust Defendants have filed a Motion for Summary Judgment and Memorandum in Support, the Plaintiff has filed a Memorandum of Law in Opposition, and the Trust Defendants have filed a Reply in Support of their Motion for Summary Judgment. The parties have submitted numerous exhibits in support of their respective positions. On October 13, this Court heard oral argument on the Motion. The matter is fully briefed and is ripe for disposition. After careful consideration of the undisputed material facts and the applicable law, the Court finds that Summary Judgment is appropriate in favor of the Trust Defendants on all claims.

¹ Plaintiff has named Wesley Allen and Patricia Blanton as defendants in their individual capacity and in their capacity as Trustees for the J. Wesley Allen Revocable Living Trust. This Order collectively refers to these defendants as the "Trust Defendants" and applies to them in all capacities.

I. Undisputed Facts

This is a civil lawsuit stemming from a third-party shootout that occurred in the early morning hours of October 12, 2020. Defendant J. Wesley Allen Revocable Living Trust is the commercial landlord and owner of a commercial property located in Myrtle Beach, South Carolina. The commercial property owned by the Trust consists of a parcel off Highway 501, which includes a commercial building and a parking lot—the commercial building houses a hair boutique, a barber shop, and a restaurant. The two trustees of the Trust are its now 93-year-old grantor, Wesley Allen, and his daughter, Patricia Blanton. In 2018, trustee Wesley Allen, on behalf of the Trust, entered into a commercial lease agreement with Gabriel Jackson. The purpose of the commercial lease was for Jackson to operate a restaurant for serving food. Jackson's restaurant was Allen's Food Basket, also going by the business name of Gabriel's Breakfast and Grill at Allen's Food Basket. The Trust, as well as its trustees Wesley Allen and Patricia Blanton, had no part in running Jackson's business.

On October 11, 2020, the Plaintiff arrived at Allen's Food Basket, as he had done many times before, to meet with friends and acquaintances to watch the NBA finals game and gamble cash over poker games. When the Plaintiff arrived with his friends, the lights were off, the doors were locked, and nobody else was inside. Jackson would close his business around 8:00 p.m. Jackson had given a key to one of the Plaintiff's friends to get into the building that evening. The facts confirm Jackson was hosting a late-night poker game in the back utility/storage room of the restaurant, and his business was closed. Wesley Allen and Patricia Blanton had no prior knowledge of these social gatherings by Jackson and the Plaintiff at the leased premises.

In the early morning hours (around 2:00 to 3:00 a.m.) of October 12, 2020, masked men made their way into the building and opened fire on the Plaintiff and others in the back

utility/storage room of the restaurant. The Plaintiff was shot during the incident. The Trust Defendants had no knowledge of the Plaintiff's presence at Allen's Food Basket, and also had no prior knowledge of Jackson's use of the leased premises for after-hours gambling sessions.

II. Standard of Review

“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.” *Jackson v. Swordfish Invs., LLC*, 3654 S.C. 608, 611, 620 S.E.2d 54, 55-56 (2005); *see also* Rule 56(c), SCRCP. Summary Judgment is appropriate in those cases in which plain, palpable, and undisputed facts exist on which reasonable minds cannot differ. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 431, S.E.2d 565 (1993).

“[A] party opposing a properly supported motion for summary judgment . . . may not rest on mere allegations or denials of his pleading but must set forth or point to specific facts showing that there is a genuine issue of material fact.” *Pryor v. Northwest Apts.*, 321 S.C. 524, 526, 469 S.E.2d 630, 632 (Ct. App. 1996). The Supreme Court has recently clarified and reiterated that the proper standard for Rule 56, SCRCP is the “genuine issue of material fact” standard, and “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 464, 892 S.E.2d 297, 301 (2023).

III. Discussion

The Plaintiff has brought five causes of action against the Trust Defendants. The First through Fourth claims against the Trust Defendants sound in negligence. *See* Complaint, at 8 – 12. The Plaintiff's Fifth Cause of Action alleges a violation of the South Carolina Unfair Trade Practices Act. *See* Complaint, at 12 – 13. At the hearing of this Motion, the Plaintiff

acknowledged that there are no facts to support his Fifth Cause of Action, and voluntarily dismissed this claim. Thus, only the negligence claims remain to be considered.

“In order to establish a claim for negligence, a plaintiff must show (1) a defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant’s breach was the actual or proximate cause of the plaintiff’s injury; and (4) plaintiff suffered an injury or damages.” *Roe v. Bibby*, 410 S.C. 287, 293, 763 S.E.2d 645, 648 (Ct. App. 2014) (internal quotation marks omitted) (quoting *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007)). “An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Id.* One does not always owe a duty to others. “Without a duty, there is no actionable negligence.” *Id.* “The existence of a duty owed is a question of law for the courts.” *Id.* “One who controls the use of property has a duty of care not to harm others by its use. Conversely, one who has no control owes no duty.” *Charleston Elec. Servs. v. Rahall*, 427 S.C. 317, 323, 931 S.E.2d 122, 125 (Ct. App. 2019) (quoting *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)).

“South Carolina recognizes four general classifications of persons who come on premises: adult trespassers, invitees, licensees, and children. Different standards of care apply depending on whether the visitor is considered an “invitee,” i.e., and invited (express or implied) business guest; a “licensee,” i.e., a person not invited, but whose presence is suffered; a “trespasser,” i.e., a person whose presence is neither invited nor suffered; or a child.” *Sims v. Giles*, 343 S.C. 708, 715, 541 S.E.2d 857, 861 (Ct. App. 2001). “The level of care owed is dependent upon the class of the person present.” *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000).

The Trust Defendants present three primary arguments in support of their Motion for Summary Judgment. First, they argue that Plaintiff was a social guest of Gabe Jackson on the night of the shooting and, therefore, there was no duty of the Trust Defendants to protect the Plaintiff from third-party criminal activity. Second, they argue that even if Plaintiff was an invitee, they did not breach any duty owed to him as an invitee. Third, the Trust Defendants submit that their actions, or inactions, were not the proximate cause of the Plaintiff's injuries. While proximate cause is typically a jury question, they contend that, given the undisputed facts of this case, it is a matter of law for this Court.

In response, the Plaintiff argues that he was an invitee on the night of the shooting. He submits that he was both a public invitee and a business visitor, as he was invited to enter the premises as a member and potential customer. In support of this position, Plaintiff relies on the assertion that he, and other victims, were eating and drinking at the restaurant that night, among other things. Additionally, the Plaintiff argues that the Trust Defendants owed a duty of care to the Plaintiff as an invitee for any defective or dangerous conditions on the property, including the duty to take actions to prevent this third-party criminal activity. The Plaintiff argues, generally, that this shooting was foreseeable by the Trust Defendants, and therefore, it is a jury question to determine whether the Trust Defendants acted reasonably.

“A licensee is a social guest or a person who is privileged to enter upon land by virtue of the possessor's consent.” *Goode v. St. Stephens United Methodist Church*, 324 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997) (quoting *Hoover v. Broome*, 324 S.C. 531, 535, 479 S.E.2d 62, 64 (Ct. App. 1996)); *see also Neil v. Byrum*, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986). “A licensee's presence on property is for the primary benefit of the licensee, not the owner.” *Id.* In other words, “[w]hen a licensee enters onto the property of another, it is for his or her benefit

and not that of the landowner.” *Vogt v. Murraywood Swim and Racquet Club*, 357 S.C. 506, 510, 593 S.E.2d 617, 619 (2004). “Although a social guest normally is invited, and even urged to come, he is not an “invitee,” within the legal meaning of that term . . . [h]e does not come as a member of the public upon premises held open to the public for that purpose, and he does not enter for a purpose directly or indirectly connected with the business dealings of the possessor.” *Vogt*, 357 S.C. at 510, 593 S.E.2d at 620. “The most common example of a licensee is the social guest.” *Sims*, 343 S.C. at 720, 541 S.E.2d at 864. “The basic distinction between a licensee and an invitee is that an invitee confers a benefit on the landowner.” *LeFont v. City of Myrtle Beach*, 430 S.C. 534, 542, 846 S.E.2d 344, 359 (Ct. App. 2020). “The possessor is under no obligation to exercise care to make the premises safe for [a licensee’s] reception, and is under no duty toward him except: (a) [t]o use reasonable care to discover him and avoid injury to him in carrying on the activities upon the land; [and] (b) [t]o use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.” *Sims v. Giles*, 343 S.C. 708, 720-21, 541 S.E.2d 857, 864 (2001).

The Court has also carefully considered the Supreme Court decision in *Jackson v. Swordfish Invs., LLC*, 365 S.C. 608, 613, 620 S.E.2d 54, 56 (2006), which outlines that “South Carolina law does not impose a duty on a landlord to protect a tenant from the criminal acts of third parties[,]” as well as the common law exceptions recognized in our jurisprudence. The Court has also reviewed and considered the authorities cited by the Plaintiff in his application of the balancing test and the economic feasibility of additional security measures, including *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910 (2011) and *Lord v. D & J Enters., Inc.*, 407 S.C. 544, 757 S.E.2d 695 (2014).

Furthermore, “[n]egligence is not actionable unless it is a proximate cause of the injury.” *Wright v. PRG Real Estate Mgmt.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295 (2019) (quoting *Bishop v. S.C. Dep’t of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998)). “Proximate cause requires proof of both causation in fact and legal cause.” *Id.* “Legal cause is proved by establishing foreseeability.” *Id.* “When the injury complained of is not reasonably foreseeable, in the exercise of due care, there is no liability.” *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009) (quoting *Eadie v. Krause*, 381 S.C. 55, 64, 671 S.E.2d 389, 393 (Ct. App. 2008)). Going further, “[w]hen the cause of a plaintiff’s injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing the defendant’s conduct proximately caused his injuries.” *Id.* (citing *Mellon v. Lane*, 377 S.C. 261, 280, 659 S.E.2d 236, 246 (Ct. App. 2008)). While proximate cause is typically a jury question, “when the evidence is susceptible to only one inference, it becomes a matter of law for the court.” *Id.* (citing *Platt v. CSX Transp., Inc.*, 379 S.C. 249, 266, 665 S.E.2d 631, 640 (Ct. App. 2008)).

“The touchstone of proximate cause in South Carolina is foreseeability.” *Vinson v. Hartley*, 324 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct. App. 1996) (citing *Koester v. Carolina Rental Ctr. Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994)). “Foreseeability is determined by looking to the natural and probable consequences of the act complained of.” *Id.* “A Plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant’s negligence.” *Vinson*, 324 S.C. at 400, 477 S.E.2d at 721. “The general rule of law is that when, between negligence and the occurrence of an injury, there intervenes a willful, malicious, and criminal act of a third person producing the injury, but that such was not intended by the negligent person and could not have been foreseen by him, the

causal chain between the negligence and the accident is broken.” *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 172-74 (1968).

The Court finds that all genuine material facts confirm that the business was closed when the Plaintiff arrived, and that it remained closed throughout the late-night poker game that Gabe Jackson was hosting. The Court also finds that third-party individuals came to this property to commit crime(s), and the actions of those third-party criminals were the proximate cause of the Plaintiff’s injuries. There is no dispute that these third-party criminals came to the property and started shooting—it is not material to the Court’s ultimate determination whether there were shots made outside the restaurant or not. Regardless of the legal status of the Plaintiff at the time of the shooting, the Trust Defendants, as the commercial landlord, did not breach any legal duty that was or may have been owed to the Plaintiff that proximately caused his injuries in this matter.

There may be a dispute as to whether the Plaintiff was a licensee or invitee at the time of the shooting, but this Court finds that ultimate determination is not material to the outcome of this Motion. The Court has thoroughly considered the applicable law on these issues, the submissions and arguments of the parties, and the disputed and undisputed facts of this case. The Court finds there are no genuine material disputed facts. Regardless of whether the Plaintiff was a licensee or an invitee, the Trust Defendants did not breach any duties owed to him. The Court need not decide what Plaintiff’s status was, as for either instance, given the facts of this case, the Trust Defendants did not act or fail to act in any way which could be a breach of any duty, regardless of the Plaintiff’s status. The Court finds as a matter of law that the actions—or inactions—of the Trust Defendants were not the proximate cause of the Plaintiff’s injuries in this matter. *See McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App.

2009); *see also Wright v. PRG Real Estate Mgmt.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295 (2019 (“Negligence is not actionable unless it is a proximate cause of the injury”)); *Bishop v. S.C. Dep’t of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998); and *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 172-74 (1968).

Plaintiff has requested this Court to allow him time to conduct additional discovery in this matter before ruling on the instant Motion. In this Court’s judgment, further discovery would be unavailing. Plaintiff has not identified any material fact which could change the outcome. The facts critical to the issues in this matter have already been fully developed. The Trust Defendants have verified their extensive efforts in identifying any documents they may have in their possession that could be responsive to the Plaintiff’s discovery requests. The documents identified have been produced. The Court further notes that Plaintiff originally filed this lawsuit on June 12, 2023. Plaintiff has had well over two years to develop his claims. Additionally, this shooting incident occurred over five years ago. The only things Plaintiff has presented through his briefing and his argument are inferences that are not reasonable, and issues of fact that are not genuine. *See Kitchen Planners, LLC*, 304 S.C. at 464-65, 892 S.E.2d at 301. Further discovery would be unavailing, and the Court declines Plaintiff’s request to conduct additional discovery. Moreover, it is **ORDERED** that the remaining discovery motions as to these Defendants before this Court are **DENIED AS MOOT** based upon this Court’s decision granting Summary Judgment to the Trust Defendants on all counts.

IV. Conclusion

For the foregoing reasons, it is hereby **ORDERED** that the Trust Defendants’ Motion for Summary Judgment is **GRANTED** as to Causes of Action 1 – 4. It is further **ORDERED** that the Trust Defendants’ Motion for Summary Judgment is **GRANTED** as to Cause of Action 5

based upon Plaintiffs' withdraw of that claim. Defendants Wesley Allen, Patricia A. Blanton, and The J. Wesley Allen Revocable Living Trust are dismissed as Defendants in this action.

Judge
Fifteenth Judicial Circuit

Dated:



Horry Common Pleas

Case Caption: Komonick Sinclair VS Allens Food Basket Inc (SPEC REFEREE) ,
defendant, et al
Case Number: 2023CP2603658
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148