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SC Court of Appeals

The State of South Carolina
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2026-000769

Komonick Sinclair,

Appellant,

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 in his capacity as Trustee of the J. Wesley Allen Revocable Living Trust; Patricia A. Blanton in her capacity as Trustee of the J. Wesley Allen Revocable Trust; Gabe Jackson a/k/a Gabriel Jackson; James D. Lewis; & Shirley A. Lewis,

Defendants,

of which Wesley Allen a/k/a J. Wesley Allen; Patricia A. Blanton; J. Wesley Allen Revocable Living Trust; J. Wesley Allen in his capacity as Trustee of the J. Wesley Allen Revocable Living Trust; & Patricia A. Blanton in her capacity as Trustee of the J. Wesley Allen Revocable Trust,

Respondents,

APPELLANT KOMONICK SINCLAIR'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court erred in granting summary judgment in favor of the Allen Defendants.
2. Whether genuine issues of material fact exist as to whether the Allen Defendants breached a duty that proximately caused Sinclair's injuries.
3. Whether the circuit court erred in granting summary judgment before Sinclair had a full and fair opportunity to complete discovery, while his motion to compel remained pending and unheard.

STATEMENT OF THE CASE

This is a negligent security action arising from an armed robbery and shooting at Allen's Food Basket, a commercial property in Myrtle Beach. Komonick Sinclair commenced the action in the Horry County Court of Common Pleas on June 12, 2023. (Compl.). Sinclair asserted causes of action for negligence, recklessness, gross negligence, negligent hiring, negligent supervision, negligent retention, and a violation of the South Carolina Unfair Trade Practices Act against Wesley Allen, Patricia A. Blanton, and the J. Wesley Allen Revocable Living Trust (collectively, the Allen Defendants), who owned the property called Allen's Food Basket, and against other defendants.¹ (Compl.).

Several of the named defendants are not presently before the Court. Gabriel's Breakfast and Grill at Allen's Food Basket, LLC d/b/a Gabriel's Grill and Gabe Jackson, who operated the restaurant, are in default. The claims involving James D. Lewis and Shirley A. Lewis are pending but are not relevant to this appeal. This appeal concerns only the summary judgment entered in favor of the Allen Defendants.

The Allen Defendants answered and denied liability on August 18, 2023. (Answer). On October 3, 2024, they moved for summary judgment, arguing that they neither owed nor breached any duty that proximately caused Sinclair's injuries. (Motion for SJ). Sinclair opposed the motion by written memoranda. (Sinclair Memo in Opp.; Supplemental Memo in Opp.). Sinclair further moved on March 25, 2025, to compel production of records relating to the Allen Defendants' control of the premises and the cost of additional security measures, and the Allen Defendants

¹ Plaintiff brought claims against Wesley Allen and Patricia A. Blanton in their individual capacities and in their capacities as trustees of the J. Wesley Allen Revocable Living Trust. Plaintiff later abandoned his allegations of Unfair Trade Practices Act Violations.

moved on April 22, 2025, to quash Sinclair's third-party subpoenas for those records. Neither motion was heard before the court ruled on summary judgment.

The circuit court heard the Allen Defendants' motion for summary judgment on October 13, 2025, and granted the motion by written Memorandum Opinion and Order entered October 21, 2025. (Order pp. 1-11). The court declined to determine whether Sinclair was an invitee or a licensee, holding, "the Court need not decide what Plaintiff's status was, as for either instance, given the facts of this case, the [Allen 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." (Order p. 8). The court further concluded that the Allen Defendants "did not breach any legal duty that was or may have been owed to the Plaintiff that proximately caused his injuries." (Order p. 8). Finally, the court concluded the motions to compel and quash were moot and denied them summarily. (Order p. 9).

Sinclair moved to reconsider under Rule 59(e), SCRCP, on October 24, 2025. (Mot. Recons.). The court heard the motion on March 2, 2026, and denied it from the bench, stating: "I'm going to deny the motion to reconsider. I still don't see where . . . the property owners owe your client a legal duty to provide better lighting in the parking lot, or to put up a gate in the parking lot, or to do anything that would deter people at three am from coming in to rob it. So, I'm going to stand by my prior ruling." (Recons. Tr. 13:11-17). The motion to reconsider was thereafter denied by written Form 4 Order on March 2, 2026. (March 2, 2026, Form 4). Sinclair timely appealed serving and filing the notice of appeal on March 27, 2026.

STATEMENT OF FACTS

A. The armed robbery and Sinclair's injuries.

On the night of October 11, 2020, Komonick Sinclair was a customer at Allen's Food Basket. He watched a basketball game, played cards, ate chicken wings that were prepared and served at the restaurant, and purchased a bottle of water. (Staggers Aff.) (stating while at Allen's Food Basket on the night of October 11, 2020 "Gabe Jackson cooked chicken wings, shrimp and rice inside the restaurant at Allen's Food Basket for us to eat; I saw Komonick Sinclair eat chicken wings that night at the restaurant . . . Sinclair also purchased a bottle of water that night from the restaurant at Allen's Food Basket for \$1.00.") (Body Worn Camera Still (Axon Body 2 X81349189) (filed October 11, 2025)).

While Sinclair was inside, armed men carried out a robbery. A man knocked at the door, and Sammie Jackson opened it because he thought he recognized the man from the neighborhood. (Police Report p. 32). Two other individuals, at least one of whom wore a mask, then entered from the side of the building and opened fire. (Police Report pp. 32-33). Responding officers found several spent shell casings in the parking lot near the building and a large amount of blood inside the business. (Police Report pp. 8, 10) (Crime Scene Photos - Exterior Shell Casing). Two patrons were killed; Sinclair was shot and severely injured. (Police Report pp. 19, 20). Sinclair survived, but his injuries required the amputation of his leg. (Med. Recs. filed October 4, 2025) (Sinclair Dep. pp. 89-93).

B. The Allen Defendants owned, maintained, and controlled the premises.

The Allen Defendants owned the property, and under the written lease they retained control of areas where dangerous conditions existed. The lease obligated the landlord to "maintain the general exterior structure of the Premises," and provided that the "parking area shall be maintained

by the Lessor.” (Lease p. 2). The lease prohibited the tenant from making any alteration to the premises “without first obtaining the consent of the Lessor/landlord in writing,” and reserved to the landlord “the complete and unencumbered right of entry to the Premises at any time.” (Lease pp. 8, 9). Consistent with that retained control, Wesley Allen testified that he was responsible for the exterior lighting and had changed light bulbs at the restaurant, inside and outside, in the past. (W. Allen Dep. pp. 32–33).

C. Prior crime in the area and the Allen Defendants’ knowledge of it.

The restaurant operated in an area with a well-documented history of violent crime. In the immediate years before the attack, sixteen armed robberies and fourteen shootings occurred within a two-and-one-half-mile radius of the restaurant, most of them less than a mile away. (Levenberg Aff. pp. 2, 3) (Compilation of prior area crime stats). A CAP Index CRIMECAST Report, which measures the risk of serious crime at a location against national, state, and county averages, placed the risk at Allen’s Food Basket substantially above each of those averages. (Levenberg Aff. p. 3; CRIMECAST Report) (“The overall CAPRisk score for Allen’s Food Basket in 2020 was 917 or over nine times more likely that a serious crime against a person would occur at that location than Horry County.”).

The Allen Defendants knew the premises needed security, once provided it, and let it lapse. Wesley Allen testified he had used a security service, Vector Security, at the restaurant, but he stopped maintaining the service when he leased the premises out. (W. Allen Dep. p. 51) (“When I leased the store out, then I didn’t keep up with [the services of Vector Security].”). A security system remained in the wall, but Wesley Allen testified that it had not worked in years. (W. Allen Dep. p. 124). There were no cameras on the premises before the shooting. (W. Allen Dep. p. 21). Wesley Allen did not tell Gabe Jackson, the tenant, that he had previously had a security system

or that the glass had been broken. (W. Allen Dep. p. 51). Wesley Allen further testified that he had heard of shootings around the restaurant before this incident. (W. Allen Dep. pp. 59-60). Patricia Blanton testified that she and her husband posted “no loitering” signs because people would linger on the premises. (Blanton Dep. p. 33).

The premises was also unlit at night. Wesley Allen testified that, for the twenty-some years he operated the store, the premises was “lit up good” at night, but that he later discontinued the lighting because it carried a separate bill, and that after he leased the premises out neither he nor the operator kept it lit. (W. Allen Dep. pp. 86–87). The front door had only a basic lock and no deadbolt, and the parking lot was a shared, open common area for the three stores at the location. (W. Allen Dep. pp. 87–88). Wesley Allen knew the restaurant was kept open to the public for business, but he set no rules governing when it could be open. (W. Allen Dep. pp. 30, 88).

D. The expert opinions.

Sinclair retained David Levenberg, a security expert with decades of experience directing security and loss-prevention operations for retail and shopping-center operators. (Levenberg Aff. p. 1). Levenberg reviewed the prior-crime history, the CRIMECAST report, the lease, the depositions, and the premises in forming his expert opinion. To a reasonable degree of professional certainty, he opined the armed robbery and shooting at Allen’s Food Basket on October 12, 2020, was reasonably foreseeable, and the Allen Defendants did not provide reasonable and adequate security to deter the criminal activity that injured Sinclair. (Levenberg Aff. pp. 2-5). He identified specific security measures that, in his opinion, were economically feasible and more likely than not would have prevented the attack, including restoring the exterior lighting, gating the parking lot, installing a closed-circuit camera system, employing or requesting uniformed or police patrol, and setting closing hours. (Levenberg Aff. pp. 4-5).

E. The unresolved discovery.

When summary judgment was entered, the record on the issues of control and feasible cost was incomplete. Sinclair's outstanding discovery sought records and invoices relating to utilities, lighting, security, and payments, which bore on who controlled and maintained the premises and on the cost of the security measures at issue. The Allen Defendants responded that they did not possess the materials, Sinclair then subpoenaed two banks for the financial records, and the Allen Defendants moved to quash those subpoenas. Sinclair's motion to compel and the Allen Defendants' motion to quash were both pending and unheard when the court granted summary judgment. (Mot. to Compel; Mot. to Quash).

STANDARD OF REVIEW

An appellate court reviews the grant of summary judgment under the same standard that governs the circuit court under Rule 56(c), SCRCP. Summary judgment is proper only where “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In determining whether a genuine issue of material fact exists, the evidence and all reasonable inferences that can be drawn from it must be viewed in the light most favorable to the nonmoving party. *Wilson v. Style Crest Prods., Inc.*, 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006).

The party opposing summary judgment must show a genuine issue of material fact, which requires a reasonable inference, and not merely any inference, to be drawn from the evidence. *The Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). In *Kitchen Planners*, the supreme court reaffirmed that the standard is the “genuine issue of material fact” standard stated in Rule 56(c). *Id.* The inquiry remains one for the existence of a triable issue rather than the weight of the evidence, and “[e]ven when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Wilson*, 367 S.C. at 656, 627 S.E.2d at 735.

INTRODUCTION

This is a case about accountability for known dangers. Komonick Sinclair was a patron at Allen's Food Basket when, in the early-morning hours, armed men entered the unlit and unguarded premises, robbed the business, killed two people, and shot Sinclair, who lost his leg. The Allen Defendants, who were the owners of that property had once lit it and once secured it, and then withdrew both, discontinuing exterior lighting to save a separate bill, and letting the security service lapse when the restaurant was leased out. The Allen Defendants did so even though the immediate vicinity of the restaurant had absorbed sixteen armed robberies and fourteen shootings in the years before the attack. While the procedural history is involved, the question presented is not. On the Allen Defendants' motion for summary judgment, the evidence and every reasonable inference must be read in Sinclair's favor, and so read, the record permits a jury to find that the attack was foreseeable, that the security in place was unreasonable, and that reasonable measures would have spared Sinclair his injuries. Sinclair does not ask this Court to announce a new duty, to make landlords insurers of their tenants' patrons, or to impose strict liability. He asks only that foreseeability, reasonableness, and causation be decided by a jury rather than resolved against him as a matter of law. Therefore, Sinclair respectfully requests the Court reverse.

ARGUMENT

The Allen Defendants, not Sinclair, moved for summary judgment. On their motion, the evidence and every reasonable inference must be viewed in the light most favorable to Sinclair, and judgment was proper only if no genuine issue of material fact remained for trial. Sinclair does not ask this Court to weigh the evidence or to declare the Allen Defendants liable; he simply asks this Court to allow the disputed questions of duty, breach, and proximate cause to be tried. Viewed in that light, the record presents triable issues on each element the circuit court resolved against Sinclair. And it does so even on a record that was not complete when the court ruled, as Sinclair was not afforded a full opportunity to conduct discovery. The judgment should be reversed.

I. The Allen Defendants owed Sinclair a duty of reasonable care.

The Allen Defendants owed Sinclair a duty of reasonable care, and the Court assesses that duty on the assumption that Sinclair was an invitee. In any negligence action, the threshold question is whether the defendant owed the plaintiff a duty of care. *Bass v. Gopal, Inc.*, 395 S.C. 129, 135, 716 S.E.2d 910, 913 (2011). Two features of this record establish a duty was owed. The circuit court resolved the motion on the assumption that Sinclair was an invitee, and the Allen Defendants controlled the areas of the premises where the dangerous conditions existed.

a. The circuit court assessed the case on the assumption that Sinclair was an invitee.

The circuit court assessed the case on the assumption that Sinclair was an invitee, and this Court should do the same. The level of care a landowner owes depends on the status of the person on the premises. *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). The circuit court did not find that Sinclair was a licensee. It found that his status could not be resolved on a motion for summary judgment, and it held that the Allen Defendants breached no duty “regardless of the Plaintiff’s status.” (Order p. 8). Because the duty owed to an invitee is the more

demanding of the two, the court's conclusion that the Allen Defendants breached no duty under either status necessarily rests on the determination that they breached no duty owed to an invitee. The court thus assessed the case as though Sinclair was an invitee.

On the Allen Defendants' motion, this Court should assess the duty owed on the same assumption. By treating Sinclair's status as genuinely disputed rather than resolving it against him, the circuit court recognized the record contains a genuine issue of material fact from which a jury could find that Sinclair was an invitee. The evidence supports that inference. Sinclair was a customer who ate food prepared and served at the restaurant and purchased a bottle of water. (Staggers Aff.). A business visitor of that kind is an invitee. *See Singleton*, 377 S.C. at 199–201, 659 S.E.2d at 203-04. Drawing that inference in Sinclair's favor, as Rule 56(c) requires, the duty owed is the duty owed to an invitee, a duty to take reasonable action to protect Sinclair against the foreseeable risk of physical harm, including the foreseeable criminal acts of third parties. *Bass*, 395 S.C. at 135, 716 S.E.2d at 913.

b. The Allen Defendants controlled the areas of the premises where the dangerous conditions existed.

The Allen Defendants controlled areas of the premises where dangerous conditions existed. Liability for the condition of a property turns on control. "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." *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997); *see also Cooke v. Allstate Management Corp.*, 741 F. Supp. 1205, 1209 (D.S.C. 1990) ("[A] landlord who increases the risk of loss from criminal activities is under a duty to exercise reasonable care to protect his tenants against the foreseeable risk of harm arising out of his action."). The Allen Defendants controlled areas that matter here. Under the lease, they were obligated to maintain the exterior structure of the premises and the parking area, the tenant could make no alteration without their written

consent, and they reserved an unencumbered right of entry at any time. (Lease pp. 2, 8-9). Wesley Allen confirmed that control in practice. He testified he was responsible for the exterior lighting and that the exterior lighting and the security service at the premises were his to provide or withdraw. (W. Allen Dep. pp. 32–33, 51, 86–87).

The conditions at the center of this case, the unlit premises and the open, unrestricted parking lot where the shooting occurred, were thus within the Allen Defendants' control rather than the tenant's control. Because they controlled those areas, the Allen Defendants owed a duty of reasonable care with respect to them. *Miller*, 329 S.C. at 314, 494 S.E.2d at 815. At a minimum, viewing the lease and Wesley Allen's testimony in the light most favorable to Sinclair, there is a genuine issue of material fact as to control for the jury to resolve.

Therefore, Sinclair respectfully requests that the Court recognize the duty the circuit court assumed—the full duty of reasonable care owed to an invitee—and decline to affirm summary judgment on the element of duty.

II. Genuine issues of material fact exist as to whether the Allen Defendants breached their duty.

Genuine issues of material fact exist as to whether the Allen Defendants breached their duty. Once a duty to protect invitees from third-party criminal acts is established, South Carolina applies a balancing approach to determine the standard of care and, thus, whether a business owner has breached a duty. *Bass*, 395 S.C. at 142, 716 S.E.2d at 917. This approach asks two questions, whether the crime was foreseeable, and, given the foreseeability, what economically feasible security measures were required. *Id.* As the foreseeability of the harm increases, so does the standard of care the owner must meet. *Id.* at 141, 716 S.E.2d at 916. Accordingly, a landowner breaches its duty when the security measures undertaken are unreasonable compared to the foreseeability of crime. *Id.* On this record, both questions present genuine issues of material fact.

a. The armed robbery was foreseeable.

The armed robbery was foreseeable. Foreseeability under the balancing approach may be shown through crime statistics and through the defendant's own knowledge of the risk. In *Bass*, the supreme court held that a plaintiff produced "at least some evidence" that an assault was foreseeable where he offered a CRIMECAST report showing that the risk of crime at the location exceeded national and state averages, even though he could show no prior criminal incident at the business itself. 395 S.C. at 141, 716 S.E.2d at 916. The report in *Bass* reflected a risk of crimes against persons roughly three and one-half times the national average and nearly twice the state average, although at or below the county average, and the plaintiff offered no evidence of prior crime on the premises. *Id.* That showing alone was sufficient to make foreseeability a triable question. *Id.*

The evidence here is stronger in each respect of importance in *Bass*. Sinclair offered a CRIMECAST report placing the risk of serious crime at Allen's Food Basket even further above the national, state, and county averages. (Levenberg Aff. p. 3; CRIMECAST Report). Where the *Bass* plaintiff had no evidence of actual prior crime on or near the premises, Sinclair offered evidence of sixteen armed robberies and fourteen shootings within two and one-half miles of the restaurant in the years before the attack, most of them less than a mile away. (Levenberg Aff. p. 2) (Compilation of prior area crime stats). And where the *Bass* defendant showed no knowledge of the risk, the Allen Defendants had direct knowledge of it. Wesley Allen had previously used a security service on the premises, the glass at the store was vandalized, and he testified that he had heard of shootings in the area. (W. Allen Dep. pp. 51, 59). Patricia Blanton posted "no loitering" signs in response to people lingering on the premises. (Blanton Dep. p. 33).

Lord v. D & J Enterprises, Inc. confirms this evidence creates a jury question. There, the supreme court reversed summary judgment, holding the plaintiff presented “some evidence” of foreseeability where the owner had encountered the risk and prior armed robberies had occurred in the area. 407 S.C. 544, 558–60, 757 S.E.2d 695, 702–03 (2014). The court refused to treat the distance of the prior crimes as defeating foreseeability, reasoning crimes two or more miles away did not weaken the plaintiff’s position because it would take only minutes to travel that distance. *Id.* at 560 n.4, 757 S.E.2d at 703 n.4. The prior crimes here were closer, far more numerous, and squarely within the Allen Defendants’ knowledge. If the showings in *Bass* and *Lord* sufficed to make foreseeability a jury question, the stronger showing here compels the same result. At a minimum, the evidence supports more than one reasonable inference on foreseeability, and the question therefore belongs to the jury. *Bass*, 395 S.C. at 141, 716 S.E.2d at 916.

Taken together, the foreseeability evidence places this case well beyond the threshold the supreme court has found sufficient to present a triable jury question. The balancing approach treats foreseeability as a matter of degree, and as the foreseeability of harm increases, so does the security a reasonable owner must provide. *Bass*, 395 S.C. at 141, 716 S.E.2d at 916. Statistical risk above the national, state, and county benchmarks; a documented history of armed robberies and shootings in the immediate vicinity; and the Allen Defendants’ own recognition of the danger are not isolated data points. They are mutually reinforcing evidence that an armed robbery at this restaurant, late at night, was not merely possible but probable. A jury crediting that evidence could readily find the attack foreseeable. A jury might weigh the evidence differently, but at this stage that is of no importance, because the existence of competing reasonable inferences is what forecloses summary judgment.

b. Whether the Allen Defendants' security measures were reasonable is a question for the jury.

Whether the Allen Defendants' security measures were reasonable is a question for the jury. Once a crime is foreseeable, the balancing approach asks whether the business's security measures were reasonable in light of the risk, a determination that "will, at many times, be identified by an expert." *Bass*, 395 S.C. at 141, 716 S.E.2d at 917. The presence or absence of such expert testimony appears decisive. In *Bass*, the supreme court affirmed summary judgment for the business not because the crime was unforeseeable, but because the plaintiff "offered no evidence that [the business's] preventative measures were unreasonable under the circumstances." *Id.* at 142, 716 S.E.2d at 917. The plaintiff's expert had opined only that additional security would have been reasonable in light of the risk, which the court found insufficient to show that the measures in place were unreasonable. *Id.*

Lord supplies the other half of the rule. There, the plaintiff offered expert testimony that the business's security measures were unreasonable, specifically, that the business should have posted a security guard. 407 S.C. at 559, 757 S.E.2d at 702. The supreme court reversed. Expert testimony that an owner's security measures were unreasonable in light of the risk creates a genuine issue of material fact and defeats summary judgment. *Id.*

This case falls on the *Lord* side because Sinclair offered the very evidence the *Bass* plaintiff lacked. Levenberg opined, to a reasonable degree of professional certainty, the Allen Defendants did not provide reasonable and adequate security against the foreseeable risk, and he identified specific, economically feasible measures that more likely than not would have prevented the attack, including restoring the exterior lighting, gating the parking lot, installing a closed-circuit camera system, employing or requesting uniformed or police patrol, and setting closing hours. (Levenberg Aff. pp. 3-5). None of those measures were in place on the night of the attack.

(Levenberg Aff. pp. 3-5). Under *Bass* and *Lord*, Levenberg's expert opinion creates a jury question on breach.

The circuit court reached the opposite conclusion, finding that the Allen Defendants "did not act or fail to act in any way which could be a breach of any duty." (Order p. 8). That conclusion cannot be reconciled on summary judgment when the record includes an expert opinion that the Allen Defendants failed to provide reasonable security against a foreseeable risk. To reach it, the court necessarily weighed Levenberg's testimony and rejected it, which is an error at the summary judgment stage. On a motion for summary judgment, that testimony was instead to be credited, and every reasonable inference drawn in Sinclair's favor. In weighing the evidence, the court did the jury's work, and did it against the party that, as nonmovant, was entitled to the benefit of every reasonable inference.

The record also reflects more than a passive absence of security. The Allen Defendants once provided both security and lighting and then withdrew both. Wesley Allen discontinued the Vector Security service and allowed the system that remained in the wall to fall into disuse, and no cameras were ever installed. (W. Allen Dep. pp. 21, 51, 124). He also discontinued the exterior lighting that had kept the premises "lit up good" at night for two decades, because it carried a separate bill. (W. Allen Dep. pp. 86-87). Whether security and lighting the owner once provided, and then withdrew, were reasonably adequate after being withdrawn is a question of fact. So too is the cost of the measures Levenberg identified, which the balancing approach weighs against the risk to be avoided. *Bass*, 395 S.C. at 141, 716 S.E.2d at 916-17. Measured against the foreseeable risk and the feasibility of the alternatives, the reasonableness of the Allen Defendants' security is for the jury. Therefore, Sinclair respectfully requests that the Court hold the question of breach to be one for the jury.

III. Genuine issues of material fact exist as to proximate cause.

Genuine issues of material fact exist as to proximate cause. Negligence is not actionable unless it is a proximate cause of the injury. *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295–96 (2019). Proximate cause requires proof of both causation in fact and legal cause. *Id.* Causation in fact is established by showing the injury would not have occurred but for the defendant’s negligence; legal cause is established by showing foreseeability. *Id.* at 222, 826 S.E.2d at 296. Proximate cause is ordinarily a question for the jury and becomes a matter of law only when the evidence is susceptible of a single inference. *Id.* The threshold is not demanding. Although the existence of proximate cause “may hang by a slender thread, it hangs nonetheless,” and the question is for the jury. *Id.*

Both components present jury questions here. As to causation in fact, Levenberg opined that the security measures he identified were economically feasible and more likely than not would have prevented the attack. (Levenberg Aff. pp. 4-5). That opinion is grounded in the circumstances of the crime. The robbery occurred at a commercial premises that, in the early-morning hours, was unlit because the Allen Defendants had discontinued the exterior lighting, had no operating security system, had no guard, and placed no restriction on access to its parking lot. (W. Allen Dep. pp. 86–87; Levenberg Aff. pp. 3-4). The attackers approached and entered through that very same unlit, unguarded, open environment. (Police Report pp. 32-33). From this evidence, a jury could reasonably find adequate lighting, a gate, a camera system, or a patrol would have deterred the attackers from selecting this premises or disrupted their approach, and that the absence of those measures was a but-for cause of Sinclair’s injuries. The reasonableness of that inference is reinforced by the published research on the deterrent effect of lighting Sinclair placed in the record.

(Lighting Article). On this record, but-for cause is an inference a jury should draw, not one the court could foreclose.

As to legal cause, the same evidence that makes the attack foreseeable establishes that Sinclair's injury was a foreseeable consequence of the Allen Defendants' failure to secure the premises. Legal cause requires foreseeability of some injury from a defendant's acts or omissions but does not require a contemplated or anticipated injury. *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 397, 237 S.E.2d 753, 757 (1977). Rather, it is sufficient that there is a reasonable range of greater than ordinary dangers of injury and the injury fall within that range. *Id.* Our supreme court has held that a third-party criminal act cannot be deemed unforeseeable as a matter of law where the alleged breach was the defendant's failure to guard against that very kind of harm. *Wright*, 426 S.C. at 222, 826 S.E.2d at 296. The Allen Defendants' failure to light the premises, to operate a security system, and to restrict access to the parking lot created the foreseeable risk that an armed criminal would exploit those conditions, which is what occurred. The intervening criminal conduct of the attackers does not break the causal chain as a matter of law, because the precautions Sinclair contends were required guard against that very conduct. *Id.* At a minimum, the evidence supports more than one reasonable inference on proximate cause, which makes it a question for the jury. *Id.*

The but-for inquiry does not require Sinclair to prove that the attack could not possibly have occurred had the premises been secured. *See Daniel v. Days Inn of America, Inc.*, 292 S.C. 291, 301-02, 356 S.E.2d 129, 134-35 (Ct. App. 1987). It requires only evidence from which a jury could find that, more likely than not, the injury would not have occurred absent the Allen Defendants' negligence. *Wright*, 426 S.C. at 222, 826 S.E.2d at 296. Levenberg's opinion supplies that evidence, and the physical circumstances of the attack, the darkness, the absence of

surveillance, the absence of any patrol, and the unrestricted access, supply the factual basis a jury may credit in deciding whether reasonable measures would have made a difference. Where the plaintiff offers expert testimony and supporting facts on causation, and the evidence permits more than one inference, the question must be for the jury rather than the court. *Id.* Therefore, Sinclair respectfully requests that the Court hold the question of proximate cause to be one for the jury.

IV. The circuit court erred in granting summary judgment before Sinclair had a full and fair opportunity to complete discovery.

The circuit court erred in granting summary judgment before Sinclair had a full and fair opportunity to complete discovery. Summary judgment should not be granted until the party opposing the motion has had a full and fair opportunity to complete discovery. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). A party contending that summary judgment is premature must advance a good reason why the time for discovery was insufficient and explain how further discovery would uncover additional relevant evidence and create a genuine issue of material fact. *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009); *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Sinclair makes both showings.

Sinclair’s outstanding discovery sought records and invoices relating to utilities, lighting, security, and payments. Those materials bore directly on two issues the circuit court treated as dispositive, who controlled and maintained the premises, and what the additional security measures at issue would have cost. The cost of a precaution is central to the balancing inquiry, which weighs the burden of a security measure against the risk it would avert. *Bass*, 395 S.C. at 141, 716 S.E.2d at 916–17. When the Allen Defendants represented that they did not possess the records, Sinclair subpoenaed two banks for them, and the Allen Defendants moved to quash. Sinclair’s motion to compel and the motion to quash were both pending and unheard when the

court ruled on the Allen Defendants' motion for summary judgment. (Mot. to Compel; Mot. to Quash).

Granting the motion on that record was error. Unlike the plaintiffs in *Dawkins* and *Guinan*, who could not show that further discovery would yield a genuine issue, Sinclair identified specific records, directed at the precise issues the court found dispositive, that remained outstanding only because of an unresolved discovery dispute. Had the court heard the motion to compel and ordered production, Sinclair would have been better positioned to quantify the cost of the security measures his expert identified and to further document the Allen Defendants' control of the premises. The court's ruling deprived Sinclair of that opportunity and provides an independent ground for reversal. Therefore, Sinclair respectfully requests that the Court reverse on the independent ground that summary judgment was entered before discovery was complete.

CONCLUSION

The Allen Defendants moved for summary judgment, and on their motion the evidence and all reasonable inferences must be viewed in Sinclair's favor. Viewed in that light, the record presents genuine issues of material fact as to whether the Allen Defendants breached a duty owed to Sinclair and whether that breach proximately caused his injuries. Sinclair's expert opined that the attack was foreseeable and that the security measures in place were unreasonable, and the court entered judgment before Sinclair could complete discovery directed at the issues it found dispositive. For these reasons, Sinclair respectfully requests that the Court reverse the grant of summary judgment and the denial of reconsideration and remand for trial.

[Signature page to follow]

Respectfully submitted,

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