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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

The Honorable 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 Living Trust, Gabe Jackson a/k/a Gabriel Jackson, James D. Lewis, and 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, and Patricia A. Blanton in her capacity as Trustee of the J. Wesley Allen Revocable Living Trust,

Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Whether summary judgment for the Trust Defendants should be affirmed because a commercial landlord that surrendered possession and control of the leased premises to its tenant, and that did not operate the business, owed no duty to protect the tenant's social guest from the criminal acts of third parties.
2. Whether summary judgment should be affirmed because the intervening criminal acts of the third-party assailants—not any act or omission of the Trust Defendants—were the proximate cause of Sinclair's injuries as a matter of law.
3. Whether, in any event, the Trust Defendants committed no act or omission that could breach any duty owed to Sinclair, rendering his status as invitee or licensee immaterial.
4. Whether the circuit court acted within its discretion in granting summary judgment and denying further discovery, where Sinclair had a full and fair opportunity to complete discovery and identified no additional evidence that would create a genuine issue of material fact.

STATEMENT OF THE CASE

This is a lawsuit stemming from a third-party shootout that occurred in the early morning hours of October 12, 2020. At around 2:00 to 3:00 a.m., while Appellant and others were gambling in the back utility/storage room of the restaurant, masked men entered the building and opened fire. (Memo. Op. and Order, at 2-3). Appellant was shot during the incident, sustaining injury. (Compl.).

The Appellant filed his Complaint on June 12, 2023, naming Wesley Allen, Patricia A. Blanton, and the J. Wesley Allen Revocable Living Trust (collectively, the Respondents, or “the Trust Defendants”) as defendants to this action. (Compl.). The J. Wesley Allen Revocable Living Trust is the commercial landlord for this property—Wesley Allen and Patricia Blanton are the trustees of the Trust. (Memo. Opinion and Order). Appellant asserted causes of action against the Trust Defendants for negligence, recklessness, gross negligence, negligent hiring, negligent supervision, negligent retention, and a violation of the South Carolina Unfair Trade Practices Act.¹ (Compl.). The Trust Defendants answered, denying liability. (Answer).

Respondents filed a Motion for Summary Judgment on October 3, 2024, arguing that the Trust Defendants neither owed nor breached any duty that proximately caused Appellant’s injuries. (Motion for SJ). One year later, the Appellant filed a Memorandum in Opposition to Respondents’ Motion for Summary Judgment on October 4, 2025. (Sinclair Memo. in Opp.) Respondents filed a Reply in Support of Motion for Summary Judgment on October 9, 2025. (Reply in Support of Motion for SJ).

¹ Plaintiff brought claims against Wesley Allen and Patricia Blanton in their individual capacities and in their capacities as trustees of the J. Wesley Allen Revocable Living Trust.

The Circuit Court held a hearing on Respondents' Motion for Summary Judgment on October 13, 2025. At the hearing, Sinclair voluntarily dismissed his Unfair Trade Practices Act claim, leaving only the negligence claims. (Transcript of Oct. 13, 2025 Hearing, at 16). After hearing oral argument from both sides, the Circuit Court granted Respondents' Motion for Summary Judgment, holding that Respondents did not breach any legal duty that was or may have been owed to the Plaintiff that proximately caused his injuries. (Transcript of Oct. 13, 2025 Hearing). The Circuit Court denied Sinclair's pending discovery motions as Moot. (Transcript of Oct. 13, 2025 Hearing). The Circuit Court also denied the Trust Defendants' motion to quash as moot. (Transcript of Oct. 13, 2025 Hearing).

The Circuit Court entered a Form-4 Order memorializing its rulings on October 14, 2025. (Oct. 14, 2025 Form-4 Order). After the hearing and the Court's decision, the Appellant filed a Supplemental Memorandum in Opposition to Respondents' Motion for Summary Judgment on October 17, 2025. (Sinclair Supp. Memo. in Opp.). On October 21, 2025, the Circuit Court entered a Memorandum Opinion and Order, granting the Trust Defendants' Motion for Summary Judgment and denying the pending discovery motions as Moot. (Memo. Op. and Order).

Thereafter, on October 24, 2025, Sinclair moved to reconsider under Rule 59(e), SCRCPP. (Motion to Recons.). The Respondents filed a Memorandum in Opposition to Plaintiff's Motion to Reconsider on February 26, 2026. (Memo. in Opp. to Plaintiff's Mtn. to Recons.). The Circuit Court held a hearing on Sinclair's Motion to Reconsider on March 2, 2026. The Court denied Sinclair's Motion to Reconsider, issuing a Form-4 Order on March 2, 2026. (March 2, 2026 Form-4). Sinclair filed and served a Notice of Appeal on March 27, 2026.

STATEMENT OF FACTS

Defendant J. Wesly Allen Revocable Living Trust is the commercial landlord and owner of a commercial property located in Myrtle Beach, South Carolina. (General Warranty Deed). 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. (Deposition Testimony of Patricia Blanton, at 15). The two trustees of the Trust are its (now) 94-year-old grantor, Wesley Allen, and his daughter, Patrial Blanton. (Certificate of Trust; Deposition Testimony of Wesley Allen, at 8-9; Deposition Testimony of Patricia Blanton, at 15). In 2018, trustee Wesley Allen, on behalf of the Trust, entered into a commercial lease agreement with Gabriel Jackson. (Commercial Lease Agreement). Wesley Allen signed on behalf of the Trust, and Jackson signed as the lessee. (*Id.*) The purpose of the commercial lease was for Jackson to operate a restaurant for serving food. (*Id.*) Jackson's restaurant was Allen's Food Basket, also going by the business name of Gabriel's Breakfast & Grill at Allen's Food Basket. (Gabriel Jackson's Business License). The Trust, as well as its trustees Wesley Allen and Patricia Blanton, had no part in running Gabriel Jackson's business, and did not exercise any control or authority over the interior premises of Jackson's restaurant. (Deposition Testimony of Wesley Allen, at 130-31; Deposition Testimony of Patricia Blanton, at 73-74).

On October 11, 2020, Komonick Sinclair arrived at Gabriel's Breakfast & Grill 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 over card games. (Deposition Testimony of Komonick Sinclair, at 38 and 41). On the night of the shooting, the Plaintiff brought \$240 of his

own cash to gamble. (Deposition Testimony of Komonick Sinclair, at 41-42). When he arrived with his friends Demarius Hemingway and James Bynum, Gabriel Jackson's business was closed—the lights were off, the doors were locked, and nobody else was inside. (Deposition Testimony of Komonick Sinclair, at 32; and Testimony of Gabriel Jackson, at 149 and 158). Gabriel Jackson closed his business at 8:00 p.m. (Testimony of Gabriel Jackson, at 150). The shooting occurred around 2:00 or 3:00 a.m. (Testimony of Gabriel Jackson, at 149). Jackson invited the Plaintiff and had given either Hemingway or Bynum a key to get into the store. (Deposition Testimony of Komonick Sinclair, at 30-31). Jackson returned to Gabriel's Breakfast & Grill at Allen's Food Basket later in the evening to join. (Deposition Testimony of Komonick Sinclair, at 33).

In the early morning hours of October 12, 2020, masked men were let into the building and opened fire on the Plaintiff and others in the back room of the restaurant. (Deposition Testimony of Komonick Sinclair, at 51-54). The men were let in at the front door by Sammy Jackson. (Police Report at 32; Testimony of Gabriel Jackson, at 154). The men hit Sammy Jackson on the left side of his face after forcing him behind the counter. (Police Report at 32). Komonick Sinclair did not hear the masked men come in. (Deposition Testimony of Komonick Sinclair, at 51). The men rounded the corner of the back room, and then opened fire. (Deposition Testimony of Komonick Sinclair, at 52). Gabriel Jackson was also in the back room playing cards when the incident occurred. (Gabriel Jackson Testimony, at 153). The first shot came from the masked intruder at the back room. (Gabriel Jackson Testimony, at 155). The masked intruders shot Plaintiff in the back room during the incident. (Deposition Testimony of Komonick Sinclair, at 60-61). As the assailants were leaving the premises, they began shooting at another individual who was in his car in the parking lot. (Police Report, at 17).

The Trust Defendants had no knowledge of the Plaintiff's presence at Gabriel's Breakfast & Grill at Allen's Food Basket, and also had no prior knowledge of Jackson's use of the leased premises for personal, after-hours gambling sessions. (Deposition Testimony of Patricia Blanton, at 36; and Deposition Testimony of Wesley Allen, at 88 and 98-99). The Trust Defendants did not maintain any security within the leased premises. (Deposition Testimony of Wesley Allen, at 51). Wesley Allen did not give Gabriel Jackson any rules about when he could be open or present at the restaurant, he simply leased him the store. (Deposition Testimony of Wesley Allen, at 30). The Trust Defendants did not have any possession or control of the interior of the leased premises at the time of the shooting. (Deposition Testimony of Patricia Blanton, at 74; Deposition Testimony of Wesley Allen, at 131; Commercial Lease Agreement).

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite [the] disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). When the appellate court "review[s] the grant of summary judgment, this [c]ourt applies the same standard that governs the trial court under Rule 56(c), SCRPC." *Erie Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 459-60, 713 S.E.2d 318, 320 (Ct. App. 2011). "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., L.L.C.*, 365 S.C. 608, 611, 620 S.E.2d 54, 55-56 (2005); *see also* Rule 56(c), SCRPC.

This Court must "review[] all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party." *Roland v. Heritage Litchfield, Inc.*, 372 S.C. 161, 165, 641 S.E.2d 465, 467 (Ct. App. 2007). However, "[the] 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) (ellipses in original). Our Supreme Court has recently clarified and re-iterated that the proper standard for Rule 56, SCRPC 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).

ARGUMENT

Any one of the following grounds is independently sufficient to affirm. The Trust Defendants owed Sinclair no duty. The intervening criminal acts of the assailants were the proximate cause of his injuries as a matter of law. In any event, the Trust Defendants committed no act or omission that could breach a duty. The circuit court acted within its discretion in declining further discovery. Because the existence of a duty and, on this record, proximate cause are questions of law, the Court may affirm without reaching any disputed question of fact—and may affirm on the no-duty ground on any basis appearing in the record. Rule 220(c), SCACR.

I. A Commercial Landlord that Surrendered Possession and Control of the Leased Premises and Did Not Operate the Business Owed No Duty to the Tenant’s Social Guest to Protect Against Third-Party Criminal Activity

“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.” *Roe v. Bibby*, 410 S.C. 287, 293, 763 S.E.2d 645, 648 (Ct. App. 2014). 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., Inc. v. Rahall*, 427 S.C. 317, 323, 831 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)).

A. Sinclair’s Negligent-Security Authorities Define The Duty of The Business Proprietor—The Tenant—Not The Landlord

Sinclair’s argument rests on the balancing approach of *Bass v. Gopal, Inc.* and *Lord v. D&J Enterprises, Inc.* But that approach defines the duty of a *business owner*: it holds that “the more foreseeable a crime, the more onerous is a business owner’s burden of providing security.” *see Lord v. D&J Enters.*, 407 S.C. 544, 556, 757 S.E.2d 695, 700 (2014) (citing *Bass v. Gopal, Inc.*, 395 S.C. 129, 138, 716 S.E.2d 910, 915 (2011)). *Bass* analyzed the security measures of the motel operator whose guests were the invitees. *See Bass*, 395 S.C. at 132-34, 716 S.E.2d at 912-13. *Lord* analyzed the measures of the check-cashing business that invited its customers into its operational premises. *Lord*, 407 S.C. at 547-50, 757 S.E.2d at 696-98. The framework of these authorities presupposes the party that operates the premises and admits the public.

Here, that party was Gabriel Jackson. Jackson signed the lease, obtained the business permit, and ran the restaurant. The Trust Defendants had no part in the business. The *Bass/Lord* duty is Jackson’s duty as proprietor. Sinclair cannot transfer the proprietor’s duty onto the landlord by invoking cases that never involved a landlord. South Carolina draws a fundamental distinction between the landlord/tenant relationship and the owner/invitee relationship. *See Cramer v. Balcov Prop. Mgmt., Inc.*, 312 S.C. 440, 443, 441 S.E.2d 317, 318 (1994). Against the Trust Defendants, the threshold duty question is governed not by *Bass*, but by the settled rule that a commercial landlord owes no duty to protect against third-party crime in premises it does not control. *See Jackson*, 365 S.C. at 614, 620 S.E.2d at 57. The Trust Defendants do not

contend that a landlord can never owe a security-related duty. A landlord may owe such a duty as to a common area it actually controls. *See id.* But that principle does not reach the leased interior where Sinclair was shot.

B. The Lease Surrendered Possession and Control of the Leased Premises to the Tenant

South Carolina law has long held that a lease transfers possession and control of the premises to the lessee. In *Byerly v. Connor*, the Supreme Court explained that although a landowner ordinarily has a duty to warn of latent hazards arising “from the owner’s superior knowledge of conditions on the premises within his control,” that duty does not survive a lease— “when land is occupied by a lessee, . . . the law of property regards the lease as equivalent to a sale of the premises for the term of the lease.” *See Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). “In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee.” *Id.* After the premises are surrendered, “the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.” *Id.*; *see also Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 110, 512 S.E.2d 510, 519-20 (Ct. App. 1998) (holding that, “unless the terms of the lease provide otherwise, the [landlord] had no duty to maintain the entrance steps while [the tenant] was in control of the premises.”). A commercial landlord who relinquishes possession and control to a tenant owes no general duty to protect third parties from criminal acts occurring inside leased premises absent retained control or assumption of duty. *See Cramer*, 312 S.C. at 443, 441 S.E.2d at 318-19 (“Absent agreement, the landlord cannot be expected to protect [] against the wiles of felony . . .”).

The holding of *Byerly* is precisely on point. Here, the Trust Defendants transferred possession and control of the premises to the commercial lessee, Gabriel Jackson. As the land was occupied by the lessee, the law of property regards the lease as equivalent to the sale of the premises for the term of the lease—possession and control was surrendered to Gabriel Jackson. As *Byerly* instructs, under these circumstances “[The Trust Defendants are] not responsible for hazardous conditions which thereafter develop or are created by the lessee.” *Id.*

Byerly also forecloses the theories Sinclair uses to try to revive a landlord duty. The *Byerly* plaintiff argued that the lessor had assumed a “special duty”—both from a federal regulation and from a voluntary undertaking to inspect the premises. *See Byerly*, 307 S.C. at 444-46, 415 S.E.2d at 798-99. The Court rejected both: the regulation created no duty, and the limited undertaking to inspect for structural conformity did not expand into a duty to discover or warn of the latent hazard the lessee’s premises presented. *Id.* Sinclair’s voluntary undertaking theory—built on Wesley Allen’s informal practice of having friends keep an eye on the property and on a long-lapsed alarm service—fails for the same reason: a landlord’s limited, self-interested activities do not enlarge into a general duty for conditions and activities the lessee controls.

C. The Trust Defendants Did Not Exercise Control Within the Leased Premises

The governing test is stated in *Miller v. City of Camden*, “[o]ne 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) (internal citations omitted). Two features of *Miller* dispose of Sinclair’s “retained control” theory. First, a limited reserved right is not control. The defendant in *Miller* had a limited contractual right—maintaining a certain normal water level for production purposes—but

because complete operational control was reserved to another—the City—it owed no duty. *See id.* Second, incidental retained ownership is not control. The defendant’s incidental ownership of part of the structure created no duty.

Applied here, none of the facts referenced by Sinclair establish control of the leased interior. Sinclair references three facts which, he contends, evidence the Trust Defendants’ control: (1) lease obligations to maintain the exterior structure of the premises and the parking area; (2) lease provision that required the tenant to obtain written consent before making any alteration; and (3) a reserved unencumbered right of entry. *See Brief of Appellant*, at 11-12.

Regarding the first point, these obligations concern the common areas, not the tenant-controlled interior where the shooting occurred. Under *Jackson*, even arranging common-area security creates no duty inside the leased space. *See Jackson*, 365 S.C. at 613, 620 S.E.2d at 56-57. Going further, Sinclair was shot inside, in the back storage room. The facts confirm that the gunmen were let into the front door, and the gunfire reached the lot afterward—there are no facts suggesting that the gunmen shot their way into the building. *Jackson* holds that a landlord’s common-area role does not extend a duty into the leased interior. *Jackson*, 365 S.C. at 614, 620 S.E.2d at 57 (affirming summary judgment where there was “no evidence of any alleged criminal or suspicious activity occurring in areas under the landlord’s control” that would have signaled the attack). This is precisely the case here.

As for the second point, the consent-to-alter clause, it presupposes the tenant’s possession and control. In other words, a landlord needs no such clause over space it already controls. This is an ownership-protective, limited reserved right, not operational control. This is parallel to the *Miller* holding.

Third, a landlord's reserved right to enter for inspection and repair is the kind of limited right *Miller* holds is categorically not control. The right to enter, without more, is not evidence of control or authority. To start, the right to enter presupposes another's possession. One reserves entry only into space one does not occupy. Further, *Miller* held a reserved contractual right was insufficient where the other party retained complete control. *See Miller*, 329 S.C. at 314, 494 S.E.2d at 815 (concluding Appellant "owed no duty of care to respondents based on its contractual right of control."). Even exercising an inspection right does not expand into control. *See Byerly*, 307 S.C. at 445, 415 S.E.2d at 799 (holding the annual inspection undertaking was "limited" and did not expand any legal duties of the landlord). Finally, adopting Sinclair's reasoning would nullify the rule—a boilerplate entry right would make every landlord a controller of every leased space—a result that is contrary to our well-established law.

D. An Entity Without Control Over Daily Operations Owes No Duty

The control that matters in a negligent-security case is control over the daily operations and security of the business. Sinclair's own lead authority makes that clear. In *Bass v. Gopal*, the Court of Appeals affirmed summary judgment for the non-operating franchisor because there was no evidence it "asserted sufficient control over the motel's daily operations"; quarterly inspections, checklists, and mandatory training were insufficient, and it was the operating owner who bore the innkeeper's duty. *Bass v. Gopal, Inc.*, 384 S.C. 238, 247-50, 680 S.E.2d 917, 922-23 (Ct. App. 2009). That formulation came from *Allen v. Greenville Hotel Partners, Inc.*, which asked whether the entity exerted sufficient control over the daily operations or the hotel security and life safety systems, and held that the franchisor owed no duty because it "did not control the hotel's daily operations or hotel security." *Allen v. Greenville Hotel Partners, Inc.*, 409 F. Supp.

2d 672, 679 (D.S.C. 2006). Whether control is sufficient to ground a duty is, on undisputed facts, a question of law for the court. *Id.*

The Trust Defendants stand exactly where the franchisors in *Bass* and *Allen* stood. Gabriel Jackson handled daily management, held the business permit, admitted the guests, and controlled the hours and operations. The Trust Defendants did none of these things. Sinclair's own authority defeats his theory.

E. Sinclair Was A Licensee—A Social Guest

Because the Trust Defendants owed no duty regardless of Sinclair's status, the Court need not classify him. But if it does, he was a licensee. A licensee is one whose presence is merely suffered or consented to, and "the most common example of a licensee is the social guest." *Sims v. Giles*, 343 S.C. 708, 720, 541 S.E.2d 857, 864 (Ct. App. 2001). "Since a licensee is there for his own benefit, he can be said to accept the premises as they are and demand no greater safety than his host provides himself." *Singleton v. Sherer*, 377 S.C. 185, 202, 659 S.E.2d 196, 205 (Ct. App. 2008) (alteration omitted). A social guest of a tenant is a licensee—neither a public invitee, because such premises are private and "only for those specifically invited," nor a business invitee, because his purpose has no connection with the owner's business. *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997). Sinclair was a friend attending a private, after-hours poker game—the paradigmatic social guest. The record forecloses any contrary inference. Gabriel Jackson testified his business closed at 8:00 p.m., and it was closed when this shooting occurred in the middle of the night. Sinclair himself testified that when he arrived, no one was there, the lights were off, and the doors were locked. That he ate food and put a dollar in a jar is entirely

consistent with a social gathering and does not make him a business visitor. To claim he was a customer of the business is simply erroneous.

These Defendants owed no duties to make the premises safe for the Plaintiff. The Trust Defendants had no responsibility or duty to warn the Plaintiff of the possibility of a third-party criminal shooting, nor were they responsible for providing any protection to the Plaintiff or other security measures. Sinclair's authorities confirm this determination. *Parker v. Stevenson Oil Co.* turned on an operational public offering—a gas station whose vending machines were lighted and whose restroom was unlocked and marked. *Parker v. Stevenson Oil Co.*, 245 S.C. 275, 278-82, 140 S.E.2d 177, 178-80 (1965). The gas station did not have any signage that the premises were closed. *Id.* The Court applied the generally accepted rule that the occupant is required to exercise due care to protect invitees from harm, but this duty “applies only to those portions of the premises to which the invitation actually or apparently extends and during times included therein or apparently so.” *Id.* *Parker* found the facts before it produced additional reasonable inferences that could be drawn from the evidence. Here, by contrast, the undisputed evidence supports only one inference: the restaurant was closed, dark, and locked, with no lighted vending machine, marked facility, or other public offering to which any invitation could “actually or apparently” extend in the early-morning hours. *Id.* The only invitation Sinclair received came from the tenant personally—to a private, after-hours poker game. He entered with Gabriel Jackson's own key, so his presence served his own social purposes and conferred no benefit in a business held open to the public. *Parker* thus confirms, rather than undermines, the licensee determination. Where the premises are closed and the visit is a private social gathering, the entrant is a social-guest licensee, not an invitee.

Hoover v. Broome made status a jury question only because the service center advertised to the public and was “open to the general public.” *See Hoover v. Broome*, 324 S.C. 531, 536, 479 S.E.2d 62, 65 (Ct. App. 1996). A fully closed, locked, and unlit restaurant hosting a private poker game in the middle of the night in the back utility room is the opposite of a public offering. The doors were locked when Sinclair arrived, and they remained locked throughout the night as the assailants had to be let in. The record is clear that Sinclair was the quintessential social guest on the night of the incident.

F. No Exception Applies

South Carolina courts have confirmed there is no duty to warn a licensee of prior third-party criminal acts on the premises. *See Roe*, 410 S.C. at 297-98, 763 S.E.2d at 650-51. The concealed-danger and common-areas exceptions are confined to physical defects, not criminal activity. *See Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1209-14 (D.S.C. 1990). And the voluntary-undertaking exception fails for the reasons *Byerly* and *Jackson* supply: a limited undertaking does not expand into a general duty, and an undertaking as to common areas does not reach the leased interior. The record is undisputed that the Trust Defendants provided no security within the leased premises during Jackson’s tenancy. There are no facts to support the application of any common-law exception.

II. The Intervening Criminal Acts of the Assailants Were the Proximate Cause of Sinclair’s Injuries as a Matter of Law

Even assuming a duty, summary judgment is independently correct on causation. “Negligence is not actionable unless it is a proximate cause of the injury.” *Wright v. PRG Real Est. Mgmt.*, 426 S.C. 202, 222, 826 S.E.2d 285, 295 (2019). “Proximate cause requires proof of both causation in fact and legal cause.” *Id.* “[A] willful, malicious, and criminal act of a third

person” that “was not intended” and “could not have been foreseen” breaks the causal chain. *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173-74 (1968) (citing *Johnston v. Atl. Coast Line R. Co.*, 183 S.C. 126, 190 S.E. 459 (1937)). Although proximate cause is ordinarily a jury question, it becomes a question of law for the court when the evidence is susceptible of only one reasonable inference. See *Wright*, 426 S.C. at 223, 826 S.E.2d at 296 (citing *Oliver v. S.C. Dep’t of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992)).

The circuit court found that the third-party criminals proximately caused Sinclair’s injuries and that the Trust Defendants’ acts or omissions did not. The record compels that conclusion. The causal gap is fundamental. Causation in fact requires that Sinclair’s injury would not have occurred but for the landlord’s negligence. *Id.* The masked assailants were admitted through the front door, went to the back storage room and shot Sinclair there. His injury was complete inside the leased interior. The parking-lot conditions Sinclair faults—lighting, a gate, patrols, etc.—could not be a but-for cause of an injury that was already complete before any criminal activity reached the landlord-controlled common area. Sinclair’s contrary theory, that the assailants selected this location because it was dark, is conjecture, and speculation, which cannot create a genuine issue. See *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463-64, 892 S.E.2d 297, 301-02 (2023).

Wright does not aid Sinclair. There, a jury question existed only because the alleged breach was the mismanagement of a security program the landlord had itself undertaken and controlled, so the very harm was foreseeable, and expert testimony tied the absent patrols to but-for cause. See *Wright*, 426 S.C. at 222-23, 826 S.E.2d at 296. The Trust Defendants operated no such program. On this record, the only reasonable inference is that the assailants’ independent

criminal conduct—not the landlord’s non-operation of a closed restaurant—caused Sinclair’s injuries.

III. The Trust Defendants Committed No Act Or Omission That Could Breach Any Duty Owed to Sinclair

Even if the Court reaches breach, summary judgment stands on the ground the circuit court actually used: 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. That is a conclusion about the scope of the landlord’s duty, which the Court decides—not a weighing of the reasonableness of security, which the Trust Defendants do not ask the Court to resolve on this record. The scope of a duty—its existence and its reach—is a question of law for the Court, not a question of fact for the jury. “When 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.” *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009) (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 Circuit Court’s finding that nothing the Trust Defendants did could be a breach of any duty is therefore a legal determination that no obligation existed whose breach a jury could be asked to assess. This Court may resolve that legal question on de novo review without intruding on any jury function. *Jackson v. Swordfish* confirms the point and the method: assuming without deciding that the commercial landlord owed a common-area duty, the Supreme

Court still affirmed summary judgment because the plaintiff identified no act or omission of the landlord that breached it. *See Jackson*, 365 S.C. at 614, 620 S.E.2d at 57.

The security measures Sinclair's expert identifies—closing hours, on-site security, control of who is admitted, and operating alarm—were operational decisions belonging to the party that ran the business, Gabriel Jackson. Wesley Allen set no rules about when the tenant could open or close, because operation of the restaurant was Jackson's. A landlord's failure to make the tenant's operating decisions is not a breach of any duty the landlord had. Both trustees confirmed the point without contradiction. Neither the Trust nor its trustees exercised any possession or control over the interior, and Wesley Allen never told Gabriel Jackson how to run his business. Measures directed at when the restaurant opened or closed, who was let inside, and what on-site security was maintained within the leased premises were Jackson's to make and Jackson's alone.

The Trust Defendants acknowledge that, *if* they owed the operational duty Sinclair posits, the reasonableness of the security would ordinarily be a jury question, and expert testimony can raise that issue. But that concession does not help Sinclair because—as discussed *supra*—the Trust Defendants owed no such duty. There is no duty whose breach a jury could reach. And because the invitee duty is the more demanding, the absence of any breachable duty disposes of the licensee scenario as well. This is the very reason expressed by the circuit court—regardless of Plaintiff's status, there was no breach by the Trust Defendants.

This conclusion does not ask the Court to weigh Sinclair's expert; his opinion is credited for purposes of summary judgment. Levenberg opines that the Trust Defendants should have restored lighting, gated the lot, added cameras or patrols, and set closing hours, among other things. But an expert's opinion that a defendant should have acted cannot manufacture a legal

duty. Whether a particular duty exists is a question of law for the Court, not a matter an expert can supply. *Jackson*, 365 S.C. at 612, 620 S.E.2d at 56. Crediting the affidavit in full, it speaks only to breach—a question reached only if the Trust Defendants first owed the duty Sinclair posits, and they did not. To the extent the affidavit faults measures that were the operator’s to make (closing hours, who was admitted, interior security), the landlord had no authority to take them. And to the extent it faults common-area conditions (lighting, a gate, roving patrol, police patrol), those fail on control and causation for the reasons already shown. Either way, the affidavit raises no genuine issue as to any duty the Trust Defendants actually owed.

Finally, Sinclair cannot supply the missing breach with speculation. A non-moving party must come forward with evidence supporting a reasonable inference, not conjecture. *See Kitchen Planners, LLC*, 440 S.C. at 463-64, 892 S.E.2d at 301-02. Where the fact-finder would be left to speculate that some unspecific measure by the landlord would have prevented a targeted, after-hours armed assault on a closed restaurant, no genuine issue of material fact exists and Summary Judgment in favor of the Trust Defendants should be affirmed.

IV. The Circuit Court Acted Within Its Discretion In Declining Further Discovery

Sinclair’s contention that summary judgment was premature fails. Summary judgment must not be granted until the opposing party 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). But the party claiming prematurity must advance a good reason why the time was insufficient and show how further discovery would uncover evidence creating a genuine issue of material fact. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). The trial court may grant

summary judgment where further discovery would be unavailing. *Dawkins*, 354 S.C. at 71, 580 S.E.2d at 439-40.

Sinclair had a full and fair opportunity. He filed suit on June 12, 2023, and had more than two years to develop his claims. The incident occurred more than five years before the Circuit Court held argument on the Defendants' Summary Judgment Motion. At that hearing, the Circuit Court found the critical facts developed. The Trust Defendants verified their extensive efforts in identifying any document they may have in their possession that could be responsive to the Plaintiff's discovery requests, and those had been produced.

The decisive point is not merely that Sinclair had enough time, it is that the additional specific discovery he sought is immaterial to the grounds on which summary judgment rests. A nonmovant must connect the requested discovery to a genuine issue on an outcome-determinative fact. *See Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009). More invoices proving the landlord paid a utility bill would not convert an ordinary landlord incident into the operational control that creates a duty. The discovery is therefore incapable of producing a genuine issue on the duty question, as it is directed at a legal conclusion the records, if any, could not alter.

Sinclair also sought the Trust Defendants' personal financial information to establish the economic feasibility of additional security. As has already been covered, economic feasibility has no effect on the legal duties owed to this Plaintiff. Economic feasibility is a component of the breach inquiry under the balancing approach; it is reached only if the Trust Defendants first owed the operational duty Sinclair posits. Because the Trust Defendants owed no such duty, and because the intervening criminal acts were the proximate cause as a matter of law, *see supra*, the feasibility of measures the landlord had no duty to provide is inapposite. Discovery into the

Defendants' net worth could not create a trial issue on duty or causation—the grounds that actually decide the case. Going further, the lower court's ruling denying the motion to quash Sinclair's pending subpoenas was appropriate. Again, as these subpoenas sought personal financial information to establish the economic feasibility of additional security, even if available and obtained, would not change the legal result.

Conclusively, Sinclair has never identified a specific, material fact that further discovery would reveal. He offered the possibility that unspecified records might bear on control or cost—precisely the “fishing expedition” *Dawkins* and *Guinan* hold insufficient. *See Dawkins*, 354 S.C. at 71, 580 S.E.2d at 439; *Guinan*, 383 S.C. at 54-55, 677 S.E.2d at 36. South Carolina law requires the party opposing summary judgment to come forward with evidence supporting a reasonable inference, not a metaphysical possibility. *See Kitchen Planners, LLC*, 440 S.C. at 463-64, 892 S.E.2d at 301-02. A hoped-for document that might turn up does not satisfy that standard, and it does not entitle plaintiff to postpone judgment indefinitely. The Circuit Court correctly found that the only things Sinclair presented were inferences that are not reasonable and issues of facts that are not genuine. No quantity of utility invoices, repair receipts, or financial statements can transform the legal relationship between a commercial landlord and its tenant, or convert an intervening armed robbery into a foreseeable consequence of the landlord's non-operation of a closed restaurant. For these reasons, additional discovery would have been unavailing and the circuit court acted well within its discretion in so holding and denying the pending discovery motions as moot.

CONCLUSION

For the foregoing reasons, the Trust Defendants respectfully request that the Court affirm the grant of summary judgment. Any one of the grounds set forth above is independently

sufficient. Respondents owned Sinclair no duty as the commercial landlord; the intervening criminal acts of the assailants were the proximate cause of Sinclair's injuries as a matter of law; and in any event, no act or omission of the Trust Defendants could breach any duty owed to Sinclair. The lower court acted within its discretion in declining further discovery. The judgment should be affirmed.

Respectfully submitted,

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