

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elyse Decker,

Plaintiff,

vs.

Caishen II, LLC and Columbia Property
Management, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2025-CP-40-03138

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER THE ORDER
GRANTING SUMMARY JUDGMENT IN
FAVOR OF CAISHEN II, LLC****RECEIVED****Oct 02 2026****SC Court of Appeals**

This matter is before the Court upon Plaintiff's Motions to Reconsider the respective Orders Granting Summary Judgment in favor of Defendant Caishen II, LLC ("Caishen") and Columbia Property Management, LLC ("Columbia Property"). The Order Granting Summary Judgment in favor of Columbia Property was entered on June 16, 2026. The Order Granting Summary Judgment in favor of Caishen was entered on June 24, 2026. The Motions to Reconsider were filed on July 1, 2026. The Court heard the Motions to Reconsider via Webex on September 1, 2026. Stephen Foster presented arguments on behalf of Columbia Property. Kevin Maroney presented arguments on behalf of Caishen. Brady Thomas presented arguments on behalf of Plaintiff. After hearing from the parties, the Court denied the Motion to Reconsider.

I. Background

Defendants' Motions for Summary Judgment were initially heard May 19, 2026. On the day of the motions for summary judgement hearing, Plaintiff brought a packet titled "Supplemental Material on Assumed Duty in Opposition to Defendants' Motion for Summary Judgement[.]" Per the public index, Plaintiff did not formerly file this material with the Court until June 16, 2026. This "supplemental material" does not contain any arguments. In relation to Caishen, the

“supplemental material” asserts that Caishen assumed a duty toward Plaintiff “to [i] use reasonable care in the property-management, inspection, and walkthrough system it created, authorized, and relied upon through [Columbia Property Management]” and “to [ii] use reasonable care in the maintenance and safety-repair reporting system it created through John Lanier, and Chris, including a duty to respond reasonably to the unsafe stoop/stairway condition Plaintiff’s daughter reported to Chris before the fall.”¹

The Court granted Summary Judgment in favor of the Defendants on June 24, 2026. Plaintiff submitted Rule 59(e) Motions to Reconsider on July 1, 2026. Per Rule 59(g), on July 2, Plaintiff sent copies of her Motions directly to the Court. On July 6, the Court asked the Defendants to submit responses within 10 days. Both Caishen and Columbia Property Management complied with the Court’s request.

II. Standard of Review – Rule 59(e) Motion to Reconsider.

“A party may wish to file [] a [Rule 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772 (2004). On the other hand, a “party must file such a motion when an issue or argument has been raised, but not ruled on[.]” Id. It must be remembered, however, that a “party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693 (2014). “[N]ew theories or arguments that were not advanced earlier” cannot be presented for the first time in a Rule 59(e) motion. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing Natural Resources Defense Council v.

¹ Plaintiff’s “Supplemental Material”, p. 3

U.S. E.P.A., 705 F.Supp. 698, 701 (D.D.C.1989), vacated on other grounds, 707 F.Supp. 3 (D.D.C.1989)).

III. Arguments

i. Plaintiff Waived Her “Supplemental Material” Arguments.

As discussed above and in the Court’s Order granting summary judgment, Plaintiff asserts in her “supplemental material” that Caishen undertook a duty “to [i] use reasonable care in the property-management, inspection, and walkthrough system it created, authorized, and relied upon through [Columbia Property Management]” and “to [ii] use reasonable care in the maintenance and safety-repair reporting system it created through John Lanier, and Chris, including a duty to respond reasonably to the unsafe stoop/stairway condition Plaintiff’s daughter reported to Chris before the fall.” Plaintiff’s daughter is Alayna Causey. Alayna Causey was a tenant on a property owned by Caishen. Plaintiff was her daughter’s social guest at the time of her fall. Plaintiff contends that the duty allegedly undertaken on behalf of Caishen’s tenant extends to her as well.

Presumably to support the existence of the above duty, the “supplemental material” contained citations—without any accompanying arguments—to three cases.² Notwithstanding the lack of any arguments relating thereto, the Court made clear in its Order that none of the cases were applicable.

Two cases involve institutions that were caring for a mentally impaired individual residing therein. Madison v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (2006) (“Madison” was a mentally disabled adult who lived in a residential home operated by Babcock Center); Hubbard v. Taylor, 339 S.C. 582, 529 S.E.2d 549 (Ct. App. 2000) (Hubbard was an elderly woman suffering from periods of confusion and short-term memory issues who lived in the Greenbriar Retirement Village). The third case involves an apartment building that voluntarily undertook a duty to provide security for tenants. Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 826 S.E.2d 285 (2019).

² Plaintiff’s “Supplemental Material”, pp. 4-8

All these cases involve a duty that was undertaken on behalf of a tenant rather than a social guest.³

In response, in her Rule 59(e) motion, Plaintiff submits new case law, creating new theories and arguments for the Court to consider in support of its assumed duty argument.⁴ The cases Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997) and Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813 (1995) should have been argued about during the hearing and before judgment. Plaintiff cannot present them now in her Motion to Reconsider. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693; Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482. The same is true for all arguments and citations (to other case law, secondary sources, depositions, or other materials) that were not presented or argued about prior to this Court's judgment. Id. This includes, but is not limited to, an obscure reference to Restatement § 323 that Plaintiff never elaborated upon in her Motion to Reconsider.⁵

ii. To the Extent Properly before the Court, Plaintiff's "Supplemental Material" does not Support her Theory of Liability.

Even if Plaintiff's new case law, theories, and arguments are properly before the Court, the "Supplemental Material[s]" do not help Plaintiff. Plaintiff misstates the holding of Carson v. Adgar. Plaintiff states: "Carson held that, to establish an assumed duty, the plaintiff must show that the defendant, through affirmative action, assumed an obligation or intended to render services for the benefit of another."⁶ This is incorrect. Carson concerned two friends who had gone on a bender. Carson v. Adgar, 326 S.C. 212, 214-16, 486 S.E.2d 3, 4-5. The issue was whether the less intoxicated friend had "taken charge of" the more intoxicated friend and thereby assumed a duty

³ Order Granting MSJ for Caishen, p. 6.

⁴ Plaintiff's Rule 59(e), pp. 6-7

⁵ Id., p. 4

⁶ Id., p. 6 (underlining added)

of care. Carson v. Adgar, 326 S.C. 212, 216-18, 486 S.E.2d 3, 5-6. After noting that an intoxicated person is considered helpless under Restatement §324, the Court held that “to establish the defendant has ‘taken charge of’ one who [is] helpless, the plaintiff must show ‘the defendant did more than act, but through affirmative action assumed an obligation or intended to render services for the benefit of another.’” Id., 326 S.C. 212, 217-18, 486 S.E.2d 3, 5-6. Plaintiff’s case does not involve a Defendant who has allegedly “taken charge of” someone who is helpless.⁷ Carson is irrelevant under the facts of this case.

Likewise, in Miller v. City of Camden, the Army Corps of Engineers had determined that a dam was unsafe. Miller v. City of Camden, 329 S.C. 310, 313, 494 S.E.2d 813, 814. The former owners of the dam attended a meeting with the South Carolina Land Resources Commission, wherein “an emergency plan was formulated for [notifying] the appropriate officials in the event of an imminent dam failure.” Id., 329 S.C. 310, 313, 494 S.E.2d 813, 815. The former dam owners “were listed on Land Resources emergency notification forms as personnel assigned to monitor the dam.” Id. The dam eventually broke, causing deaths and personal injuries.

The Supreme Court ruled that, based on the evidence, a jury should decide whether the former dam owners voluntarily undertook a duty to monitor the dam for the benefit of the people surrounding the dam who would be affected if the dam were breached. Id., 329 S.C. 310, 315, 494 S.E.2d 813, 815. The evidence supporting this jury question was (a) the presence of the former dam owners in the meeting concerning an emergency response to an imminent dam failure and (b) the placement of the former dam owners’ names on the dam monitoring and notification form. Id.

Miller held that a jury question could exist concerning whether a party volunteered to undertake a duty for the benefit of identifiable and specific parties, i.e., those who would be

⁷ Order Granting MSJ for Caishen, pp. 1-2 (case background information)

affected if the dam were breached. Miller does not hold that a landlord who undertakes a duty for a tenant also undertakes a duty for a tenant's social guest, someone whom the landlord knows nothing about and on behalf of whom the landlord undertook no duty. In fact, Miller expressly declined to adopt this expanded form of liability when the Court rejected Restatement §324A: "We decline to adopt the expanded liability of Restatement 2d of Torts § 324A (1965) [which] imposes a duty on 'one who undertakes ... to render services to another *which he should recognize as necessary for the protection of a third person*' and *requires no actual volunteer relationship between the defendant and the third party.*" Miller v. City of Camden, 329 S.C. 310, 315 n. 2, 494 S.E.2d 813, 815 n. 2 (italics added).

As stated above, Plaintiff never elaborated upon her §323 argument in her submissions to this Court. Notwithstanding, during the Motion to Reconsider hearing, it became clear that she was resting her voluntary undertaking argument on §323. That section of the restatement of torts states:

One who undertakes, gratuitously or for consideration, to render services *to another* which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 216, 826 S.E.2d 285, 292 (2019) (citing Restatement (Second) of Torts §323 (1965)) (italics added) (internal quotation marks omitted). As discussed in this Court's Order granting summary judgment, however, Wright involved a landlord undertaking duties for tenants. Plaintiff is not a tenant. She is a third party, a social guest of Defendants' tenant, Alayna Causey.

Although Defendants did arguably undertake duties for their tenant, no evidence suggests that Defendants undertook any duties for Plaintiff. In fact, no evidence suggests that Defendants

knew Plaintiff existed, let alone that she would be a social guest of Alayna Causey. There is also no evidence that Plaintiff relied on Defendants' alleged undertaking. Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 216, 826 S.E.2d 285, 292. What became evident during the Motion to Reconsider hearing is that Plaintiff wants to "impose a duty on '[Defendants for] undertak[ing] ... to render services to [Alayna Causey] which [they] should [have] recognize[d] as necessary for the protection of a third person [the Plaintiff]' and require[s] no actual volunteer relationship between the [Defendants] and the third party.'" Miller v. City of Camden, 329 S.C. 310, 315 n. 2, 494 S.E.2d 813, 815 n. 2. South Carolina has rejected this expanded form of liability. Id.

Notwithstanding the above, Plaintiff wants "the jury to decide, under Carson and Miller, whether Caishen's affirmative undertaking was intended to protect the people using the very entrance, walkway, stairs, and landing that the system inspected, maintained, and repaired."⁸ Plaintiff cites testimony to claim the existence of a genuine issue of material fact here; but nothing suggests that the allegedly undertaken actions were done for the specific benefit of anyone besides Alayna Causey, the tenant.⁹ Under Kitchen Planners, "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, 463, 892 S.E.2d 297, 301 (2023). In the absence of a genuine issue of material fact, summary judgment should be granted. Id.

Finally, even if Plaintiff had presented reasonable inferences and issues of fact, none of the specific facts that she cites override Plaintiff's status as a licensee or the duty that Plaintiff owed.¹⁰ The duty owed toward a licensee requires a landowner "to [1] use reasonable care to discover the licensee, to [2] conduct activities on the land so as not to harm the licensee, and to [3] warn the

⁸ Plaintiff's Rule 59(e), p. 10

⁹ Id., pp. 8-14

¹⁰ Id., p. 2 (Plaintiff admits she is a licensee)

licensee of any *concealed* dangerous conditions or activities.” Harris v. the Univ. of South Carolina, 391 S.C. 518, 523, 706 S.E.2d 45, 47-48 (Ct. App. 2011) (emphasis added). Notwithstanding, “[a] licensee cannot recover for an injury caused by known dangers[.]” Neil v. Byrum, 288 S.C. 472, 474, 343 S.E.2d 615 (1986). The South Carolina Supreme Court “refuses to make every landowner an insurer of the safety of [] social guests.” Id., 288 S.C. 472, 474, 343 S.E.2d 615.¹¹ Finally, “if [the Court] determine[s] that the danger posed by the [condition] was not hidden or concealed, *then [the licensee] had the duty to discover and avoid the danger.*” Id., 288 S.C. 472, 473, 343 S.E.2d 615 (emphasis added).

As the Court discussed in its Order, Plaintiff had seen and used the dangerous brick porch/landing on several occasions.¹² Although Plaintiff swore in an affidavit that she had failed to “appreciate that the condition of the brick landing posed a tripping hazard or dangerous condition[.]”¹³ her contention is irrelevant. Because “the danger posed by the [brick porch/landing] was not hidden or concealed, *[Plaintiff] had the duty to discover and avoid the danger.*” Id., 288 S.C. 472, 473, 343 S.E.2d 615 (emphasis added). No matter what theories about voluntary duties are asserted, Plaintiff cannot escape the fact that *she had a duty* as a licensee to *discover and avoid* the *unconcealed* danger posed by the brick porch/landing. Id. No precautions or warnings were required under these circumstances.¹⁴ Summary judgment is appropriate because the alleged dangerous condition of the brick porch/landing was open and obvious.

¹¹ For this Summary Judgment Motion only, Caishen assumes, without admitting, that the uneven brick on the patio constituted a dangerous condition.

¹² Order Granting MSJ for Caishen, pp. 2-5; Affidavit of Elyse Decker, p. 1, ¶4

¹³ Affidavit of Elyse Decker, p. 1, ¶4.

¹⁴ See Padgett v. Colleton County, 383 S.C. 431, 436, 679 S.E.2d 533, 536 (Ct. App. 2009) (“Reasonable care on the part of [a] possessor [of land] ... does not ordinarily require precautions, or even warning, against dangers which are known to [a] visitor, *or so obvious to him that he may be expected to discover them.*”) (emphasis added) (concerning duties owed to invitees, *which are more numerous and involve a higher standard of care than that owed to licensees like Plaintiff*) (citation omitted) (alterations added by Padgett Court).

iii. Caishen is not Liable to a Third-Party Plaintiff.

As an additional ground for the Court's decision, the Court ruled that, under South Carolina law, "[t]he landlord is liable to third persons for a defective condition of premises only...where the landlord retains control over the premises or a part thereof where the injury occurred, such as a common passageway to this and other property, or an elevator." Binnicker v. Adden, 204 S.C. 487, 30 S.E.2d 142, 143 (1944). Plaintiff testified that she fell on the front porch/landing and entranceway of the Property. Per the uncontested affidavit of Caishen's owner, Marwan Marzago, filed May 15, 2026, Caishen did not retain control over this part of the premises.¹⁵ The front porch/landing and entranceway were under the exclusive possession and control of the tenant.¹⁶ Consequently, Caishen is not liable to Plaintiff.

Plaintiff did not present any arguments against this position before her Rule 59(e) motion. She cannot make any now. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693; Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482.

Nonetheless, during the summary judgment hearing, Plaintiff complained that she had not received proper notice of Caishen's argument under Rule 56(c). In footnotes within her Rule 59(e) motion, Plaintiff again asserts that she did not receive notice of Caishen's Binnicker argument under Rule 56(c).¹⁷ Plaintiff is mistaken.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be

¹⁵ Affidavit of Marwan Marzago, ¶¶7-8; see also Residential Rental Agreement.

¹⁶ Daniels v. Timmons, 216 S.C. 539, 549, 59 S.E.2d 149, 154 (1950) ("The law implies an obligation [and] creates a legal duty to keep the same in repair and to operate properly such parts of the premises which the *lessor reserves possession and control of for the common use of several tenants* and this is peculiarly applicable to halls, entrances, porches or stairways *of which no particular tenant has exclusive possession or control.*") (emphasis added).

¹⁷ Plaintiff's Rule 59(e), p.4 n. 3 and n. 4.

rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Rule 56(c), SCRCPP (emphasis added).

Caishen filed a summary judgment *motion* on February 25, 2026, more than 10 days before the hearing on May 19, 2026. Nothing in Rule 56 requires a party to spell out in its Motion the specific arguments that will be made during a hearing. *Id.* On the Friday before the Tuesday, May 19 hearing, Caishen submitted a Memorandum in Support of its Motion. That Memorandum contained the Binnicker argument.¹⁸ Despite knowing Caishen's positions in advance, Plaintiff chose not to contest Caishen's owner's affidavit or the Binnicker argument; and Plaintiff did not ask for more time to do so. Rule 56(f), SCRCPP.¹⁹

If Plaintiff is asking the Court to consider a Rule 7(b)(1) argument,²⁰ she has only ever referenced Rule 56. Although the argument is not properly before the Court, a "party must establish prejudice as the result of another's failure to comply with Rule 7(b)(1), SCRCPP." Chastain v. Hiltabidle, 381 S.C. 508, 517, 673 S.E.2d 826 (Ct. App. 2009). In order "[t]o demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish [that] if he or she had received appropriate notice, *he or she would have done something different, thereby affecting*

¹⁸ Plaintiff's Rule 59(e), p.5 n. 4.

¹⁹ "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

²⁰ "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Rule 7(b)(1), SCRCPP.

the decision of the trial court and advancing his or her case.” Id. (emphasis added). As discussed, Plaintiff never asked for more time under Rule 56(f). In fact, Plaintiff has never argued that she would have done something different if she had received 10 days’ notice instead of 5. She cannot claim now that she was unable to marshal facts and arguments because of the lack of notice. Consequently, Plaintiff cannot satisfy the prejudice requirement, to the extent she is attempting to make a notice argument under Rule 7(b)(1).

IV. Conclusion

Plaintiff was a licensee. She can only recover if Caishen failed to warn her of a latent or concealed dangerous condition. The allegedly dangerous bricks on the front porch/landing were not latent or concealed. The condition of the brick porch/landing was open and obvious. Furthermore, Caishen did not retain control over the front porch/landing, meaning Caishen cannot be liable to Plaintiff. And for all the reasons given above, Plaintiff’s voluntary undertaking argument is unpersuasive, including the fact that, even if a voluntary undertaking occurred, that voluntary undertaking would not negate Plaintiff’s duty as a licensee to discover and avoid the unconcealed danger posed by the condition of the brick front porch/landing.

The Court is unaware of any material fact or principle of law that has either been overlooked or disregarded and finds no error of law or fact that was not appropriately considered. THEREFORE, the Motion to Reconsider is DENIED.

IT IS SO ORDERED.

The Honorable Thomas W. McGee, III

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Richland Common Pleas

Case Caption: Elyse Decker vs Caishen Li Llc , defendant, et al
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So Ordered

s/ Thomas W. McGee III, Judge Code 2786