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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Appellate Case No. 2013-001102

Case No. 2011-CP-40-04883R

Raymond Armstrong,

Appellant,

v.

Samuel J. Thompson,

Respondent.

RECORD ON APPEAL

Shannon L. Felder
SOLOMON LAW GROUP, LLC
3501 North Main Street
Columbia, SC 29203
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Attorney for Appellant

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Attorney for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011CP4004883R

Raymond Armstrong

Jacqueline Berry

Samuel J Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Shannon Lee Felder

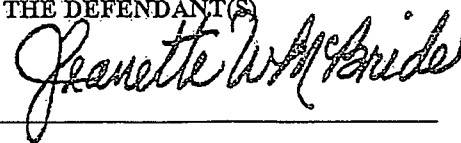
Catharine H. Garbee Griffin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

v.

Samuel J. Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-04883R

ORDER

RICHLAND COUNTY
FILED
2013 APR 17 AM 9:55
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Plaintiff to alter or amend this Court's May 30, 2012 Order. The Motion for Reconsideration was filed with the Clerk of Court on June 13, 2012. A copy of the Motion was not served on the Court pursuant to Rule 59, SCRCP. The Motion was not brought to the Court's attention until March 26, 2013.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Reconsider the Order Granting Defendant's Motion for Summary Judgment. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 16, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4004883R

Raymond Armstrong

Jacqueline Berry

Samuel J Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonstat); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Shannon Lee Felder

Catharine Garbee Griffin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2011-CP-40-4883R

ORDER

y.

Defendants.

RICHLAND COUNTY
 FILED
 2012 MAY 30 AM 9:27
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

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SCANNED

give way or had the board pop up as he walked over it. The Plaintiff further testified that during the eleven months he lived in the house that he never noticed any loose molding between the kitchen and the living room and that he "never had boards pop up before the incident." He testified that when the molding came up, he tripped and fell over it and, "just went down." He stated during the time he lived in the house, he walked over the area between the living room and the kitchen a couple of times a day and never felt the floor give way. The Plaintiff stated that he never reported to anybody that there was something wrong with the board.

Likewise, the day before the Plaintiff fell, Armstrong's sister walked through the same area and did not notice anything about the wood. She stated that the 1/4' round molding which she described as the piece of wood her brother's foot broke loose had "very long nails and had probably been there since the house was built." She never reported the condition of the wood to Thompson. Washington also testified that there was some softness in the kitchen floor near the dishwasher, but that it was "nothing about that archway" [the area between the living room and kitchen] and was not an issue that required an immediate repair.

STANDARD OF REVIEW

When considering summary judgment, the evidence and inferences should be viewed in the light most favorable to the nonmoving party. Etheredge v. Richland School Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000). However, once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party cannot rest upon mere allegations but must come forward with evidence. Baughman v. American Tel & Tel Co., 306 S.C. 101, 410 S.E.2d 537 (1991). 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. Gadson v. Hembree, 36 S.C. 316, 613 S.E.2d 533 (2005). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Id. In cases where the burden of proof is by a preponderance of the evidence, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009). A scintilla of evidence is any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror. Taylor v. Atlantic Coast Line Railway Co., 78 S.C. 552, 59 S.E. 641 (1942).

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DISCUSSION

The common law rule concerning the condition of leased property is that the landlord has no duty to use due care to insure that the premises are safe. Instead, the tenant generally is responsible for the premises. Marks v. Industrial Life and Health Insurance Company, 212 S.C. 502, 48 S.E.2d 445 (1948). Through the years, the South Carolina Supreme Court has acknowledged that several exceptions exist to this rule. The court has recognized an exception for concealed dangers where the lessor knows or should know that a dangerous condition is not obvious to the lessee. If the lessor knows or should know that a dangerous condition is not obvious to the lessee, then the lessor must use due care to discover and warn of that latent condition. Timmons v. Williams Wood Product Corp., 164 S.C. 361, 162 S.E. 329 (1932). Defendant contends that the condition of the threshold was not dangerous and could not have been discovered upon a reasonable inspection. The Plaintiff and his sister's testimony are consistent that there was nothing notable about the threshold until the day of the Plaintiff's accident. A reasonable inspection would not have revealed the alleged defect. Therefore, this exception would not apply to create a duty for the landlord to keep the premises safe.

Another recognized exception, under common law, is that if the landlord undertakes to perform an act, such as a repair, that the act must be performed with due care. Watson v. Sellers, 299, S.C. 426, 385 S.E.2d 369 (Ct. App. 1989). There is no evidence in this case that the landlord undertook any action to repair the threshold in the leased premises. Therefore, the Plaintiff has no evidence that the landlord had a duty to use due care to insure that the leased premises are safe under common law. Because the Plaintiff has only pled allegations of common law negligence, there is no genuine issue of material fact regarding the actions of the landlord, and, this court should grant summary judgment in favor of the Defendant.

There is no evidence that Plaintiff provided written or oral notice of the defect or needed repairs to the Defendant landlord, as required by the South Carolina Residential Landlord Tenant Act. The South Carolina Residential Landlord Tenant Act provides that a landlord would have a duty to "make all repairs and do what is reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann § 27-40-440(a)(1)-(2). After the passage of the Landlord Tenant Act the Court in Watson v. Sellers, supra, held that "a tenant of residential property has a cause of action in tort against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable

and
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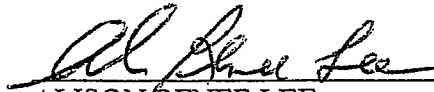
condition.” The issue of the duty of a landlord to make repairs was addressed again by the court in Robinson v. Code, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009). There, the Court of Appeals held that a landlord’s failure to provide smoke detectors was not actionable under the Landlord Tenant Act because, in part, the tenants failed to allege that they had notified the landlord of the need for the smoke detectors. The South Carolina Residential Landlord Tenant Act, S.C. Code Ann. §§ 27-40-10 et seq., requires a landlord to comply with applicable housing codes materially affecting health and safety, and “make all repairs and to do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.” Section 27-40-610(a) requires the delivery of a “written notice to the landlord specifying the acts and omissions constituting the breach” before liability attaches. The tenant must then demonstrate that the landlord failed to act in a reasonable time for a cause of action to arise. Robinson, 682 S.E.2d at 495. Because the Landlord Tenant Act requires that notice be in writing, it follows that the tenant must notify the landlord in writing of the need for repairs to trigger liability.

The Plaintiff has presented no evidence to raise a genuine issue of material fact that the Plaintiff gave notice either in writing or orally, to the Defendants of the need to repair the threshold. At the time Armstrong and his sister moved into the house, they testified that the house was in good shape and did not need repairs. When Plaintiff entered into a lease with Defendant, Defendant no longer had a legal duty to correct a defect which arose in the home after the space was rented, unless given written notice. Plaintiff’s rights under the South Carolina Landlord Tenant Act only arise after the landlord fails to take action to make repairs after notice. Here, both the Plaintiff and his sister, who resided in the home, never notified the Defendant of the need to repair the threshold. Therefore, Defendant Thompson is entitled to summary judgment as a matter of law.

ORDER

For the aforementioned reasons, the Defendants' motion for summary judgment as to the Plaintiff's claim of negligence is **GRANTED** and this case is dismissed.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Fifth Judicial Circuit

Columbia, South Carolina
May 24, 2012

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Jacqueline Berry and Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 09-CP-40-03531

**CONSENT ORDER
TO RESTORE CASE TO GENERAL
DOCKET UNDER RULE 40(j)**

2011 MAY -5 PM 1:09
J. BETTE W. MERRID
C.C.P. & G.S.

FILED
RICHLAND COUNTY

Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, and by the consent of the parties, this Court orders that this case be restored to the General Docket and further proceed as set forth under the applicable law and Rules of Civil Procedure.

AND IT SO ORDERED.

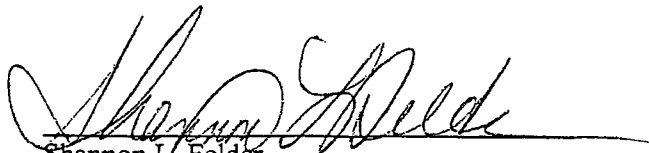
Alison Lee Lee

Judge Fifth Judicial Circuit

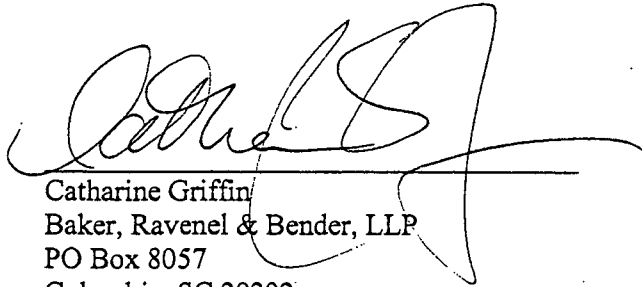
May 3, 2011

Columbia, SC

WE SO MOVE AND CONSENT



Shannon L. Felder
FELDER/LAW FIRM, LLC
Post Office Box 1065
Winnsboro, SC 29180
(803)815-1000
(803) 454-9451 Facsimile
Attorney for Plaintiff



Catharine Griffin
Baker, Ravenel & Bender, LLP
PO Box 8057
Columbia, SC 29202
(803) 799-9091
(803) 799-3423 Facsimile
Attorney for Defendant

2009CP4003531

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No.:
Raymond Armstrong	)	
Plaintiff,	)	
vs.	)	SUMMONS
Jacqueline Berry and Samuel J. Thompson	)	
Defendant.	)	

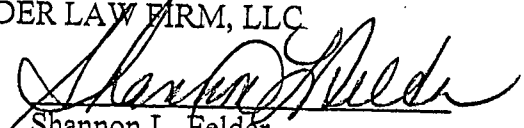
JEANETTE W. McBRIDE
C.C.P. & G.S.
2009 MAY 14 AM 10:35
FILED
RICHLAND COUNTY

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Felder Law Firm, P.O. box 1065, Winnsboro, SC 29180, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,
FELDER LAW FIRM, LLC

BY:


Shannon L. Felder

P.O. Box 1065
Winnsboro, SC 29180
803-815-1000 Office
803-454-9154 Fax
Attorney for Plaintiff

Winnsboro, South Carolina
April 20, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Jacqueline Berry and Samuel J. Thompson
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

COMPLAINT
(Jury Trial Requested)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 MAY 14 AM 10:36

FILED
RICHLAND COUNTY

Now comes Plaintiff, by and through counsel, and states as follows:

1. Plaintiff Raymond Armstrong is a citizen and resident of Richland County, South Carolina.
 2. Upon information and belief, the Defendants Jacqueline Berry and Samuel J. Thompson are both residents of Richland County, South Carolina.
 3. On October 01, 2006, as Raymond Armstrong walked in the kitchen, one of the pieces of the hardwood floor came loose from the subflooring, causing Mr. Armstrong to sustain significant injury. Upon information and belief, the subflooring had deteriorated and Defendants had failed to remedy the condition despite having actual and/or constructive knowledge of the problem.
 4. As a result of this incident, Plaintiff suffered injuries to his body including but not limited to:
 - a. Open fracture to the right ankle; and
 - b. infection to the wound that may lead to amputation.
- Plaintiff Raymond Armstrong has incurred medical, hospital, and doctors bills as a result of this incident and may suffer such damages in the future.
5. Further, Plaintiff has suffered and may in the future suffer physical pain and suffering, mental anguish, and impairment of health and bodily efficiency.

FOR A FIRST CAUSE OF ACTION

(Negligence)

6. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.
7. Defendants Jacqueline Berry and Samuel J. Thompson were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:
 - a. In failing to take proper care of the property;
 - b. In failing to provide a safety living environment;
 - c. In failing to exercise the degree of care with which a reasonable prudent person would have exercised under the same circumstances; and
 - d. In any other manner as may be ascertained during discovery or trial of this case

JURY DEMAND

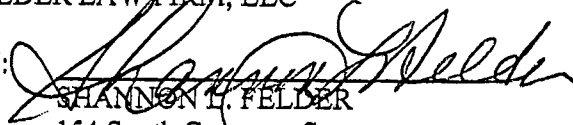
8. Plaintiff demands that all causes of action that may be tried before a jury be so tried.

WHEREFORE, Plaintiff prays for judgment against Defendants in a sum sufficient to adequately compensate him for his actual damages, punitive damages, the costs of this action, any relief a jury may award, and for such other and further relief as this court may deem just and proper.

Respectfully Submitted,

FELDER LAW FIRM, LLC

BY:



SHANNON L. FELDER
154 South Congress Street
Post Office Box 1065
Winnsboro, SC 29180
803/815-1000
803/454-9451 (Facsimile)
sfelder@felderlawfirm.com

Attorney for Plaintiff

Winnsboro, South Carolina
April 20, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Jacqueline Berry and Samuel J. Thompson

Defendants.

IN THE COURT OF COMMON PLEAS

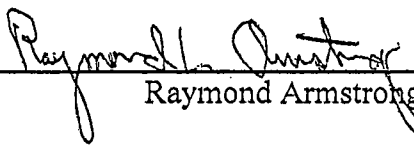
Civil Action No.:

VERIFICATION

2009 MAY 14 AM 10:35
JEANETTE W. BOBIDE
C.C.P. & T.S.

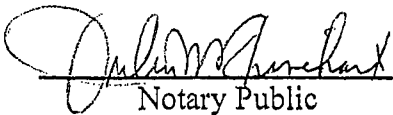
RICHLAND COUNTY
FILED

I, Raymond Armstrong, being first duly sworn upon oath, depose and state I am the Plaintiff in the above-entitled actions; that I have read the foregoing Complaint, know the contents thereof and that the same is true and correct, except as to those matters therein stated on information and belief and as to those matters I believe them to be true.


Raymond Armstrong

Subscribed and sworn to before me

This 20th day of March, 2009


Notary Public

for S.C.
Try Commis. Expires Feb. 23rd 2019

) THE COURT OF COMMON PLEAS

))

) Civil Action No.: 2009-CP-40-3531

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FILED
2009 OCT -5 PM 4:23
JEANETTE B. BRIDGES
C.C.P. & G.S.
MILBRIDGE

FOR A FIRST DEFENSE

1. Denies each and every allegation of the complaint not herein specifically admitted, qualified or explained.
2. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph one (1) of the complaint, and, therefore, denies the same and demands strict proof thereof.
3. Admits that Samuel J. Thompson is a resident of Richland County, South Carolina, but does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph two (2) of the complaint and therefore denies the same and demands strict proof thereof.
4. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph three (3) of the complaint, and, therefore, denies the same and demands strict proof thereof.

5. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph four (4), subparts (a) and (b) of the complaint, and, therefore, denies the same and demands strict proof thereof.

6. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph five (5) of the complaint, and, therefore, denies the same and demands strict proof thereof.

7. Realleges and reasserts its responses to paragraphs one (1) through five (5) of the complaint in response to paragraph six (6) of the complaint as if fully reiterated herein verbatim.

8. Denies the allegations of paragraph seven (7), subparts (a) through (d) of the complaint.

9. Defendant joins in the plaintiff's request for a trial by jury.

FOR A SECOND DEFENSE

10. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE

11. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE

12. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A FIFTH DEFENSE

13. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR AN SIXTH DEFENSE

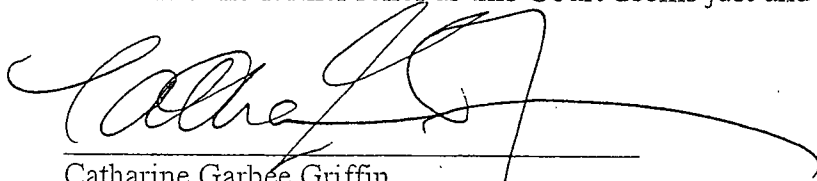
14. The negligence, recklessness, willfulness and wantonness of the Plaintiff, combining and concurring with this Defendant, if any, and the same is denied, was a direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of this Defendant, if any, and same is denied, and, therefore, the Plaintiff may not recover from the Defendant for any of their alleged injuries or damages complained of in the complaint. This Defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff as a bar to any recovery against this Defendant.

As an alternative, this Defendant is entitled to a reduction of damages based upon the percentage of the Plaintiff's negligence, recklessness, willfulness and wantonness.

FOR A SEVENTH DEFENSE

15. Any and all conditions which existed in the home rented by the plaintiff were open and obvious to the plaintiff, the tenant, and should have been discovered by the plaintiff upon reasonable inspection. Defendant pleads the openness and obviousness of the condition as a complete defense.

WHEREFORE, having fully answered the complaint, defendant prays for the dismissal of same, for a trial by jury, costs and such other and further relief as this Court deems just and proper.



Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant Samuel J. Thompson

Columbia, South Carolina

October 5, 2009

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Raymond Armstrong,) Civil Action No.: 2009-CP-40-3531

Plaintiff,)

v.)

CERTIFICATE OF SERVICE)

Jacqueline Berry and Samuel J. Thompson,

Defendants.)

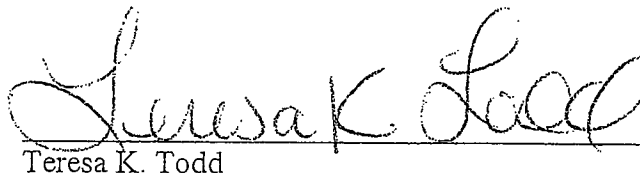
JEANETTE M. PRODRIDE
Clerk, P. & G.S.

2009 OCT -5 PM 4:23

FILED

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with **an answer** by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Shannon L. Felder, Esquire
Felder Law Firm, LLC
P.O. Box 1065
Winnsboro, sC 29180
803.815.1000
803.454.9154 fax
sfelder@felderlawfirm.com



Teresa K. Todd

October 5, 2009

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

☐ Plaintiff

v.

Jacqueline Berry And Samuel J. Thompson,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-40-3531

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Shannon Felder, Bar No.
Address:
Solomon Law Group, POBox 1866, Cola, SC
29201-1866
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fax:
e-mail: other:

Defendant's Attorney:
Catharine Garbee Griffin, Bar No. 9821
Address:
P.O. Box 8057, Columbia, SC 29202
phone: 803 799 9091 fax: 803 779-3423
e-mail: cgriffin@brblegal.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

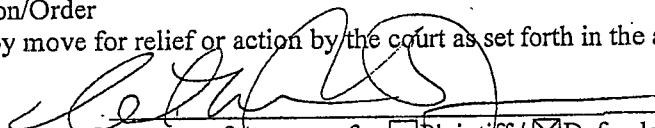
Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 20 minutes Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 10, 2012

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

v.

Jacqueline Berry and Samuel J.
Thompson,

Defendants.

THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-40-3531

MOTION FOR SUMMARY JUDGMENT

JEANETTE W. JORDRIDE
Clerk, C.P. & G.S.

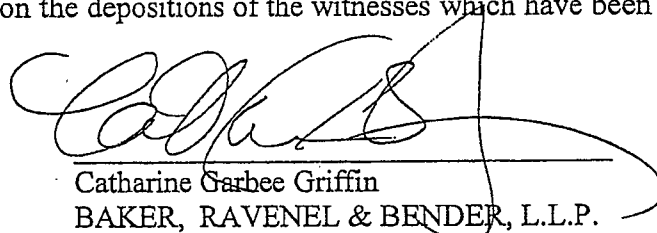
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RICHLAND COUNTY
FILED

TO: SHANNON FELDER, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the defendant Samuel Thompson, by and through his undersigned attorney, will move as soon as practicable for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an order granting him summary judgment on the basis that there exists no genuine issue of material fact regarding any act or omission of Mr. Thompson because there is no evidence that Thompson knew or should have known of any defect which existed in the residence the plaintiff was renting from Mr. Thompson. Because there is no notice to Mr. Thompson and because the defect, if it existed, was not a defect which a reasonably careful inspection would have revealed, this defendant is entitled to judgment as a matter of law.

This motion is based upon the depositions of the witnesses which have been taken in this case.



Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant Samuel J. Thompson

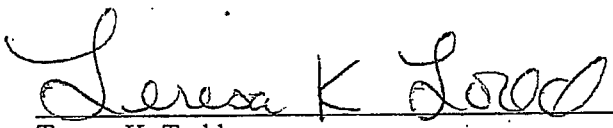
January 10, 2012

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Raymond Armstrong,	)	Civil Action No.: 2009-CP-40-3531
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
	)	
Jacqueline Berry and Samuel J.	)	
Thompson,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
 FILED
 2012 JAN 11 PM 1:49
 JEANETTE W. MCBRIDE
 CLERK P. & G.S.

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with Defendant Thompson's Motion for Summary Judgment by serving a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Shannon L. Felder, Esquire
 The Solomon Law Group
 1519 Richland Street
 PO Box 1866
 Columbia, SC 29201-1866



 Teresa K. Todd

January 10, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL CIRCUIT
)

Raymond Armstrong,

Plaintiff,

v.

Jacqueline Berry and Samuel J.
Thompson,

Defendants.

) Civil Action No.: 2011-CP-40-04883R
)

) MEMORANDUM IN SUPPORT OF
) DEFENDANT THOMPSON'S MOTION
) FOR SUMMARY JUDGMENT

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C.C.P. & C.S.
156606

The defendant, Samuel Thompson, landlord, moves for summary judgment on the basis that there exists no genuine issue of material fact as to the negligence of the landlord because the landlord has no common law duty to the plaintiff to use due care that the premises are safe and because the plaintiff tenant failed to notify Thompson, in writing, or, alternatively, orally, that the threshold over which he allegedly fell needed to be repaired. Absent notice, the landlord has no duty to repair the plaintiff's leased premises. Because there is no evidence of notice to Mr. Thompson, this defendant is entitled to judgment as a matter of law.

FACTS

In November of 2005, plaintiff and his sister, Beverly Armstrong Washington, rented a home located at 212 Hickory Ridge, Columbia, South Carolina from defendant, Samuel Thompson. On October 1, 2006, the plaintiff fell in Thompson's home and thereafter brought this lawsuit on the basis that Thompson failed to "take proper care of the property" and failed to provide a "safety [sic] living environment." (Plaintiff's Complaint, para. 7).

The plaintiff allegedly fell between the living room and the kitchen in the home rented from the defendant Thompson. (Depo. of Armstrong, p. 129-130, Photos of area, Exhibits 1 and 2) The living room, which is adjacent to the kitchen, had hardwood flooring. (Depo. of Thompson, p. 33, ll. 17-24). The kitchen had a linoleum floor. As a divider between the two rooms, Mr. Thompson screwed down a piece of transitional wood approximately four inches wide that covered or spanned the doorway between the kitchen and the living room. (Depo. of Thompson, p. 34, l.4-p.35, l. 25). Mr. Thompson used approximately six screws to secure the wooden threshold. (Depo. of Thompson, p. 36, ll. 4-15).

Both Plaintiff and his sister described 212 Hickory Ridge home as "beautiful," "pretty," and "nice." (Depo. of Washington, p. 31, ll. 62-63; Depo. of Armstrong, p. 60). The plaintiff did not request any repairs before he moved into the house. (Depo. of Armstrong, p. 63). Plaintiff and his sister had lived in the house for approximately eleven (11) months when Plaintiff fell. (Depo. of Armstrong, p.137, ll. 1-6; Depo. of Washington, p. 33, ll. 11-12). The plaintiff claims to have fallen because "the floor went down" and a "board came up." (Depo. of Armstrong, p. 70). The plaintiff's sister testified that a piece of molding popped up. (Depo. of Washington, p. 44). She denied that the piece of molding was the transitional wood reflected in Exhibits One(1) and Two(2) as testified to by the plaintiff, but claimed that she removed the piece of wood after the plaintiff's fall from the area shown in Exhibits 1 and 2.

Before October 1, 2006, the date of the plaintiff's accident, the plaintiff had no complaints about the house. (Depo. of Armstrong, p. 64). The plaintiff testified that he went into the kitchen a couple of times a day and never felt the floor give way or had the board pop up as he walked over it. (Depo. of Armstrong, p. 74). The plaintiff further testified that during the eleven months he lived in the house that he never noticed that the molding between the kitchen

and the living room was loose. (Depo. of Armstrong, p. 137). The plaintiff testified that he had "never had boards pop up before the incident." (Depo. of Armstrong, p. 72). The plaintiff further stated that he had never seen the board pop up before he fell. (Depo. of Armstrong, p. 72). He stated during the time he lived in the house, he walked over the area between the living room and the kitchen a couple of times a day and never felt the floor give way. (Depo. of Armstrong, p. 74). He stated that he never reported to anybody that there was something wrong with the board. (Depo. of Armstrong, p. 72).

Likewise, Armstrong's sister had walked through the area where the plaintiff fell the day before and did not notice anything about the wood. (Depo. of Washington, p. 52). She stated that the 1/4' round molding which she described as the piece of wood her brother's foot broke loose had "very long nails and had probably been there since the house was built." (Depo. of Washington, p. 68). She agreed that she never reported the condition of the wood to Thompson. (Depo. of Washington, p. 72). Her testimony was as follows:

Q: Is it your testimony that you never told him that there was anything wrong with this piece of wood?

A: There was nothing to see that was wrong with that piece of wood. How would I know that?

Q: So because there was nothing to see, there's nothing you ever asked him [Thompson] to fix; is that right?

A: The wood?

Q: Right.

A: No. It dislodged when Raymond walked into the kitchen. No. I never asked him to fix that piece of wood. Had I known that piece of wood was going to come dislodged, I probably would have had it repaired. But, there's nothing you could see or predict. I'm not a prophet...

(Deposition of Washington, p. 72).

Washington also testified that there was some softness in the kitchen floor near the dishwasher, but that it was “nothing about that archway” [the area between the living room and kitchen] and was “not a fix this kind of thing.” (Depo. of Washington, p. 74).

Because there is no genuine issue of material fact regarding the actions of the defendant, the defendant has moved for summary judgment.

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). A trial court may properly grant a motion for summary judgment when “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.” Rule 56(c), *SCRCP*. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). However, when triable issues exist, those issues must go to the jury. *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party. *Worley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). The burden is on the moving party to clearly establish an absence of a genuine issue of material fact. *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Once the moving party meets the initial burden of showing an absence of evidentiary support for the non-moving party’s case, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid S.*

Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

DISCUSSION

I. PLAINTIFF TENANT HAS NO EVIDENCE THAT THE DEFENDANT LANDLORD WAS NEGLIGENT

A. Defendant Landlord Has No Duty to Use Due Care to Insure that the Leased Premises are Safe and Plaintiff does not Fall under any Recognized Exceptions to this Rule

The traditional common law rule concerning the condition of leased property is that the landlord has no duty to use due care to insure that the premises are safe. Instead, the tenant generally is responsible for the premises. *Marks v. Industrial Life and Health Insurance Company*, 212 S.C. 502, 48 S.E.2d 445 (1948). Through the years, the South Carolina Supreme Court has acknowledged that several exceptions exist to the traditional rule. The court has recognized an exception to the traditional rule if there is an existing or foreseeable danger to those outside the premises because they are subjected to an unreasonable risk due to the condition of the premises at the time of the lease or because of the contemplated use by the tenant. RESTATEMENT (SECOND) OF PROPERTY §379-379a, 837. In this case, the first exception would not apply because the plaintiff is the tenant himself and not a person outside the premises. Second, the court has recognized an exception for concealed dangers where the lessor

knows or should know that a dangerous condition is not obvious to the lessee. If the lessor knows or should know that a dangerous condition is not obvious to the lessee, then the lessor must use due care to discover and warn of that latent condition. *Timmons v. Williams Wood Product Corp.*, 164 S.C. 361, 365 162, S.E. 329 (1932). Defendant contends that the condition of the threshold was not dangerous and could not have been discovered upon a reasonable inspection. The plaintiff and his sister's testimony is consistent that there was nothing notable about the threshold until the day of the plaintiff's accident. A reasonable inspection would not have revealed the alleged defect. Therefore, this exception would not apply to create a duty for the landlord to keep the premises safe. The third exception applies if the premises are open to the public which is not applicable in this case since it was a private residence. The fourth exception applies to common areas under the control of the lessor, which again is not applicable in this matter, since the accident happened inside the home between the living room and kitchen. The last recognized exception, under common law, is that if the landlord undertakes to perform an act, such as a repair, that the act must be performed with due care. *Watson v. Sellers*, 299, S.C. 426, 385 S.E.2d 369 (Ct.App. 1989). There is no evidence in this case that the landlord undertook any action to repair the threshold in the leased premises. Therefore, the plaintiff has no evidence that the landlord had a duty to use due care to insure that the leased premises are safe under common law. Because the plaintiff has only pled allegations of common law negligence, there is no genuine issue of material fact regarding the actions of the landlord, and, this court should grant summary judgment in favor of the defendant.

B. Under the South Carolina Residential Landlord and Tenant Act, Plaintiff Tenant has no Competent Evidence that Tenant Provided Written or Oral Notice to Landlord Defendant of an Alleged Defect in the Residence and Landlord Failed to Repair the Defect in a Reasonable Time

Assuming that the plaintiff's complaint can be read to include an allegation under the provisions of the South Carolina Residential Landlord Tenant Act, the plaintiff has no evidence that he provided written or oral notice to the defendant landlord, as required by the South Carolina Residential Landlord Tenant Act, that there was a repair needed at the transitional wood between the living room and kitchen. Although traditionally in South Carolina, there has been no duty for a landlord to maintain leased premises in a safe condition, the South Carolina Residential Landlord Tenant Act, as interpreted by the South Carolina Court of Appeals, but not yet addressed by the South Carolina Supreme Court, provides that a landlord would have a duty to "make all repairs and do what is reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann § 27-40-440(a)(1)-(2)(2007). The tenant, however, must put the landlord on notice of the repairs needed.

The South Carolina Court of Appeals recognized that only limited legal duties arise based on a residential landlord/tenant relationship in the case of *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 372 (Ct. App. 1989). The *Watson* court found: "[T]he courts of this state have held that the relationship of landlord and tenant, by itself, imposes no legal duty on the part of the landlord to keep in repair leased residential premises under the control of the tenant." *Id.* The court held, however, after the passage of the Landlord Tenant Act that "a tenant of residential property has a cause of action in tort against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Id.* In *Watson*, the Court of Appeals found that the trial court did not err in submitting the case to the jury because there was evidence in the record that the landlord had

undertaken to make repairs and had a duty to exercise reasonable care in doing so. *Id.* at 437, 385 S.E.2d at 375. Although the court also concluded that a duty existed under the Landlord Tenant Act, the court did not address whether plaintiff's evidence would have satisfied the requirements set forth in the Landlord Tenant Act.

The issue of the duty of a landlord to make repairs was addressed again by the court in *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009). There, the Court of Appeals held that a landlord's failure to provide smoke detectors was not actionable under the Landlord-Tenant Act because, in part, the tenants failed to allege that they had notified the landlord of the need for the smoke detectors. The South Carolina Residential Landlord Tenant Act, S.C. Code Ann. §27-40-10 to 940 (2007), requires a landlord to comply with applicable housing codes materially affecting health and safety, and "make all repairs and to do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." Section 27-40-610(a) requires the delivery of a "written notice to the landlord specifying the acts and omissions constituting the breach" before liability attaches. The tenant must then demonstrate that the landlord failed to act in a reasonable time for a cause of action to rise for the tenant. *Robinson*, 682 S.E.2d at 495. Because the Landlord Tenant Act denotes that the notice be in writing, it follows that to trigger liability that the tenant must notify the landlord in writing of the need for repairs. The Court of Appeals endorsed this reading of the Landlord Tenant Act in the *Robinson* case. Since the Landlord Tenant Act is in derogation of common law, it must be strictly construed which would require the notice be in writing. *Watson v Sellers*, 385 S.E.2d 369 (Ct. App. 1989). The South Carolina Supreme Court has not yet ruled on this notice issue.

The plaintiff has presented no evidence to raise a genuine issue of material fact that the plaintiff gave notice - either in writing or orally - of the need for a repair in the leased home to

the threshold. At the time Armstrong and his sister moved into the house, they testified that the house was in good shape and did not need repairs. Plaintiff and his sister had been living at 212 Hickory Ridge for approximately eleven months when Plaintiff fell allegedly when entering the kitchen. (Depo. of Armstrong, p.137, ll. 1-6; Depo. of Washington, p. 33, ll. 11-12). When plaintiff entered into a lease with defendant, defendant no longer had a legal duty to correct a defect which arose in the Hickory Ridge home after the space was rented, unless given written notice. *See Robinson, 384 S.C. at 582, 682 S.E.2d at 495.* Plaintiff's rights under the South Carolina Landlord-Tenant Act only arise after the landlord fails to take action to make repairs after notice. Here, both the plaintiff and his sister, who resided in the home, never notified the defendant of the need to repair the threshold. (Depo. of Armstrong, p. 72; Depo. of Washington, p. 72).

First, there is no evidence that Plaintiff notified Mr. Thompson of a defect in the molding in the area of the home where Plaintiff fell. (Depo. of Thompson p. 54, l. 25-p. 55, l. 3; p. 57, l. 23-p. 58, l. 2). In his deposition, Plaintiff testified that he never reported to anyone that there was something wrong with the board. (Depo. of Armstrong, p. 72, ll. 11-15). Plaintiff testified that during the year that he and his sister lived at the house, he had never felt the floor, upon which he allegedly fell, give way. (Depo. of Armstrong, p. 74, ll. 15-18). He also testified that he never saw the board pop up as he walked over it from the living room to the kitchen. (Depo. of Armstrong, p.74, ll. 19-21). Finally, Plaintiff testified that he had never noticed that the molding separating the kitchen and living room was loose during the entire eleven months that he lived at the Hickory Ridge house prior to his fall. (Depo. of Armstrong, p.137, ll. 1-6).

Plaintiff's sister, the other resident of the home, also testified in her deposition that "[she] never asked [Defendant] to fix that piece of wood. We had no conversations about that piece of

wood.” (Depo. of Washington, p. 72, ll. 16-17). When asked if she did any repairs in the living room of the house at Hickory Ridge, Plaintiff’s sister responded: “There was nothing to repair. It was a beautiful house. I wouldn’t have moved in the house if it needed repairs.” (Depo. of Washington, p. 62, l. 24-p.63, l. 3). When asked about whether repairs were needed on the home, Plaintiff’s sister responded: “There was nothing to repair. A dishwasher. I didn’t repair anything.” (Depo. of Washington, p. 62, ll. 18-23). When asked if her brother offered to do any work inside the Hickory Ridge house, Beverly testified, “there was no work to be done in the house.” (Depo. of Washington, p. 29, ll. 9-11). When asked again whether there was work to be done on the Hickory Ridge house, Beverly responded, “Nothing visible. No. It was a nice house.” (Depo. of Washington, p. 29, ll. 12-14.)

The plaintiff’s sister claimed that she did not notify Thompson of any problem with the threshold because there was nothing to see about the condition of the wood until Mr. Armstrong allegedly tripped over it. (Depo. of Washington, p. 72). Washington unequivocally testified that she never asked Thompson “to fix that piece of wood.” (Depo. of Washington, p. 72).

Plaintiff has submitted the affidavit of Karen Moore, a friend of the plaintiff and his sister, which contradicts the direct testimony of the tenants and contains inadmissible hearsay on the issue of notice to Thompson. By a separate motion, defendant has moved to exclude the affidavit of Moore as not being based on her personal knowledge, speculative and containing inadmissible hearsay. Should the court consider the affidavit of Moore, the affidavit does not raise a genuine issue of material fact. First, the affidavit is not entirely based on the personal knowledge of Moore as required by Rule 56 (e), *SCRCP*. Moore does not state that she personally told the defendant to repair the threshold in the plaintiff’s home. Moore avers only that Washington “related to her” that she told Thompson that there “was a problem with the

floor.” Moore does not specifically state that Washington told Thompson of problems with the threshold, molding or transitional wood and asked for it to be repaired. Moore also does not state that the notice to the defendant was in writing. Moore also does not state in the affidavit when Armstrong allegedly told Thompson about the threshold wood. It is as likely that the conversation took place after the plaintiff fell as before he fell. Importantly, Moore admits in her affidavit that “sometime shortly” after she allegedly personally tripped in the same area that the plaintiff then fell. Without any indication of the amount of time between the two events, the plaintiff fails to raise a genuine issue that the defendant had sufficient time to repair the threshold. This issue is left entirely to speculation. Even if this court were to consider the affidavit of Moore, which defendant urges the court to exclude, the affidavit fails to address the area of the floor in the home that Washington allegedly told Moore that she told Thompson to repair, fails to state whether the conversation with Thompson took place before or after the plaintiff fell, and fails to provide information to know if allegedly Thompson had sufficient time to repair the threshold. The affidavit of Moore which directly contradicts testimony given by the tenants of their personal knowledge does not raise a genuine issue of material fact.

In the light most favorable to the plaintiff, the evidence demonstrates that neither Plaintiff nor his sister nor Ms Moore requested in writing or orally that Mr. Thompson fix a defect existing in the area of the home where Plaintiff fell. The plaintiff cannot evoke his rights as a tenant because no notice was provided to his landlord(s) under section 27-40-630(d) of the Landlord Tenant Act; therefore, Mr. Thompson is entitled to summary judgment as a matter of law.

II. NO EVIDENCE DEMONSTRATES THAT A DEFECT EXISTED IN THE PLAINTIFF'S RENTAL HOME WHEN PLAINTIFF FELL

Plaintiff has failed to plead with specificity or present evidence of a specific defect in the home where he fell. Rather, in his complaint, Plaintiff alleged that: "On October 01, 2006, as [he] walked into the kitchen, one of the pieces of the hardwood floor came loose from the subflooring, causing [him] to sustain significant injury." (Complaint ¶3). However, no evidence exists that the reason for Plaintiff's fall was due to a defective condition in the area between the kitchen and living room and not some other reason. Plaintiff merely maintains that he suffered a fall, and based on his fall he assumes there must be something defective about the particular area of the home he rented from defendants. Plaintiff's cause of action for negligence must fail as a matter of law because South Carolina does not recognize the doctrine of *res ipsa loquitur*.

A mere inference or allegation without supporting evidence is not enough to overcome a summary judgment motion. *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010), reh'g denied (June 24, 2010) (internal citation omitted) ("[R]ule 56(e), SCRCF, requires that when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings."); *Roland v. Heritage Litchfield, Inc.*, 372 S.C. 161, 165, 641 S.E.2d 465, 467 (Ct. App. 2007) ("Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial and cannot simply rest on mere allegations or denials contained in the pleadings."); *Tobin v. Bodman*, CIV.A 1:06-492-RBH, 2009 WL 799654 (D.S.C. Mar. 23, 2009) ("The nonmoving party may not rely on beliefs, conjecture, speculation, of conclusory allegations to defeat a motion for summary judgment.").

"South Carolina has consistently refused to adopt the doctrine of *res ipsa loquitur* although it is the law in many other jurisdictions." *King v. J. C. Penney Co.*, 238 S.C. 336, 339-40, 120 S.E.2d 229, 230 (1961). "In this State it is well settled that the burden rests upon the party to prove negligence." *Id.* This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence. *Id.*; *see also Caskey v. Olympic Radio & Television*, 343 F. Supp. 969, 973-74 (D.S.C. 1972) ("Plaintiffs' case is based upon the mere happening of the accident. . . To allow them to recover upon proof of the accident alone would require the application of the doctrine of *res ipsa loquitur*, which the Supreme Court of South Carolina has consistently held is not the law of this State, and would require its application to a state of facts which would not meet the test in other states which do apply this doctrine.").

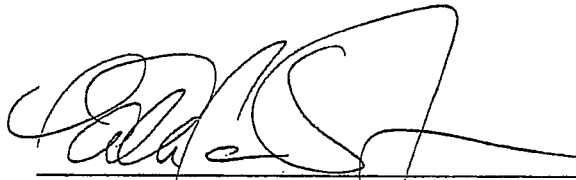
In the immediate area where Plaintiff fell, hardwood flooring covered the living room and tile covered the kitchen floor with a piece of transitional wood, or, a threshold, separating the two types of flooring and rooms. (Depo. of Armstrong, p.131, ll. 10-22). In the light most favorable to the plaintiff, plaintiff claims that the molding separating the two rooms caused him to trip and fall. (Depo. of Armstrong, p.131, ll. 18-22). The Plaintiff testified that when the molding came up, he tripped and fell over it and, "just went down." (Depo. of Armstrong, p.71, ll. 14-17; p.72, ll. 11-15; p.74, ll. 15-18). Plaintiff testified that he stepped into the kitchen with his left foot, then the molding came up, and then his right foot tripped over it. (Depo. of Armstrong, p.71, ll. 21-24). In further describing his fall, the Plaintiff testified that "something caught my leg while trying to move." (Depo. of Armstrong, p.135, ll. 12-15).

Essentially, Plaintiff is arguing that he tripped on the flooring that separated the kitchen from the living room. However, Plaintiff's mere fall or trip in maneuvering into the kitchen is

not enough to overcome a motion for summary judgment. Here, Plaintiff has failed to demonstrate that there was a defect in the threshold which caused him to fall. Based on Plaintiff's failure to present evidence of a defective condition, the Court should grant this motion for summary judgment as South Carolina does not recognize the doctrine of *res ipsa loquitur*. *King v. J. C. Penney Co.*, 238 S.C. 336, 339-40, 120 S.E.2d 229, 230 (1961).

CONCLUSION

The Court should grant Defendant Thompson's motion for summary judgment because Plaintiff has failed to present evidence demonstrating that a defect existed in the home he rented from defendants which led to his fall and no evidence exists to demonstrate that Mr. Thompson was notified that a defect existed in the area of the home where Plaintiff fell and that he failed to repair the alleged defect within a reasonable time.



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(803) 799-9091
Attorneys for Defendant Samuel J. Thompson

May 8, 2012

Raymond Armstrong v. Jacqueline Berry and Samuel J. Thompson
C.A. No. 2011-CP-40-04883R

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Tab 3—	Deposition Excerpts of Samuel Thompson
Tab 4—	Deposition Excerpts of Beverly Armstrong-Washington
Tab 5—	Exhibits One(1) and Two(2)

2009 CP4003531

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	Civil Action No.:
Raymond Armstrong Plaintiff,	
vs.	SUMMONS
Jacqueline Berry and Samuel J. Thompson Defendant.	

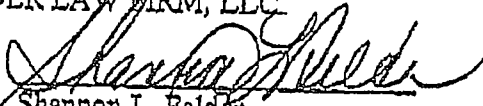
2009 MAY 14 AM 10:35
JEANETTE W. McBRIDE
C.C.P. & C.S.
FILED
RICHLAND COUNTY

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Felder Law Firm, P.O. box 1065, Winnsboro, SC 29180, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,
FELDER LAW FIRM, LLC

BY:


Shannon L. Felder
P.O. Box 1065
Winnsboro, SC 29180
803-815-1000 Office
803-454-9154 Fax
Attorney for Plaintiff

Winnsboro, South Carolina
April 20, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Jacqueline Berry and Samuel J. Thompson
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

COMPLAINT
(Jury Trial Requested)

RICHLAND COUNTY
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2009 MAY 14 AM 10:35
JEANETTE W. McBRIDE
C.C.P. & C.S.

Now comes Plaintiff, by and through counsel, and states as follows:

1. Plaintiff Raymond Armstrong is a citizen and resident of Richland County, South Carolina.
 2. Upon information and belief, the Defendants Jacqueline Berry and Samuel J. Thompson are both residents of Richland County, South Carolina.
 3. On October 01, 2006, as Raymond Armstrong walked in the kitchen, one of the pieces of the hardwood floor came loose from the subflooring, causing Mr. Armstrong to sustain significant injury. Upon information and belief, the subflooring had deteriorated and Defendants had failed to remedy the condition despite having actual and/or constructive knowledge of the problem.
 4. As a result of this incident, Plaintiff suffered injuries to his body including but not limited to:
 - a. Open fracture to the right ankle; and
 - b. Infection to the wound that may lead to amputation.
- Plaintiff Raymond Armstrong has incurred medical, hospital, and doctors bills as a result of this incident and may suffer such damages in the future.
5. Further, Plaintiff has suffered and may in the future suffer physical pain and suffering, mental anguish, and impairment of health and bodily efficiency.

FOR A FIRST CAUSE OF ACTION

(Negligence)

6. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.
7. Defendants Jacqueline Berry and Samuel J. Thompson were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

- a. In failing to take proper care of the property;
- b. In failing to provide a safety living environment;
- c. In failing to exercise the degree of care with which a reasonable prudent person would have exercised under the same circumstances; and
- d. In any other manner as may be ascertained during discovery or trial of this case

JURY DEMAND

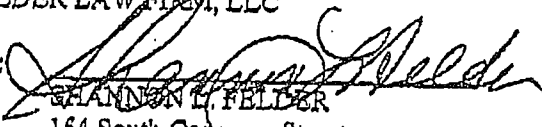
8. Plaintiff demands that all causes of action that may be tried before a jury be so tried.

WHEREFORE, Plaintiff prays for judgment against Defendants in a sum sufficient to adequately compensate him for his actual damages, punitive damages, the costs of this action, any relief a jury may award, and for such other and further relief as this court may deem just and proper.

Respectfully Submitted,

FELDER LAW FIRM, LLC

BY:


SHANNON E. FELDER
154 South Congress Street
Post Office Box 1065
Winnsboro, SC 29180
803/815-1000
803/454-9451 (Facsimile)
sfelder@felderlawfirm.com

Attorney for Plaintiff

Winnsboro, South Carolina

April 20, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Jacqueline Berry and Samuel J. Thompson

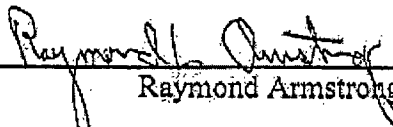
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

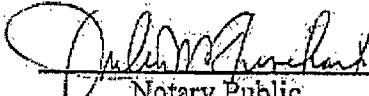
VERIFICATION

I, Raymond Armstrong, being first duly sworn upon oath, depose and state I am the Plaintiff in the above-entitled actions; that I have read the foregoing Complaint, know the contents thereof and that the same is true and correct, except as to those matters therein stated on information and belief and as to those matters I believe them to be true.


Raymond Armstrong

Subscribed and sworn to before me

This 20th day of March, 2009


Notary Public

for S.C.

My Comm. Expires Feb. 23rd 2019

JEANETTE W. HUBBARD
C.C.P. & S.

2009 MAY 14 PM 10:35

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RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

- - -

RAYMOND ARMSTRONG,	)	
	)	
Plaintiff,	)	CASE NO.
	)	2009-CP-40-3531
-vs-	)	
	)	
JACQUELINE BERRY and SAMUEL	)	
J. THOMPSON,	)	DEPOSITION OF:
	)	RAYMOND L. ARMSTRONG
Defendants.	)	

Date: August 17, 2011

Time: 10:03 a.m.

Location: Baker, Ravenel & Bender
3710 Landmark Drive
Columbia, South Carolina

Reporter: Ronda K. Blanton, RPR
Charleston, South Carolina



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- 1 A. Yes.
- 2 Q. And where did you go?
- 3 A. Hickory Ridge.
- 4 Q. What were the circumstances of the lease when
- 5 you moved into Hickory Ridge?
- 6 A. I didn't even read it. I just paid -- we
- 7 split the rent.
- 8 Q. What was the amount of rent you were paying?
- 9 A. Which one? Which house you talking about?
- 10 Q. To Sam and Jackie.
- 11 A. Around 300 a month, my share.
- 12 Q. Was there some concession that y'all weren't
- 13 paying rent for the first few months?
- 14 A. No.
- 15 Q. Did y'all agree to do any work on the house in
- 16 return --
- 17 A. No, no.
- 18 Q. Let me ask the question. I'm sorry. I forgot
- 19 to tell you. That's another rule. Court Reporters
- 20 don't like it if we talk over each other.
- 21 Did Jackie or Sam tell you or your sister that
- 22 if you did work on the house, that you wouldn't have
- 23 to pay rent?
- 24 A. No.
- 25 Q. Do you have a record of the rent you paid?



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1 A. Well, there was nothing -- the house was nice.
2 It was a beautiful house. I'm not specific about
3 what he would do, you know. He said he'd be fixing
4 it. He'd be there, and he never came. He collect
5 rent, but he never came by. It was a very nice
6 house.

7 Q. Did you ask him to fix anything else other
8 than the dishwasher?

9 A. I didn't ask for the dishwasher. He -- he did
10 that. It was out. All I know it was out. When we
11 got there, it was out.

12 Q. So it was out the day you moved in.

13 A. Uh-huh. (Nods head.)

14 Q. You gotta say "yes" or "no."

15 A. Yes. Or wait a minute. I'm not sure of that.
16 I can't be specific.

17 Q. Okay. You don't remember if it was out, but
18 you know eventually it was gone. The dishwasher was
19 gone, and you thought he was coming to put it back
20 in.

21 A. Well, didn't say "put it back in." He just
22 said he'd be fixing it. --

23 Q. Was there physically a dishwasher in the
24 kitchen that was broken, or was there a dishwasher
25 removed from the kitchen?



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1 A. No.

2 Q. Did you ever do any painting?

3 A. No.

4 Q. Did you do any repair work?

5 A. No.

6 Q. When you moved in, did you ask that anything
7 be done to the house?

8 A. No.

9 Q. Was 300 dollars a month a good amount for
10 renting the house that you were in, this Hickory
11 Ridge house?

12 A. I'm not sure exactly what that was, the time
13 line. I'm not sure of the numbers, but it was around
14 that. It seems normal.

15 Q. So it wasn't a deal because Jackie was friends
16 with y'all?

17 A. No.

18 Q. How many bedrooms did the house have?

19 A. Three.

20 Q. Did anybody else live with you?

21 A. No.

22 Q. Did anybody else stay with you?

23 A. No.

24 Q. Did you have to modify the house in any way
25 because of your condition?



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1 A. No. I used the foot, false legs, no.

2 Q. Did you ever write any letters to Jackie or
3 Sam about what you wanted fixed in the house?

4 A. No. She handled that.

5 Q. Beverly handled it?

6 A. Yes.

7 Q. Did you have any complaints about the house
8 other than the dishwasher wasn't put back in?

9 A. I had no complaints about that. She handled
10 it. I didn't pay attention to it.

11 Q. Beverly had complaints?

12 A. Yeah. There was a stove and some other things
13 that --

14 Q. Stove that was a problem?

15 A. Yeah. Refrigerator.

16 Q. What was wrong with the refrigerator?

17 A. Stopped.

18 Q. It stopped working?

19 A. Yes. She never --

20 Q. Did you have to go to a Magistrate's Court
21 over this house?

22 A. Well, like I said, they handled with him. I
23 mean, her. I just -- I paid the rent. That was all.
24 No, we didn't go to Magistrate, no.

25 Q. There were some photographs that were provided



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- 1 A. Wood.
- 2 Q. It's hardwood?
- 3 A. I'm not sure. I didn't pay attention.
- 4 Q. You don't remember what the -- what the
- 5 covering of the floor was in the living room in that
- 6 house?
- 7 A. Carpet and wood.
- 8 Q. So carpet on top of wood?
- 9 A. There was no carpet in the house, but there
- 10 was wood.
- 11 Q. So there was hardwood in the living room that
- 12 you walked over to get to the kitchen?
- 13 A. Yes.
- 14 Q. And then as you got to the kitchen, you said
- 15 you were going to the table to eat the chicken with
- 16 your sister.
- 17 A. Uh-huh.
- 18 Q. Is that right? Say "yes" or "no."
- 19 A. Yes.
- 20 Q. And as you walked toward the kitchen, tell me
- 21 again what happened.
- 22 A. I stepped into the kitchen. It went down.
- 23 Q. What went down?
- 24 A. The floor.
- 25 Q. Okay. The linoleum went down?



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1 A. No. I don't remember what it was. I just
2 know it went down. The board came up, and I went
3 over.

4 Q. So you took a step onto the kitchen floor; is
5 that right?

6 A. Uh-huh.

7 Q. You have to say "yes" or "no."

8 A. Yes.

9 Q. And when you stepped onto the kitchen floor,
10 and you say a board came up --

11 A. From the molding.

12 Q. So molding came up?

13 A. (Nods head.)

14 Q. And when that molding came up, then what --
15 what happened?

16 A. I tripped. I fell over it and went -- I just
17 went down.

18 Q. So when you stepped into the kitchen, which
19 foot stepped into the kitchen?

20 A. The left.

21 Q. So your left foot goes into the kitchen. You
22 step down. The molding comes up, and then your right
23 foot trips over it?

24 A. (Nods head.)

25 Q. Yes?



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1 A. Yes.

2 Q. I'm just trying to keep the record straight.
3 Had that board ever come up before?

4 A. I don't know nothing about no floors, nothing
5 about.

6 Q. You'd never had any problem with that board
7 before?

8 A. I didn't look at it. I didn't --

9 Q. Have you ever had that happen before?

10 A. No.

11 Q. Had you ever seen the board pop up?

12 A. No.

13 Q. Had you ever reported to anybody there's
14 something wrong with this board?

15 A. No.

16 Q. Had you done any work on that board that you
17 say popped up?

18 A. No, no.

19 Q. When you tripped, did you fall forward?

20 A. Forward.

21 Q. You didn't twist your ankle and fall to the
22 side?

23 A. Sideways.

24 Q. Okay. Which way? Did you go forward, or did
25 you go on the side?



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1 Q. How many times a day would you walk into the
2 kitchen?

3 A. I stayed in the bedroom mostly.

4 Q. How did you eat?

5 A. TV dinners, cereal.

6 Q. Your sister would bring you food?

7 A. No. I'd get it. I never paid attention to
8 it.

9 Q. Okay. What I'm asking you, did you have to go
10 into the kitchen to get the food?

11 A. Yes.

12 Q. And so you would go into the kitchen a couple
13 times a day?

14 A. Yes.

15 Q. And during the year that y'all lived there,
16 during the couple times a day that you went into the
17 kitchen, did you ever feel the floor give way?

18 A. No.

19 Q. Did you ever see that board pop up as you
20 walked over it?

21 A. No.

22 Q. Are you bigger than your sister?

23 A. Yes.

24 Q. How much does she weigh?

25 A. I don't know. I have no idea.



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1 right-hand side. (Indicating.)

2 Q. Okay. The hospital bed is right here, the
3 blue mattress right here? (Indicating.)

4 A. The hospital bed, yeah.

5 Q. And then in looking at this picture, can you
6 take a pen -- and I'm gonna borrow yours -- and draw
7 an X or circle over the area where you fell, or is it
8 not in that picture?

9 A. I'm not really good at -- this is it, then I
10 went -- the rest is big, but I don't -- right here.
11 I'm not sure which door, going through here.

12 (Indicating.) Where do you want me to put the X?

13 Q. Wherever you want to put it. If you were
14 walking through there, what I'm trying to do is have
15 you put on that exhibit an X showing the area where
16 you fell.

17 A. Right here. (Indicating.) I don't know.
18 Down here, or I don't know if you want me to put it
19 there or down here. (Indicating.)

20 Q. You could put a circle if you don't want to
21 put an X. Just put a circle around the general area.

22 A. (Complies with request.)

23 Q. Okay. And what you've circled -- can you pass
24 the pen because I know she'll need it back. I'm
25 sorry.



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1 A. (Complies with request.)

2 Q. You've circled an area that is in between the
3 carpet and the linoleum or tile which is in the
4 kitchen; is that right?

5 A. Uh-huh.

6 Q. You have to say "yes" or "no."

7 A. Yes.

8 Q. And then what I see here is there's a door
9 coming in. Is that the front door of the house?

10 A. That's -- that's to the garage.

11 Q. This is the garage door that we looked at that
12 was pulled shut with the rope.

13 A. No. The -- the -- the other door to the back
14 door is locked with a rope.

15 Q. A different door to the garage. So where does
16 this door go that I'm looking at in this picture?

17 A. To the garage.

18 Q. This goes to the garage? Are there two doors
19 to the garage?

20 A. Yes. One to the living room and one to the
21 dining room and one to the back -- the back of the
22 house. The rope was to the -- to the back of the
23 house.

24 Q. And then this is the last picture I have.
25



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1 (WHEREUPON, marked for the record
2 is Exhibit 19.)

3 Q. This is Exhibit No. 19. Can you identify that
4 picture?

5 A. Looks like the difference between -- now that
6 you showed me the floor. Looks like the distance --
7 looks like the floor in the dining -- in the kitchen.
8 I haven't seen these in a while so I don't know.

9 Q. It looks like --

10 A. The difference between the -- the living room
11 floor and the kitchen, the floorboard.

12 Q. So this is the carpet in the living room in
13 the front of the picture, that light-colored carpet.

14 A. Uh-huh.

15 Q. And then there's some hardwood, and then
16 there's the linoleum or the tile.

17 A. Yeah. And the wood between it.

18 Q. And then the wood between it.

19 A. The molding.

20 Q. And this is what you say -- this piece of
21 molding is what you say tripped you? (Indicating.)

22 A. Yes.

23 Q. How high up did it come?

24 A. I went down, and I hit the floor. I don't
25 know how high. I know it hurt.



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1 (Indicating.)

2 A. Yes.

3 Q. And as you walked into the kitchen, you didn't
4 notice anything unusual about that piece of wood.

5 A. No, I didn't.

6 Q. But as you stepped over it with your left
7 foot, do you think that you caused it to pop up by
8 the weight of your body on the linoleum?

9 A. It could be. I don't -- I don't know. I
10 mean, I -- I went down. That's all I can say. It
11 was -- it was a second. I was -- I went down.

12 Q. You went down so you don't really know how it
13 happened?

14 A. (Shakes head.) It popped up. Something
15 caught my leg while trying to move.

16 Q. So what you know is something caught your
17 foot; and you tried to move, and then you fell down?

18 A. Right.

19 Q. And it caught your right foot up near your
20 leg.

21 A. The ankle.

22 Q. It caught your right ankle?

23 A. Right.

24 Q. When you went down, did you look behind you to
25 see what had caught your right ankle?



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1 Q. During all the times you had walked in the
2 kitchen during the year you lived there before this
3 happened or the 11 months you lived there before this
4 happened, had you ever noticed that the molding
5 between the kitchen and the living room was loose?

6 A. No.

7 Q. You've told me about some of the problems that
8 you've had as a result of breaking your ankle. Can
9 you tell me any other problems that you've had or any
10 other way the broken ankle has limited you in the
11 last four years?

12 A. Arthritis.

13 Q. You now have arthritis in your ankle?

14 A. (Nods head.)

15 Q. Who treats you for that?

16 A. Nobody.

17 Q. And the arthritis in your ankle, how does that
18 affect you?

19 A. Oh, I have to crawl for something if I'm not
20 in the wheelchair. I can feel it.

21 Q. Any other problems that you've had as a result
22 of this fall?

23 A. No.

24 Q. Earlier when I asked you about family you had
25 in Richland County, you didn't tell me about Brandon.



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COURT OF COMMON PLEAS
C/A #2009-CP-40-03531

(COPY

Jacqueline Berry and,
Samuel J. Thompson,

Defendants,

* * * * *

Friday, March 16, 2012
10:05 a.m. - 11:52 a.m.

The deposition of Samuel J. Thompson, taken on behalf of the Plaintiff at Baker, Ravenel & Bender, LLP, 3710 Landmark Drive, Columbia, South Carolina, on the 16th day of March, 2012, before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 Q: Okay. In the remodel, did you replace that
2 wood sub-flooring or did you just remove the
3 tile and the linoleum?

4 A: I replaced the wood sub-flooring.

5 Q: And why did you replace the wood sub-flooring?

6 A: It needed redoing. It just needed another
7 floor.

8 Q: And why did it need to be redone?

9 A: There was part -- I wanted to make sure I knew
10 -- had knowledge of what was under there. I
11 mean, it wasn't anything wrong with it, but I
12 just wanted to replace the flooring with a
13 thicker wood.

14 Q: So when you replaced it, you used a thicker
15 wood?

16 A: Yes.

17 Q: All right. When you lived in the home and you
18 put -- when you first moved in, in 2001, and
19 you put the tile over the linoleum, as you left
20 the kitchen to go into -- I believe it's the
21 living room, what separated -- first of all,
22 what type of flooring was there in the living
23 room then?

24 A: Hardwood.

25 Q: So when you moved into the home in 2001, in the

1 kitchen they had linoleum, and then in the
2 living room there was hardwood, correct?

3 A: Yes.

4 Q: Okay. And was there any stripping, anything
5 dividing the linoleum from the hardwood between
6 the two rooms?

7 A: Yes, it was a piece of wood in the doorway
8 about four inches wide.

9 Q: All right. So that four-inch-wide piece of
10 wooding, did it span the entire doorway between
11 the kitchen and the living room?

12 A: Yes.

13 Q: Okay. And you mentioned in your remodel that
14 you refinished the original wood flooring. So
15 the living room, you refinished the floor, is
16 that correct?

17 A: Living room refinished the floor, yes. Or
18 contractors did.

19 Q: Oh, I understand. We can clarify that. All
20 right. When you put the tile down when you
21 first moved in, did you do -- did you do
22 anything with that four-inch-wide strip of wood
23 in the doorway?

24 MS. GRIFFIN: Object to the form.

25 A: It was just in the doorway holding down the

1 tile on the other side. That's all that was
2 the purpose of the four-inch strip.

3 Q: Right. And you stated that, when you moved
4 into the house in 2001, that there was linoleum
5 in the kitchen, correct?

6 A: Uh-huh (affirmative response).

7 Q: Was that four-inch piece of wood already there
8 or did you put that in when you put the tile
9 down?

10 A: I put it in when I put the tile down.

11 Q: Did you do that yourself or did you have a
12 contractor do it?

13 A: I did that.

14 Q: And what did you use to secure that four-inch
15 piece of wood that was in that doorway?

16 A: To my recollection, I think it was screws.

17 Q: Do you recall what type of screws?

18 A: No, just wooden screws.

19 Q: Was it a screw that you use with a screwdriver
20 or was it a nail used with a hammer?

21 A: I used it with my battery --

22 Q: The electric --

23 A: -- screwdriver.

24 Q: -- screwdriver or drill?

25 A: Like, I mean, battery operated.

1 Q: Okay. Do you recall how many screws you put
2 down?

3 A: No.

4 Q: Do you recall where you placed those screws?

5 A: If I'm not mistaken with my recollection, I
6 placed one on each end and I'd guess it was
7 about six screws in the whole -- throughout
8 evenly.

9 Q: Okay. So you placed one on each end and where
10 were the other screws?

11 A: In between those --

12 Q: Kind of evenly spaced throughout?

13 A: Yes.

14 Q: You say you used about six screws?

15 A: Yes.

16 Q: Before you put that piece of wood strip there,
17 when you moved into the house and the linoleum
18 was there, was there anything down there
19 dividing the linoleum from the hardwood?

20 A: No.

21 Q: Okay. So when you moved into the house, there
22 was nothing in between the two rooms, but when
23 you put the tile down, you put that wood strip
24 down?

25 A: Yes.

1 A: Yes.

2 Q: What complaints did they have?

3 A: She said that the commode in the bathroom had
4 ran -- in the -- in the -- the, I guess the
5 community bathroom, the big bathroom, had ran
6 over from the tank.

7 Q: All right. And how did you respond to that
8 complaint?

9 A: Okay. I -- I think it was the next day that I
10 went over and I looked at the commode and I
11 replaced the flotation devices in the commode
12 itself, which, you know, sometime it run and it
13 wouldn't properly. So that I cut off and it
14 was taken care of -- both commodes in the
15 bathroom and in the master bedroom bathroom.

16 Q: All right, and do you recall when she made that
17 complaint?

18 A: No.

19 Q: She was there in November, December, January,
20 February, March?

21 A: Sometime between from the time they moved in,
22 shortly after they moved in.

23 Q: Okay. Were any other complaints made?

24 A: No.

25 Q: Other than repairing the toilets, did you make

1 any other repairs or do any other maintenance
2 on the home while they were there?

3 A: No.

4 Q: Now, at some point in time, Mr. Armstrong was
5 injured at the home. Tell me what you know
6 regarding that incident?

7 A: When they -- Ms. Beverly Armstrong called me
8 and told me that her brother had fell going
9 into the kitchen.

10 Q: Did she tell you anything else?

11 A: Not to my recollection.

12 Q: Did you have any conversations with her about
13 that? I mean, how did you respond when she
14 told you her brother had fallen going into the
15 kitchen?

16 A: I apologized to her. I said I'm sorry to hear
17 that Raymond had fell, but if you think that's
18 what you need to do is file a claim. She
19 instructed -- well, she informed me that she
20 was going to file a claim against my insurance
21 company.

22 Q: All right. And what was your response to that?

23 A: I said if you feel that's what you should have
24 to do, then, you know, so be it.

25 Q: Did you give her the information on your

A: Yes.

Q: And what was the substance of those conversations?

A: That I needed my rent in order to maintain my mortgage.

Q: And what was their response?

A: Well, they was going to try to get the money and catch the rent up, but they never did.

Q: Other than having conversations with them about that, did you take any other action?

A: Well, I think they were -- if I'm not mistaken, to my recollection, I wrote her a letter.

Q: Do you remember when you wrote that letter?

A: No, but I have -- I think I have the letter with me. I don't recall the date and time.

Q: But you have access to that particular letter?

A: Yeah.

Q: Okay. Could you please give that to your attorney so she can provide it to us?

A: Didn't I?

Q: If you haven't, if you'd just do so --

A: I've already.

Q: -- and then she'll get it to me. All right. And you mentioned that, other than the commode issue, that there were no other complaints from

1 them while they were living in the home?

2 A: No.

3 Q: Did Ms. Washington, in that conversation where
4 she informed you that her brother had fallen,
5 did she give you any specifics as to how he
6 fell?

7 A: No. Not to my recollection.

8 Q: And just to be clear, after -- let's talk a
9 little bit about how they came to leave the
10 premises. Did they inform you that they were
11 leaving the home?

12 A: No.

13 Q: Okay. How did you find out that they were not
14 in the home?

15 A: I went by one day and knocked on the door. I
16 didn't get any response and I would go by there
17 every day, probably two, three more times after
18 that and I would get no response.

19 Q: When did you know that they were out of the
20 home and take possession of the home again?

21 A: I do not remember the exact date. Well, I do
22 not remember the date. I have a letter that I
23 had written them, also, pertaining to the
24 eviction notice.

25 Q: And did you file an eviction?

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
Raymond Armstrong,)
Plaintiff,) C/A NO. 2011-CP-40-04883R
vs.)
Jacqueline Berry and)
Samuel J. Thompson,)
Defendants.)

COPY

DEPOSITION OF
BEVERLY ARMSTRONG-WASHINGTON

Tuesday, December 13, 2011
10:09 a.m.-12:08 p.m.

The deposition of BEVERLY ARMSTRONG-WASHINGTON,
taken on behalf of the Defendants at the offices of Baker,
Ravenel & Bender, LLP, 3710 Landmark Drive, Suite 400,
Columbia, Carolina, on the 13th day of December, 2011,
before Lyn Allen, Court Reporter and Notary Public in and
for the State of South Carolina, pursuant to Notice of
Deposition and/or agreement of counsel.

1 helped them celebrate, ma'am. It was a pretty little
2 house. We were happy for them.

3 Q: So you were present with Sam and Jackie when they
4 closed on the purchase of the house on Hickory Ridge?

5 A: Not the close. That day she came and got me. And Sam
6 was there and they were happy. It was a pretty house.
7 I was happy for her. She loved that house. She loved
8 it.

9 Q: And so let me make sure I get this right. Your brother
10 did not offer to help do any work inside the house?

11 A: There was no work to be done in the house.

12 Q: So no work to be done in the house on Hickory Ridge?

13 A: Nothing visible. No. It was a nice house. It
14 appeared to be.

15 Q: Before you left the house that had the mold in it, had
16 you had any other problems with landlords not doing
17 repairs so that you withheld rent?

18 A: No. I don't remember that happening.

19 Q: That was the first time that ever happened?

20 A: I don't remember, ma'am. I have memory loss. That
21 wouldn't, I don't recall that.

22 Q: Do you know how to get in touch with Jackie now?

23 A: No. I lost touch with Jackie. I have a letter from
24 her from some years back.

25 Q: And what do you recall the letter says?

1 A: Thank you.

2 Q: For what?

3 A: For helping her.

4 Q: Do you still have that somewhere?

5 A: I have the envelope. I just saw it the other day. I
6 was surprised to see it. She just was thanking me for
7 encouraging her to get well and go back to school and
8 just when she was going through all this down here,
9 feeding her. She went through a lot.

10 Q: How much rent did you pay for living in the house?

11 A: I think it was like \$675 or \$680.

12 Q: And did you split that with your brother?

13 A: He paid \$300. I paid the rest.

14 Q: During the time you were living in the house slightly
15 less than a year, do you remember Jackie coming over to
16 the house?

17 A: To my knowledge Jackie was in New York at that time.

18 Q: So when you moved into the house she had already moved
19 to New York?

20 A: I believe she was already gone.

21 Q: What part of New York did she move to?

22 A: Oh, man. I don't know. I have a letter from her.
23 It's at Ozone Park, New York. I don't know where that
24 is. And then at some point she called me and said she
25 was moving to Albany to be with her grandmother. But I

1 don't know where that was. Her son was in New York.

2 Q: During the time that you and Raymond were living in the
3 house on Hickory Ridge did you have any conversations
4 with Jackie about the condition of the house?

5 A: The house was nice. We had lots of conversations with
6 Jackie. She called all the time about her health and
7 whether or not we had seen Sam. That basically was
8 have you seen Sam, I can't get in touch with Sam, have
9 you seen Sam. The plumbing backed up, stuff started,
10 as we lived there for a while, the plumbing. There was
11 a problem with the plumbing. And so I would call her.
12 And she would say she wasn't able to get in touch with
13 him. I guess he didn't answer his phone or whatever.
14 You know, stuff started happening in the house. It
15 started having problems, plumbing and I guess stuff old
16 houses have happen to them. He was nowhere to be found
17 so I paid for them.

18 Q: So when the plumbing backed up you paid the bill to get
19 the plumbing unclogged?

20 A: Yeah. The plumbing. It was something to do with a
21 tree in the front lawn. Maybe however a tree affects
22 pipes. I don't remember.

23 Q: The roots got into the sewage pipes?

24 A: Maybe that was it, ma'am. I don't remember exactly. I
25 paid for that. And the dishwasher stopped working. So

1 A: While I lived there, ma'am. I had been there a while.
2 I don't know.

3 Q: Did you deduct the cost of fixing the plumbing from
4 your rent?

5 A: No.

6 Q: Were you current on your rent to Mr. Thompson when you
7 moved out?

8 A: Yes.

9 Q: Do you remember when the dishwasher stopped working?

10 A: Six months maybe. Seven months, something like that.

11 Q: And you lived there about eleven months?

12 A: Around. Yeah.

13 Q: So for five, four to five months you didn't have a
14 dishwasher?

15 A: No. I didn't have a dishwasher for several months. I
16 was washing dishes by hand. I don't remember how long
17 it was.

18 Q: What about your refrigerator? When did that stop
19 working?

20 A: I don't know. Let's see. There's no way I would be
21 able to remember that. I just, I was mad because my
22 freezer was full. So I took pictures of all the food.
23 And it was hot. So it had to be in the summer because
24 it was hot. That's all I remember.

25 Q: Did you complain to Mr. Thompson about the refrigerator

1 A: I wouldn't remember, ma'am. It would have been before
2 I called the ambulance, whatever time of day that was.
3 I'm thinking it was late afternoon or evening but I
4 could be wrong. It wasn't breakfast.

5 Q: So you put the food on the table, you asked him to come
6 in to eat. And tell me what happens.

7 A: He came and he, we were still talking. I was facing
8 him like I'm facing you. And he started falling and he
9 screamed. I heard some wood cracking. And then he
10 fell. He screamed. And it's not a big kitchen. The
11 table was right here. And I came around. And he was
12 sprawled on the floor. And it was a piece of molding,
13 I'm saying molding from what I know about houses. It
14 was a piece of wood that was in the floor. It was up
15 like this like a seesaw. I told him not to move. His
16 foot was under it. I thought his foot was, he had
17 twisted his ankle. I removed the molding. It had
18 nails in it, rusty nails. So I told him to stay still.
19 I pulled off my jacket. And it was blood everywhere.
20 So there's just blood coming from everywhere. I pulled
21 that molding out of his foot. I thought at that point
22 his foot was, ankle was twisted because it was turned
23 around like. I told him not to move. I called 911. I
24 tried to stop the bleeding. And I was concerned that
25 those rusty nails might have went in his ankle because

1 There's no way I would remember that, ma'am. If I
2 walked in there it would have been, it couldn't have
3 been that day.

4 Q: When you walked over that area before he fell, did you
5 notice anything about the wood?

6 A: No.

7 Q: Had you ever noticed anything about this wood strip,
8 the molding that you've described earlier as where he
9 tripped?

10 A: I know it was there.

11 Q: And what I understand you're telling me is the living
12 room had a wooden floor like hardwood floors?

13 A: Yes.

14 Q: And then there was the piece of molding and then there
15 was linoleum or tile in the kitchen. Is that the way
16 it was?

17 A: Yeah. It was wood. I'm used to aluminum molding.

18 Q: Okay. This was --

19 A: This was wood that was actually down in the floor. It
20 was like a quarter, half-inch thick down in the floor.
21 It's an older house. It was wood molding. Not your
22 typical molding that Raymond and I would install when
23 we used to install kitchen floors. It was in the
24 floor.

25 Q: How many times --

1 disorder. She was wasting away. She just looked like
2 death on a stick. Very sad to see a robust person that
3 you love just dwindle. And later on she told me she
4 never told me about the drugs because she just didn't
5 want me to know that. I'm not into that kind of stuff.
6 And she just thanked me. She told me there were
7 warrants out for her in Richland County and that she
8 would never come back here and she was scared she was
9 going to lose the house. I asked her what the warrants
10 were for. Something to do with her, whatever her life
11 was. I don't know. I just told her we would pray for
12 her. I know wherever she is though she is doing
13 fantastic. I know she has recovered and moved on with
14 her life. And she is really a brilliant giving caring
15 person. And she felt that Sam was the basis of her
16 problems. So you don't get in the middle of that kind
17 of stuff.

18 Q: Did you do any repairs in the kitchen?

19 A: Me?

20 Q: Right. You.

21 A: I don't repair people's houses, ma'am. There was
22 nothing to repair. A dishwasher. I didn't repair
23 anything.

24 Q: Did you do any repairs in the living room of the house
25 at Hickory Ridge?

1 A: There was nothing to repair. It was a beautiful house.
2 I wouldn't have moved in the house if it needed
3 repairs. Sam said he was going to paint the trim, that
4 if we saw him outside on a ladder he would be coming by
5 from time to time. He was happy we were there.

6 Q: So he was painting the trim on the exterior of the
7 house?

8 A: That's what he said. He was going to paint the trim.
9 He was going to be coming by.

10 Q: I have some photographs that your attorney or that your
11 brother's attorney provided to me.

12 A: Uh-huh (affirmative response).

13 Q: There's a big, there was a big stack of them. But I
14 pulled out the ones that looked like they were related
15 to the kitchen. See if I can hand those to you. Can
16 you just look at these photographs and see if you can
17 identify the area that we were talking about earlier,
18 maybe just pick one or two or whatever can help me
19 understand what you told me earlier?

20 A: I need to remember the house, ma'am. It's weird
21 looking at it. It's hard to tell by these angles.
22 This appears to be the entrance to the kitchen because
23 of the floor and the tile. I can't certify that but
24 that's what it looks like to me.

25 Q: Can I take a, can I have that and let me mark that as

1 Q: Okay. Can you tell me the width of that piece of wood
2 that you removed and then the length?

3 A: Well, it was the length of this archway. I don't know
4 what that length is.

5 Q: So the length of the opening into the kitchen?

6 A: Right. It was the length. The width was, I don't
7 know, ma'am. Whatever that is down there. A quarter
8 inch. It might have been a quarter to a half an inch
9 down in the floor. It was a substantial piece of wood.

10 Q: It was not or was?

11 A: It was. I mean, it was down in the, it was, it wasn't
12 on top. It had very long nails in it, like old rusty
13 nails. Probably been there since the house was built.

14 Q: When you say long nails, is it an inch? Two inches?

15 A: I don't know. They were long enough to be in his shoe
16 for me to, it wasn't a tack. It was a nail because I
17 had to pull them out. That's all I remember. I don't
18 know nothing else.

19 Q: All right. And this photograph that was Defendant's
20 Exhibit Number One, do you remember if you are the one
21 who took the photograph?

22 A: I took the pictures because we were moving.

23 Q: And is that picture just representative of what it
24 looked like right before you moved or are you trying to
25 show me what it looked like at the time he fell?

1 the house go and come back and get your rent.

2 Q: Uh-huh (affirmative response).

3 A: I could understand he didn't care because he was
4 letting the house go. He said Jackie wanted that
5 house, not him. And that's what he would say over and
6 over again. So it was just a mess.

7 Q: But is it your testimony that you never told him that
8 there was anything wrong with this piece of wood?

9 A: There was nothing to see that there was wrong with that
10 piece of wood. How would I know that?

11 Q: So because there was nothing to see there's nothing you
12 ever asked him to fix; is that right?

13 A: The wood?

14 Q: Right.

15 A: No. It dislodged when Raymond walked into the kitchen.
16 No. I never asked him to fix that piece of wood. We
17 had no conversations about that piece of wood. Had I
18 known that the piece of wood was going to come
19 dislodged I probably would have had it repaired. But
20 there's nothing you could see or predict. I'm not a
21 prophet. Like I said, I have some degree of compassion
22 for their situation. Enough to get him a second job.
23 And I think we did help because Jackie thanked us
24 because she said she would be in jail if she was still
25 in South Carolina because there were warrants for her.

1 one of these people with a heart of gold. Or at least
2 she was. She's the person to judge. But she would be
3 in the neighborhood when there were people who couldn't
4 pay their rent. She'd be the one calling all her
5 friends trying to get food and clothes donations. She
6 was just really, I felt sorry for her so --

7 Q: Do you volunteer your time anywhere now?

8 A: No, ma'am. I'm working on myself. I'm not able to. I
9 need to go lay down actually.

10 Q: You know what? I am done. So I appreciate your time
11 this morning and your patience. So I don't have any
12 questions unless your brother's attorney has some
13 questions.

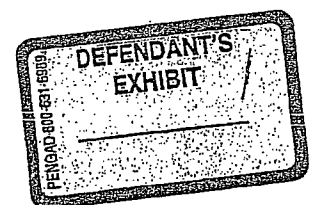
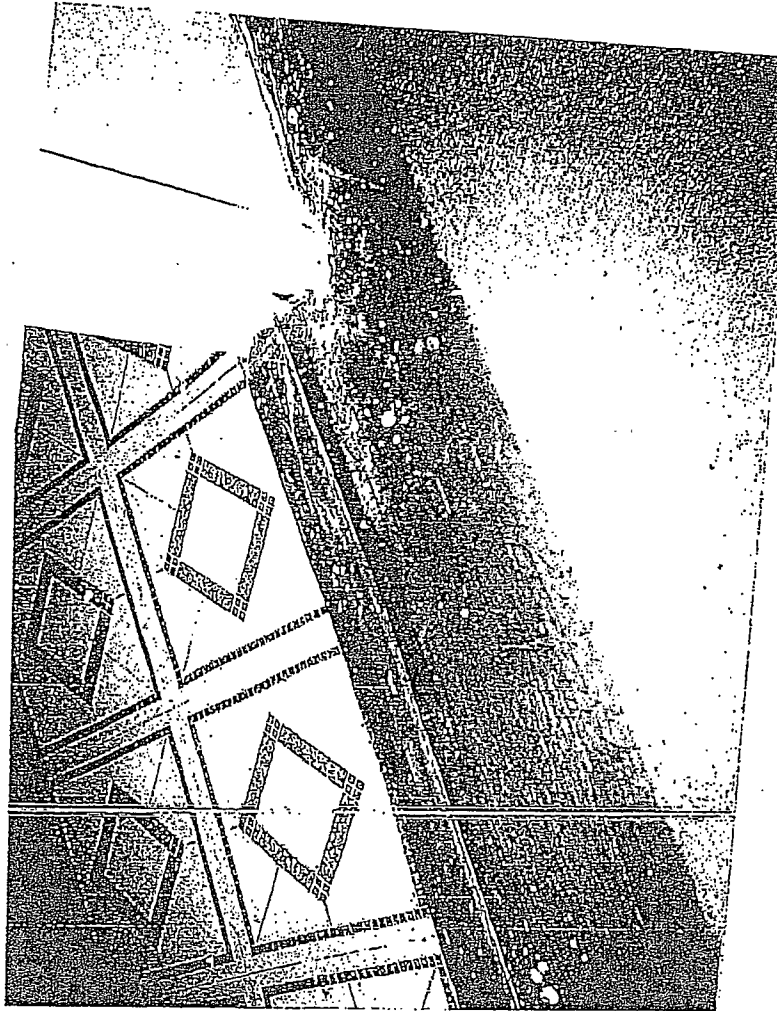
14 EXAMINATION BY MS. FELDER:

15 Q: I only have just one or two questions okay,
16 Ms. Armstrong?

17 A: Uh-huh (affirmative response).

18 Q: Did you ever complain to Jackie or to Sam about any
19 problems with the flooring in the kitchen?

20 A: I don't remember. I think that I complained about, you
21 know, I don't remember complaining about the flooring.
22 The refrigerator, when they replaced the refrigerator
23 it seemed that under the linoleum seemed like there had
24 been some mold. I'm sensitive to mold. So I don't
25 remember that specifically. It was nothing about that



PENGAD 100-881-3889
DEFENDANT'S
EXHIBIT 2



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

vs.

Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04883R

**MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

2012 MAY -8 AM 10:35

FACTS/PROCEDURE

Plaintiff and his sister were tenants in a home owned by Defendant. In October 2006, Plaintiff fell in the doorway between the home's kitchen and living room. According to Plaintiff's sister, Beverly Armstrong-Washington, who witnessed the fall, a piece of wood stripping that was in the doorway became dislodged like a see-saw and became stuck in Plaintiff's foot. Plaintiff sustained significant injury as a result of this fall. This action was filed by Plaintiff. However, as a result of Plaintiff's medical condition, the matter was removed from the docket pursuant to Rule 40(j). When Plaintiff's physical condition stabilized and he was able to participate in discovery, the matter was timely restored. Following the exchange of written discovery and depositions of the Plaintiff and Ms. Beverly Armstrong-Washington, Defendant filed this motion for summary judgment alleging that there was no evidence that the Defendant knew or should have known of the defect or hazard. The deposition of the Defendant was taken March 16, 2012 and supplemental discovery was served on Defendant. The responses to this discovery were received by Plaintiff's counsel on May 4, 2012. This hearing follows.

STANDARD OF REVIEW

Rule 56(c), SCRCF, provides that summary judgment may be granted if a review of all documents submitted to the court shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. In determining whether a genuine issue of material fact exists, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment.

Bass v. Gopal, Inc., 395 S.C. 129, 133-134 (S.C. 2011) (citations omitted) Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked").

LAW ANALYSIS

1. Defendant's motion for summary judgment should be denied because there is evidence that the Defendant knew or should have known of the defective condition in the premises.

The Plaintiff testified that his sister, Beverly Armstrong-Washington, would have been the person to speak with the Defendant regarding any issues with the home. {Depo. of Raymond Armstrong p. 143, lines 9 - 12}. In her deposition, Ms. Armstrong-Washington immediately

stated that she had memory loss. {Depo. Of Beverly Armstrong-Washington, p. 6, lines 19-20}. She stated that her memory loss affected both her short and long term memory. {Depo. of Beverly Armstrong-Washington p. 10, line 21 - p. 11, line 2}. Although Ms. Armstrong-Washington denied discussing any problem with the portion of floor where Mr. Armstrong fell with the Defendant, she also specifically stated, "I cannot remember every conversation I had with Sam because I have memory trouble. I do not remember every conversation I had with him." {Depo. of Beverly Armstrong-Washington P. 37, lines 9-10}.

Ms. Karen Moore was identified as a witness in this matter in initial discovery responses. In an affidavit, she stated that prior to Mr. Armstrong's fall, she tripped in the same location where Raymond Armstrong fell. She further testified that Ms. Armstrong-Washington "related to me" that she informed the landlord of the problem with the floor. Her affidavit does not clarify what is meant by "related to me." Therefore, there is an issue of material fact regarding whether the Defendant knew or should have known of the hazard.

2. Defendant's motion for summary judgment should be denied because there is evidence that the Defendant negligently in created the hazard which caused the injury.

"[W]here a lessor undertakes to repair or improve the leased premises and the work is done negligently, resulting in personal injury to the lessee, the lessor is liable for the damages so sustained. Negligence on the part of the lessor in making repairs or improvements is regarded as an act of misfeasance, subjecting him to tort liability for any resulting damages." Conner v. Farmers & Merchants Bank, 243 S.C. 132, 140 (S.C. 1963).

In his deposition taken on March 16, 2012, the Defendant testified that before the Plaintiff moved into the home, he replaced the flooring in the kitchen. When he replaced the flooring, he placed a piece of wood stripping in the doorway between the kitchen and living room. {Deposition of Samuel Thompson, pg. 31 – 32, 35}. Ms. Washington testified that as Plaintiff stepped into the doorway, the piece of wood dislodged like a see-saw and Plaintiff fell. She further testified that after his fall, she removed the piece of wood stripping between the doorway. "It was no effort to remove it or anything like that. I just pulled it up. {Deposition of Beverly Armstrong-Washington, pg. 56, line 20 – 22}. In her affidavit, Karen Moore states that the piece of stripping looked like it was secured but actually was loose in the floor. It had nails in it that looked as if they were securing the wood to the floor, but would become dislodged and cause you to stumble or fall. {Affidavit of Karen Moore}

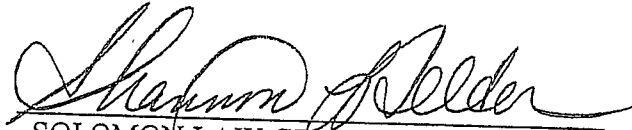
Following the deposition of Defendant, supplemental discovery requests were served on Defendant to gain more specific information regarding the nature of the wood stripping installed and the manner of installation. Responses to these discovery requests were served on Friday, May 4, 2012. The Defendant's testimony and discovery responses indicate that the wood stripping was not properly secured to the flooring which created the hazard from which Plaintiff's fall resulted. Whether the Defendant created the hazard which caused Plaintiff's fall is a factual determination for the jury.

CONCLUSION

Summary judgment should be denied in this case as there is evidence that the Defendant knew or should have known of the hazard. Additionally, summary judgment should be denied

because there is evidence to support a factual finding that the Defendant created the hazard which caused Plaintiff's injury.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Shannon L. Felder", is written over a horizontal line.

SOLOMON LAW GROUP, LLC

Shannon L. Felder (15942)

1519 Richland Street

Columbia, South Carolina 29201

(803) 391-3120 telephone

(803) 509-7032 fax

ATTORNEY FOR PLAINTIFF

Exhibit 1

1 is that correct?

2 A. Valkyrie, right.

3 Q. Okay. And you mentioned that other than
4 giving rent to Sam, that you had no involvement with
5 Sam or Jackie; is that correct?

6 A. None at all.

7 Q. So is that right?

8 A. Yeah.

9 Q. Okay. And would you say that as far as
10 dealing with Sam and Jackie, that your sister pretty
11 much handled that?

12 A. Yes, that's right.

13 Q. All right. You mentioned that your rent at
14 Hickory Ridge was 300 dollars. So was that the total
15 rent, or was that your share?

16 A. My share.

17 Q. And when you were --

18 A. That's about.

19 Q. Okay. And you mentioned that you and your
20 sister split the rent?

21 A. Yeah.

22 Q. Okay. And did you all split that equally?

23 A. Uh-huh.

24 Q. So if you paid some amount around 300 dollars,
25 she also paid some amount around 300 dollars?



Exhibit 2

1 Q: So you have a lawsuit as a result of a car accident?

2 A: Yes.

3 Q: And you have given one deposition but it's taken a
4 number of different times to go and give your
5 testimony?

6 A: Yes.

7 Q: And why is that?

8 A: Because of my injuries.

9 Q: Is it because of your strength level?

10 A: Because of my injuries.

11 Q: Because of your injuries you are having continuing
12 problems so they have to come back and talk to you
13 about another injury? I'm trying to find out is it
14 because you can't sit still for an hour? Because I
15 don't want to go over those conditions with you or if
16 those conditions affect your ability to testify I want
17 to know about them.

18 A: They're broken up because I'm in a lot of pain and it's
19 difficult to sit for long periods of time. I also
20 suffer memory loss.

21 Q: So in the car accident that you had you had a closed
22 head injury?

23 A: I'm not here to talk about my injuries.

24 Q: Well, you can talk to your attorney about it but I'm
25 entitled to find out about that because that could

1 A: Dr. Ogburu.

2 Q: And how long have you been seeing Dr. Ogburu?

3 A: Let's see. The accident was in 2007. I started seeing
4 him in 2008.

5 Q: Does he give you any injections when you go in to see
6 him?

7 A: Not now. But I've had a lot of steroid injections.

8 Q: Does your Social Security disability not cover pain
9 medication?

10 A: No. It does not.

11 Q: Who treats you for your memory loss?

12 A: I don't get treatment for memory loss.

13 Q: Who diagnosed it?

14 A: Until I had memory loss immediately I had a neuropsych
15 exam ordered by Dr. Ogburu. And the doctor confirmed
16 that I had memory loss.

17 Q: Is Dr. Ogburu in Columbia?

18 A: Yes.

19 Q: And he is a neurologist?

20 A: Yes.

21 Q: And the type of memory loss you have, did they tell you
22 if it was short-term or long-term memory loss?

23 A: Just memory loss, ma'am.

24 Q: But does it affect your ability to remember things that
25 happened ten years ago or that happened ten minutes

1 ago?

2 A: Both.

3 Q: Who was the neuropsychologist who tested you? Do you
4 remember that?

5 A: I can't remember her name. It was at University
6 Specialists Clinic, Specialty Clinic at USC. I would
7 have to look it up.

8 Q: Have you received any treatment for memory loss from
9 any physician?

10 A: No.

11 Q: Were you working back in March of 2007?

12 A: Yes. I was working when the accident, my accident
13 occurred.

14 Q: Right. And where were you working?

15 A: The University of South Carolina, Survey Research Lab.

16 Q: Were you on the job when the accident occurred?

17 A: I was leaving for the day.

18 Q: Have you been granted workers' comp?

19 A: No.

20 Q: So you were not on the premises of your employer?

21 A: I was getting into the car. The building is at Pickens
22 and Hampton. So I was in the middle of the street.

23 Q: Okay. What was your job at the USC Survey Research
24 Lab?

25 A: I was the senior interviewer.

1 A: I don't know where Sam lives.

2 Q: Do you know if he kept the house?

3 A: I never checked. I don't know.

4 Q: So what I want to make sure is that we've discussed
5 each conversation you had with them about the house.
6 And what you've told me about is the plumbing issue,
7 the Roto-Rooter, the broken refrigerator.

8 A: I can't remember every conversation I had with Sam
9 because I have memory trouble. I do not remember every
10 conversation I had with Sam. I remember realizing that
11 this might be a money issue and then he said he was
12 letting the house go. People who let their houses get
13 foreclosed do not come in and fix things when they're
14 broken. He was pretty, you know, nasty about it. He
15 wasn't fixing nothing. We were her friends. They were
16 divorcing. You know, I was her friend. So he was like
17 nasty. He was nasty.

18 Q: What else was broken in the house other than the
19 plumbing broke at one point, the refrigerator and the
20 dishwasher?

21 A: Somebody tried to break in the house through the back
22 door. Of course he wouldn't come put a lock on. I
23 asked him about that. It was just useless. You know,
24 it wasn't a lot of stuff. It was a nice house.

25 Q: Anything else you can remember? Now you have the

1 molding. He went under it and tripped because somehow
2 I thought, I was scared that the nails were in his
3 foot. I pulled it out of his shoe. I did not pull
4 nails out of his flesh. But at that time I thought the
5 nails were in his flesh. I guess I was worried about
6 tetanus and stuff. I told him not to move. I just
7 pulled them out and he, it was just awful. It was
8 awful.

9 Q: How much of the molding had come up?

10 A: It was --

11 Q: Was it the entire piece?

12 A: No. It was up in the air like a seesaw. So I don't
13 know what you would call that degree. It was up on top
14 of his foot. The bottom, the other end of it was down
15 in the floor.

16 Q: The other end was still --

17 A: In the floor.

18 Q: -- nailed into the floor?

19 A: I wouldn't say it was nailed because all I did was lift
20 it up. Maybe it had been nailed and came loose. It
21 was no effort to remove it or anything like that. I
22 just pulled it up. Just old house, ma'am. Stuff
23 happens. Bad luck.

24 Q: Then you told me that you called 911, the ambulance
25 came and got him. What do you know about the treatment

Exhibit 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

vs.

Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04883R

AFFIDAVIT OF KAREN MOORE

JANETTE W. PERDUE
C.C.P. & G.S.

2012 MAY -4 PM 2:28

RICHLAND COUNTY
FILED

Now comes affiant Karen Moore and states as follows:

1. My name is Karen Moore. I currently reside in North Carolina. However, at all times relevant to this action I was a citizen and resident of Richland County, South Carolina.
2. I was a business partner of Ms. Beverly Armstrong Washington in a television show that we produced and directed entitled *Carolina Mom*. In my capacity as Ms. Armstrong Washington's business partner, I spent a significant amount of time with her to include time at her home.
3. At one point during our business relationship Ms. Armstrong Washington lived in a home that was owned by Mr. Samuel Thompson. Ms. Armstrong Washington told me during that time that she made numerous complaints to Mr. Berry concerning issues at the home. I specifically remember her complaining to him about plumbing issues and faulty kitchen appliances. Ms. Armstrong Washington constantly complained about the landlord's failure to address her concerns.
4. On one of my visits to Ms. Armstrong Washington's home we were conducting business over dinner. As I was walking between the living room and the kitchen, I tripped over a piece of stripping that was in the entryway between the two areas. Although I tripped, I did not

fall or sustain injury. However, at that time it was apparent to me that this piece of stripping was loose in the floor. It had nails in it which looked as if they were securing the wood to the floor, but if your foot touched the wood as you walked over it, it would move and cause you to stumble or fall.

5. Ms. Beverly Armstrong Washington witnessed me trip over this piece of wood. She related to me that she informed the landlord, Mr. Samuel Thompson, that the floor needed to be repaired. She complained to me that he continued to ignore her requests to repair the property.

6. Sometime shortly after I tripped on this piece of wood, Mr. Raymond Armstrong fell in the same entryway. I learned of his fall from Beverly Armstrong Washington. The next time I was in the home she showed me where Mr. Armstrong had been injured. It was the same entryway where I had tripped. The stripping had been removed. Ms. Armstrong-Washington informed me that a part of the stripping had been caught in Mr. Armstrong's foot when he fell and she pulled the remaining piece up.

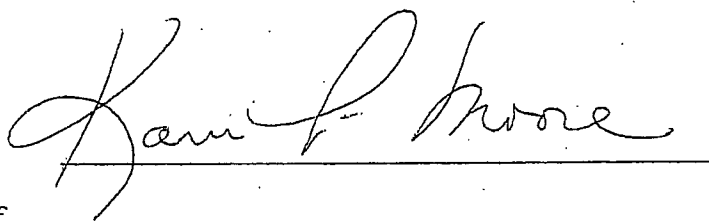
7. Around the time that I tripped over the piece of wood between the kitchen and living room at this home, I had suggested to Ms. Beverly Armstrong Washington that she consider relocating because her numerous complaints to Mr. Thompson regarding the condition of the home had not been addressed properly. I informed her that there was a home available for rent on Voss Street in Columbia, South Carolina where I lived. At the time of Mr. Raymond Armstrong's fall and injury, Ms. Armstrong Washington had already begun making arrangements to secure and move into the home on Voss Street.

8. Subsequent to Ms. Armstrong Washington and Mr. Armstrong moving into the home on Voss Street, Ms. Beverly Armstrong Washington sustained a personal injury. After this

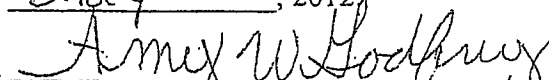
injury, her health significantly declined. She was unable to continue our business relationship so we dissolved the business and I eventually relocated. As a result of her deterioration, I have personally witnessed her long and short-term memory loss. She cannot work or remember events from her past or even perform certain routine tasks on a daily basis. At times, she does not remember things that the two of us did together or recall events from her past that she shared with me before her injury.

9. Although our business relationship had ended, I regard her as a friend and have continued to keep in contact with her since that time.

FURTHER AFFIANT SAYETH NOT.



SWORN BEFORE ME this 4 day of
May, 2012


Notary Public for the State of South Carolina
My commission expires: April 20, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Raymond Armstrong,)

Plaintiff,)

vs.)

Samuel J. Thompson)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04883R

CERTIFICATE OF SERVICE

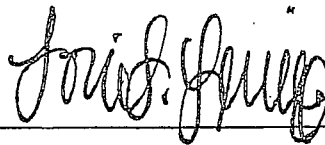
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JEROME L. W. HYBRID
C.C.P. & G.S.

RICHLAND COUNTY
FILED

I, Tori S. Lenix, the undersigned employee of Solomon Law Group, LLC, attorneys for the Plaintiff, hereby certify that I have served the foregoing Affidavit of Karen Moore, by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Catherine Garbee Griffin
Baker Ravenel Bender
P O Box 8057
Columbia, SC 29202

This 4th day of May, 2012.



Tori S. Lenix

Columbia, South Carolina

Exhibit 4

1 specifically what you did?

2 A: I put in the flooring.

3 Q: What type of flooring did you put in?

4 A: It was Magnoleum, but I just did the flooring
5 itself, I did not put the covering on it.

6 Q: Okay. Say that one more time because I'm not
7 sure I'm understanding it?

8 A: I put the flooring in. I ripped up the old
9 floor and put a floor in.

10 Q: So a sub-flooring -- the wood --

11 A: Yeah. The wood --

12 Q: -- underneath?

13 A: Yes.

14 Q: Okay. When you ripped up the sub-flooring,
15 what type of sub-flooring had been in the home?

16 A: It was Magnoleum that I had put down prior to
17 when we moved in.

18 Q: So you had put some linoleum. It looks like
19 tile, but you roll it?

20 A: No. It was tile.

21 Q: Okay. What was under the tile when you --

22 A: Magnoleum.

23 Q: Okay. I'm not familiar with Magnoleum, can you
24 just kind of --

25 A: That's a roll. That's a whole roll that they

1 roll out.

2 Q: Okay.

3 A: It can look like tile -- you know.

4 Q: Right. Yeah. They come in rolls.

5 A: Right. They come in rolls.

6 Q: Okay. All right. So when you moved in the
7 home, there was linoleum in the kitchen?

8 A: Yes.

9 Q: We're back in 2001?

10 A: Yeah.

11 Q: And you put tile over the linoleum?

12 A: Yes.

13 Q: And do have any knowledge as to what was under
14 the linoleum?

15 A: No.

16 Q: So when you did the remodel, you took the tile
17 up?

18 A: And the original Magnoleum.

19 Q: And the linoleum?

20 A: Yeah.

21 Q: Okay. And when you remodeled, what was under
22 the tile and linoleum?

23 A: There wasn't any other tile.

24 Q: Right. There was wood sub-flooring down there?

25 A: Yes.

1 tile on the other side. That's all that was
2 the purpose of the four-inch strip.

3 Q: Right. And you stated that, when you moved
4 into the house in 2001, that there was linoleum
5 in the kitchen, correct?

6 A: Uh-huh (affirmative response).

7 Q: Was that four-inch piece of wood already there
8 or did you put that in when you put the tile
9 down?

10 A: I put it in when I put the tile down.

11 Q: Did you do that yourself or did you have a
12 contractor do it?

13 A: I did that.

14 Q: And what did you use to secure that four-inch
15 piece of wood that was in that doorway?

16 A: To my recollection, I think it was screws.

17 Q: Do you recall what type of screws?

18 A: No, just wooden screws.

19 Q: Was it a screw that you use with a screwdriver
20 or was it a nail used with a hammer?

21 A: I used it with my battery --

22 Q: The electric --

23 A: -- screwdriver.

24 Q: -- screwdriver or drill?

25 A: Like, I mean, battery operated.

1 Q: Okay. Do you recall how many screws you put
2 down?

3 A: No.

4 Q: Do you recall where you placed those screws?

5 A: If I'm not mistaken with my recollection, I
6 placed one on each end and I'd guess it was
7 about six screws in the whole -- throughout
8 evenly.

9 Q: Okay. So you placed one on each end and where
10 were the other screws?

11 A: In between those --

12 Q: Kind of evenly spaced throughout?

13 A: Yes.

14 Q: You say you used about six screws?

15 A: Yes.

16 Q: Before you put that piece of wood strip there,
17 when you moved into the house and the linoleum
18 was there, was there anything down there
19 dividing the linoleum from the hardwood?

20 A: No.

21 Q: Okay. So when you moved into the house, there
22 was nothing in between the two rooms, but when
23 you put the tile down, you put that wood strip
24 down?

25 A: Yes.

Exhibit 5

RECEIVED MAY 04 2012



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

May 2, 2012

D. CRAVENS RAVENEL

*JAY BENDER

S. MARKEY STUBBS

MARINE GARBEER GRIFFIN

*WILLIAM PEARCE DAVIS

BRADLEY L. LANFORD

SAMUEL M. MOKEBA

SUSAN DRAKE DUBOSE

ROBERT L. BROWN

JENNY A. DRAFFIN

MARIEL D. NORTON

***PATRICK D. QUINN

CHARLES E. BAKER
(1935-2010)

*OF COUNSEL

**ALSO ADMITTED IN GEORGIA

***ALSO ADMITTED IN VIRGINIA

Shannon L. Felder, Esquire
The Solomon Law Group
1519 Richland Street
PO Box 1866
Columbia, SC 29201-1866

Re: Raymond Armstrong v. Jacqueline Berry and Samuel J. Thompson
Claim No. 36-917-07
C. A. No. 2009-CP-40-3531
Our File No. 8852.200

Dear Shannon:

Enclosed herein please find defendant's answers to supplemental interrogatories which I hereby serve upon you by mail in the above-referenced case.

If you have any questions concerning this letter, please feel free to call me.

Yours truly,

Catharine Garbee Griffin

cgriffin@brblegal.com

CGG/tkt

Enclosures

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Raymond Armstrong,	)	Civil Action No.: 2011-CP-40-4883
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT THOMPSON'S
	)	RESPONSES TO PLAINTIFF'S
	)	SUPPLEMENTAL INTERROGATORIES
	)	
Jacqueline Berry and Samuel J.	)	
Thompson,	)	
	)	
Defendants.	)	

1. Provide the address and contact information for the construction company that remodeled the home located at 212 Hickory Ridge Road, Columbia, SC 29209.

Answer: The McDonald Company
1200 Veterans Road
Columbia, SC
803.647.0508

2. Provide the address and contact information for the gentleman that assisted in cleaning the home located at 212 Hickory Ridge Road, Columbia, SC 29209 prior to the plaintiff and Beverly Armstrong Washington leasing the premises.

Answer: Upon information and belief, the person who assisted in cleaning the home located at 212 Hickory Ridge Road, before the plaintiff and Beverly Armstrong Washington leased the premises is now deceased.

3. Provide the length and width of the entryway between the kitchen and living room where plaintiff's fall occurred.

Answer: Defendant objects to this interrogatory insofar as it assumes facts which are not in evidence. Defendant further objects to this interrogatory because it is vague. Subject

to this objection, the horizontal distance at the entryway between the kitchen and living room is 30 ½ inches.

4. With regard to the transitional piece of wood defendant placed between the kitchen and living room when he changed the flooring in the kitchen, provide the following information:

a. the size and type of wood used (1x4 plywood, for example);

Answer: Piece of pine wood – 30 ½ inch length x 3 ½ inches in width x ¾ inch in thickness.

b. whether the transitional piece of wood was full thickness or sanded down during installation;

Answer: Full thickness – ¾ inch thick.

c. whether a single piece of wood was used for a full transition or whether multiple pieces of wood were pieced together;

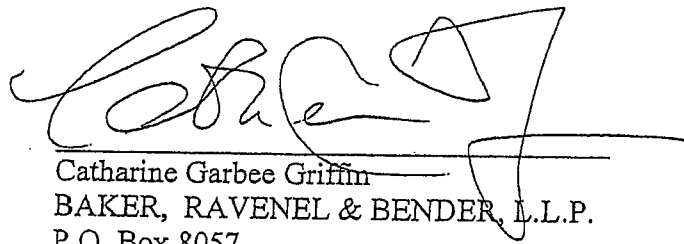
Answer: Single piece of wood.

d. whether the transitional piece of wood was secured by placing screws in the subflooring or studs; and

Answer: The transitional piece of wood was secured by placing screws in the subflooring which was secure.

e. if the transitional piece of wood was screwed to the studs, indicate whether defendant was able to locate the studs and specify how is he certain the studs were properly located.

Answer: see response to subpart (d).



Catharine Garbee Griffin

BAKER, RAVENEL & BENDER, L.L.P.

P.O. Box 8057

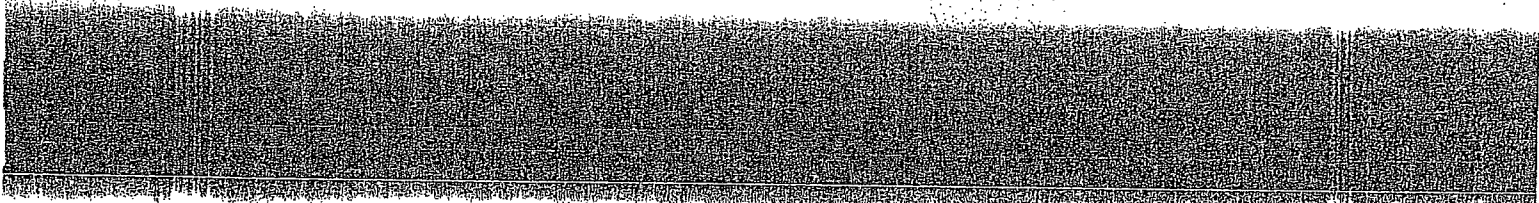
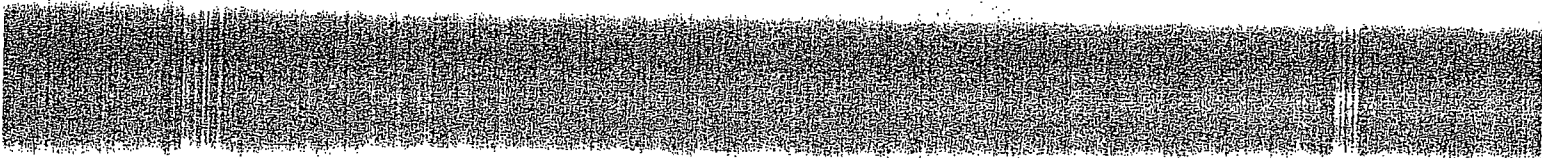
Columbia, South Carolina 29202

(803) 799-9091

Attorneys for Defendant Samuel J. Thompson

Columbia, South Carolina

May 3, 2012



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

v.

Jacqueline Berry and Samuel J.
Thompson,

Defendants.

) THE COURT OF COMMON PLEAS

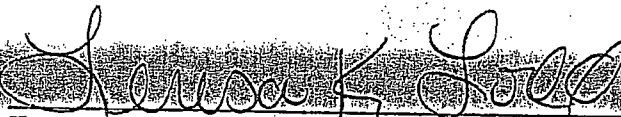
) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2009-CP-40-3531

) CERTIFICATE OF SERVICE

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with Defendant Thompson's Responses to Plaintiff's Supplemental Interrogatories by serving a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Shannon L. Felder, Esquire
The Solomon Law Group
1519 Richland Street
PO Box 1866
Columbia, SC 29201-1866


Teresa K. Todd

May 3, 2012

Columbia, South Carolina

) THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL CIRCUIT
)

) Civil Action No.: 2011-CP-40-04883R

(

i

MOTION TO EXCLUDE HEARSAY
PORTIONS OF AFFIDAVIT OF KAREN
MOORE

)

i

TO: SHANNON FELDER, ATTORNEY FOR THE PLAINTIFF:

The defendant, Samuel Thompson, moves to exclude certain paragraphs of the affidavit of Karen Moore because the paragraphs contain inadmissible hearsay. Specifically, defendant moves to exclude from consideration by this court the statements in paragraphs three (3), five (5), six (6), seven (7), and eight (8). On May 4, 2012, Plaintiff sent Defendant Thompson an affidavit of Karen Moore in opposition to defendant's motion for summary judgment. Ms. Moore averred that while she was visiting at plaintiff's rental home that she tripped on molding in the doorway upon which she contends, without first hand knowledge, that the Plaintiff also tripped. (Affidavit at ¶4). Ms. Moore averred that Plaintiff's sister, Beverly Armstrong, not a party to this lawsuit, "related to" her that that she [Plaintiff's sister] told Mr. Thompson that that "the floor needed to be repaired." (Affidavit at ¶5) Defendant Thompson moves to exclude from evidence any reference to anything Plaintiff's sister told or "related to" Ms. Moore as inadmissible hearsay.

In the present case, Plaintiff and his sister testified that they did not notify Mr. Thompson, the landlord, of any defect in the area of Thompson's home where the plaintiff fell. In fact, the Armstrongs consistently testified that the defect was not recognizable until the plaintiff fell. Although Ms. Armstrong Washington claimed that she had had some memory problems since 2006, she answered questions regarding her conversations with Mr. Thompson without claiming that she could not remember the content of the conversation. She testified as follows:

Q: But, is it your testimony that you never told him that there was anything wrong with this piece of wood?

A: There was nothing to see that was wrong with that piece of wood. How would I know that?

Q: So because there was nothing to see, there's nothing you ever asked him [Thompson] to fix; is that right?

A: The wood?

Q: Right.

A: No. It dislodged when Raymond walked into the kitchen. No. I never asked him to fix that piece of wood. Had I known that piece of wood was going to come dislodged, I probably would have had it repaired. But, there's nothing you could see or predict. I'm not a prophet...

(Deposition of Washington, p. 72).

Similarly, the plaintiff testified that he never reported any problem with the entryway in the kitchen to Thompson. (Depo. of Armstrong, p. 64).

After the sworn testimony of the plaintiff and his sister, where they both responded to questions regarding whether the landlord was given notice of the condition of the threshold, the plaintiff presented the affidavit of Moore which is replete with inadmissible hearsay in an attempt to defeat the defendant's motion for summary judgment.

Rule 801 of the *South Carolina Rules of Evidence* defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Hearsay is inadmissible unless an applicable exception applies. Rule 802, *SCRE*. There are no applicable exceptions in the case at hand. Instead, this statement is inadmissible against this Defendant because it is rank hearsay. In the absence of an applicable exception, Karen Moore cannot testify at trial regarding what Plaintiff’s sister told her about what plaintiff’s sister allegedly told Thompson. The portions of the affidavit containing hearsay paragraphs should not be considered for any purpose. *See* 30 S.C. Jur. *Evidence* § 157 (“Hearsay testimony is not entitled to any weight”); *Huggler v. State*, 360 S.C. 627, 634, 602 S.E.2d 753, 757 (2004) (“The rule against hearsay prohibits the admission of out-of-court statements used to prove the truth of the matter asserted unless an exception to the rule applies”).

Therefore, the Court should exclude all portions of Moore’s affidavit which are inadmissible hearsay.

Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant Samuel J. Thompson

May 7, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong

Plaintiff,

vs.

Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-04883R

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Shannon L. Felder, Bar No. _____
Address:
1519 Richland Street
Columbia, SC 29201
Phone: 803-391-3120 Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Catherine Garbee Griffin, Bar No. _____
Address:
P.O. Box 8057
Columbia, SC 29202
Phone: 803-799-9091 Fax _____
E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsideration of Defendant's Motion for Summary Judgement

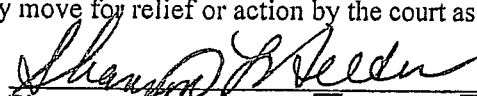
Estimated Time Needed: 1 hr

Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff/☐ Defendant

6/13/2012
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Raymond Armstrong,	)	Civil Action No.: 2011-CP-40-04883R
	)	
Plaintiff,	)	
vs.	)	MOTION FOR RECONSIDERATION
Samuel J. Thompson	)	
Defendant.	)	

2012 JUN 13 PM 12:38
 DEANETTE S. MORRIS
 C.C.P. & G.S.

You will please take notice that Plaintiff, by and through the undersigned attorney, moves the Court for a hearing, no sooner than ten (10) days after service hereof, to reconsider the granting of Defendant's Motion for Summary Judgment. The basis for this motion is set forth herein below.

FACTS/PROCEDURE

Plaintiff and his sister were tenants in a home owned by Defendant. In October 2006, Plaintiff fell in the doorway between the home's kitchen and living room. According to Plaintiff's sister, Beverly Armstrong-Washington, who witnessed the fall, a piece of wood stripping that was in the doorway became dislodged like a see-saw and became stuck in Plaintiff's foot. Plaintiff sustained significant injury as a result of this fall. This action was filed by Plaintiff. The matter was removed from the docket pursuant to Rule 40(j) and timely restored. Following the exchange of written discovery and depositions of the Plaintiff and Ms. Beverly Armstrong-Washington, Defendant filed this motion for summary judgment alleging that there was no evidence that the Defendant knew or should have known of the defect or hazard. The deposition of the Defendant was taken March 16, 2012 and supplemental discovery

was served on Defendant. The responses to this discovery were received by Plaintiff's counsel on May 4, 2012. The hearing on Defendant's Summary Judgment motion was held May 8, 2012. The Court issued an order May 24, 2012 granting Defendant's Motion for Summary Judgment. The order was filed with the Clerk of Court May 30, 2012 and received by Plaintiff's counsel June 4, 2012. This motion for reconsideration follows.

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that summary judgment may be granted if a review of all documents submitted to the court shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. In determining whether a genuine issue of material fact exists, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment.

Bass v. Gopal, Inc., 395 S.C. 129, 133-134 (S.C. 2011) (citations omitted) Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked").

LAW ANALYSIS

1. Defendant's motion for summary judgment should have been denied because there is evidence that the Defendant knew or should have known of the defective condition in the premises.

The Plaintiff testified that his sister, Beverly Armstrong-Washington, would have been the person to speak with the Defendant regarding any issues with the home. {Depo. of Raymond Armstrong p. 143, lines 9 - 12}. In her deposition, Ms. Armstrong-Washington immediately stated that she had memory loss. {Depo. Of Beverly Armstrong-Washington, p. 6, lines 19-20}. She stated that her memory loss affected both her short and long term memory. {Depo. of Beverly Armstrong-Washington p. 10, line 21 - p. 11, line 2}. Although Ms. Armstrong-Washington denied discussing any problem with the portion of floor where Mr. Armstrong fell with the Defendant, she also specifically stated, "I cannot remember every conversation I had with Sam because I have memory trouble. I do not remember every conversation I had with him." {Depo. of Beverly Armstrong-Washington P. 37, lines 9-10}.

Ms. Karen Moore was identified as a witness in this matter in initial discovery responses. In an affidavit, she stated that prior to Mr. Armstrong's fall she tripped in the same location where Raymond Armstrong fell. She further testified that Ms. Armstrong-Washington "related to me" that she informed the landlord of the problem with the floor. Her affidavit does not clarify what is meant by "related to me." Therefore, there is an issue of material fact regarding whether the Defendant knew or should have known of the hazard. The Court's order does not speak to the information contained in Ms. Moore's affidavit. At a minimum, summary judgment should be denied until such time as Ms. Moore testifies under oath regarding the basis, nature and extent of

her knowledge of complaints to the Defendant regarding the problems with the subject flooring. Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham, 349 S.C. at 362, 563 S.E.2d at 333.

2. Defendant's motion for summary judgment should have been denied because there is evidence that the Defendant negligently created the hazard which caused the injury.

"[W]here a lessor undertakes to repair or improve the leased premises and the work is done negligently, resulting in personal injury to the lessee, the lessor is liable for the damages so sustained. Negligence on the part of the lessor in making repairs or improvements is regarded as an act of misfeasance, subjecting him to tort liability for any resulting damages." Conner v. Farmers & Merchants Bank, 243 S.C. 132, 140 (S.C. 1963).

In his deposition taken on March 16, 2012, the Defendant testified that before the Plaintiff moved into the home, he replaced the flooring in the kitchen. When he replaced the flooring, he placed a piece of wood stripping in the doorway between the kitchen and living room. {Deposition of Samuel Thompson, pg. 31 – 32, 35}. Ms. Washington testified that as Plaintiff stepped into the doorway, the piece of wood dislodged like a see-saw and Plaintiff fell. She further testified that after his fall, she removed the piece of wood stripping between the doorway. "It was no effort to remove it or anything like that. I just pulled it up. {Deposition of Beverly

Armstrong-Washington, pg. 56, line 20 – 22}. In her affidavit, Karen Moore states that the piece of stripping looked like it was secured but actually was loose in the floor. It had nails in it that looked as if they were securing the wood to the floor, but would become dislodged and cause you to stumble or fall. {Affidavit of Karen Moore}

Following the deposition of Defendant, supplemental discovery requests were served on Defendant to gain more specific information regarding the nature of the wood stripping installed and the manner of installation. Responses to these discovery requests were served on Friday, May 4, 2012. The Defendant's testimony and discovery responses indicate that the wood stripping was not properly secured to the flooring which created the hazard from which Plaintiff's fall resulted. Whether the Defendant created the hazard which caused Plaintiff's fall is a factual determination for the jury.

CONCLUSION

Summary judgment should have been denied in this case as there is evidence that the Defendant knew or should have known of the hazard. Additionally, summary judgment should be denied because there is evidence to support a factual finding that the Defendant created the hazard which caused Plaintiff's injury. At a minimum, summary judgment should have been denied to afford an opportunity to conduct the deposition of Karen Moore.

Respectfully Submitted,



SOLOMON LAW GROUP, LLC
Shannon L. Felder (15942)
1519 Richland Street
Columbia, South Carolina 29201

(803) 391-3120 telephone
(803) 509-7032 fax
ATTORNEY FOR PLAINTIFF

Columbia, SC
June 12, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

vs.

Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04883R

AFFIDAVIT OF KAREN MOORE

2012 MAY -4 PM 2:28
JAMETLE M. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Now comes affiant Karen Moore and states as follows:

1. My name is Karen Moore. I currently reside in North Carolina. However, at all times relevant to this action I was a citizen and resident of Richland County, South Carolina.
2. I was a business partner of Ms. Beverly Armstrong Washington in a television show that we produced and directed entitled *Carolina Mom*. In my capacity as Ms. Armstrong Washington's business partner, I spent a significant amount of time with her to include time at her home.
3. At one point during our business relationship Ms. Armstrong Washington lived in a home that was owned by Mr. Samuel Thompson. Ms. Armstrong Washington told me during that time that she made numerous complaints to Mr. Berry concerning issues at the home. I specifically remember her complaining to him about plumbing issues and faulty kitchen appliances. Ms. Armstrong Washington constantly complained about the landlord's failure to address her concerns.
4. On one of my visits to Ms. Armstrong Washington's home we were conducting business over dinner. As I was walking between the living room and the kitchen, I tripped over a piece of stripping that was in the entryway between the two areas. Although I tripped, I did not

fall or sustain injury. However, at that time it was apparent to me that this piece of stripping was loose in the floor. It had nails in it which looked as if they were securing the wood to the floor, but if your foot touched the wood as you walked over it, it would move and cause you to stumble or fall.

5. Ms. Beverly Armstrong Washington witnessed me trip over this piece of wood. She related to me that she informed the landlord, Mr. Samuel Thompson, that the floor needed to be repaired. She complained to me that he continued to ignore her requests to repair the property.

6. Sometime shortly after I tripped on this piece of wood, Mr. Raymond Armstrong fell in the same entryway. I learned of his fall from Beverly Armstrong Washington. The next time I was in the home she showed me where Mr. Armstrong had been injured. It was the same entryway where I had tripped. The stripping had been removed. Ms. Armstrong-Washington informed me that a part of the stripping had been caught in Mr. Armstrong's foot when he fell and she pulled the remaining piece up.

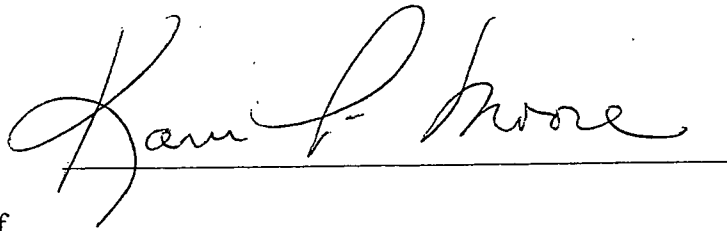
7. Around the time that I tripped over the piece of wood between the kitchen and living room at this home, I had suggested to Ms. Beverly Armstrong Washington that she consider relocating because her numerous complaints to Mr. Thompson regarding the condition of the home had not been addressed properly. I informed her that there was a home available for rent on Voss Street in Columbia, South Carolina where I lived. At the time of Mr. Raymond Armstrong's fall and injury, Ms. Armstrong Washington had already begun making arrangements to secure and move into the home on Voss Street.

8. Subsequent to Ms. Armstrong Washington and Mr. Armstrong moving into the home on Voss Street, Ms. Beverly Armstrong Washington sustained a personal injury. After this

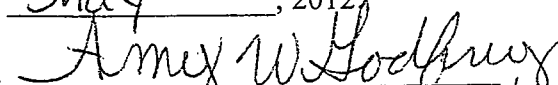
injury, her health significantly declined. She was unable to continue our business relationship so we dissolved the business and I eventually relocated. As a result of her deterioration, I have personally witnessed her long and short-term memory loss. She cannot work or remember events from her past or even perform certain routine tasks on a daily basis. At times, she does not remember things that the two of us did together or recall events from her past that she shared with me before her injury.

9. Although our business relationship had ended, I regard her as a friend and have continued to keep in contact with her since that time.

FURTHER AFFIANT SAYETH NOT.



SWORN BEFORE ME this 4 day of
May, 2012


Notary Public for the State of South Carolina
My commission expires: April 20, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

vs.

Samuel J. Thompson

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04883R

CERTIFICATE OF SERVICE

JENNIFER L. W. HYBRID
C.C.P. & G.S.

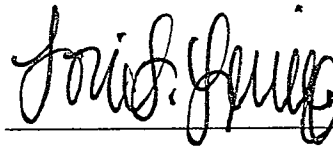
2012 MAY -4 PM 2:28

FILED
RICHLAND COUNTY

I, Tori S. Lenix, the undersigned employee of Solomon Law Group, LLC, attorneys for the Plaintiff, hereby certify that I have served the foregoing Affidavit of Karen Moore, by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Catherine Garbee Griffin
Baker Ravenel Bender
P O Box 8057
Columbia, SC 29202

This 4th day of May, 2012.



Tori S. Lenix

Columbia, South Carolina

Certified Copy

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RAYMOND ARMSTRONG,

Plaintiff(s),

vs.

JACQUELINE BERRY and SAMUEL J.
THOMPSON,

Defendant(s).

~~~~~

CASE NO.  
2009-CP-40-3531

DEPOSITION OF

RAYMOND L. ARMSTRONG

August 17, 2011

10:03 a.m.

3710 Landmark Drive  
Columbia, South Carolina

Reporter: Ronda K. Blanton, RPR Charleston, South Carolina



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1 A. No.

2 Q. Did you ever do any painting?

3 A. No.

4 Q. Did you do any repair work?

5 A. No.

6 Q. When you moved in, did you ask that anything  
7 be done to the house?

8 A. No.

9 Q. Was 300 dollars a month a good amount for  
10 renting the house that you were in, this Hickory  
11 Ridge house?

12 A. I'm not sure exactly what that was, the time  
13 line. I'm not sure of the numbers, but it was around  
14 that. It seems normal.

15 Q. So it wasn't a deal because Jackie was friends  
16 with y'all?

17 A. No.

18 Q. How many bedrooms did the house have?

19 A. Three.

20 Q. Did anybody else live with you?

21 A. No.

22 Q. Did anybody else stay with you?

23 A. No.

24 Q. Did you have to modify the house in any way  
25 because of your condition?



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1 A. No. I used the foot, false legs, no.

2 Q. Did you ever write any letters to Jackie or  
3 Sam about what you wanted fixed in the house?

4 A. No. She handled that.

5 Q. Beverly handled it?

6 A. Yes.

7 Q. Did you have any complaints about the house  
8 other than the dishwasher wasn't put back in?

9 A. I had no complaints about that. She handled  
10 it. I didn't pay attention to it.

11 Q. Beverly had complaints?

12 A. Yeah. There was a stove and some other things  
13 that --

14 Q. Stove that was a problem?

15 A. Yeah. Refrigerator.

16 Q. What was wrong with the refrigerator?

17 A. Stopped.

18 Q. It stopped working?

19 A. Yes. She never --

20 Q. Did you have to go to a Magistrate's Court  
21 over this house?

22 A. Well, like I said, they handled with him. I  
23 mean, her. I just -- I paid the rent. That was all.  
24 No, we didn't go to Magistrate, no.

25 Q. There were some photographs that were provided

1 A. Wood.

2 Q. It's hardwood?

3 A. I'm not sure. I didn't pay attention.

4 Q. You don't remember what the -- what the  
5 covering of the floor was in the living room in that  
6 house?

7 A. Carpet and wood.

8 Q. So carpet on top of wood?

9 A. There was no carpet in the house, but there  
10 was wood.

11 Q. So there was hardwood in the living room that  
12 you walked over to get to the kitchen?

13 A. Yes.

14 Q. And then as you got to the kitchen, you said  
15 you were going to the table to eat the chicken with  
16 your sister.

17 A. Uh-huh.

18 Q. Is that right? Say "yes" or "no."

19 A. Yes.

20 Q. And as you walked toward the kitchen, tell me  
21 again what happened.

22 A. I stepped into the kitchen. It went down.

23 Q. What went down?

24 A. The floor.

25 Q. Okay. The linoleum went down?



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1 A. No. I don't remember what it was. I just  
2 know it went down. The board came up, and I went  
3 over.

4 Q. So you took a step onto the kitchen floor; is  
5 that right?

6 A. Uh-huh.

7 Q. You have to say "yes" or "no."

8 A. Yes.

9 Q. And when you stepped onto the kitchen floor,  
10 and you say a board came up --

11 A. From the molding.

12 Q. So molding came up?

13 A. (Nods head.)

14 Q. And when that molding came up, then what --  
15 what happened?

16 A. I tripped. I fell over it and went -- I just  
17 went down.

18 Q. So when you stepped into the kitchen, which  
19 foot stepped into the kitchen?

20 A. The left.

21 Q. So your left foot goes into the kitchen. You  
22 step down. The molding comes up, and then your right  
23 foot trips over it?

24 A. (Nods head.)

25 Q. Yes?

1 A. Yes.

2 Q. I'm just trying to keep the record straight.  
3 Had that board ever come up before?

4 A. I don't know nothing about no floors, nothing  
5 about.

6 Q. You'd never had any problem with that board  
7 before?

8 A. I didn't look at it. I didn't --

9 Q. Have you ever had that happen before?

10 A. No.

11 Q. Had you ever seen the board pop up?

12 A. No.

13 Q. Had you ever reported to anybody there's  
14 something wrong with this board?

15 A. No.

16 Q. Had you done any work on that board that you  
17 say popped up?

18 A. No, no. - - -

19 Q. When you tripped, did you fall forward?

20 A. Forward.

21 Q. You didn't twist your ankle and fall to the  
22 side?

23 A. Sideways.

24 Q. Okay. Which way? Did you go forward, or did  
25 you go on the side?



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1 A. I went down. I don't remember side. I just  
2 know I was on the floor.

3 Q. Who said you were on the floor?

4 A. I was on the floor.

5 Q. Okay. You were on the floor, and what you  
6 remember is you went to the side. To your left or to  
7 your right?

8 A. I avoided the table.

9 Q. You avoided the table, but did you go to your  
10 left side or to your right side?

11 A. Slightly to the left.

12 Q. Slightly to the left. Did you catch yourself?

13 A. No.

14 Q. When you say you tripped, you -- your foot hit  
15 that board, and then you moved slightly to the left?

16 A. Right. I was down.

17 Q. You were down.

18 A. Yes. I heard this cracking.

19 Q. And the cracking was your foot?

20 A. (Nods head.)

21 Q. You have to say "yes" or "no."

22 A. Yes.

23 Q. Had you felt anything unusual about your foot  
24 that day?

25 A. No.



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1 Q. How many times a day would you walk into the  
2 kitchen?

3 A. I stayed in the bedroom mostly.

4 Q. How did you eat?

5 A. TV dinners, cereal.

6 Q. Your sister would bring you food?

7 A. No. I'd get it. I never paid attention to  
8 it.

9 Q. Okay. What I'm asking you, did you have to go  
10 into the kitchen to get the food?

11 A. Yes.

12 Q. And so you would go into the kitchen a couple  
13 times a day?

14 A. Yes.

15 Q. And during the year that y'all lived there,  
16 during the couple times a day that you went into the  
17 kitchen, did you ever feel the floor give way?

18 A. No.

19 Q. Did you ever see that board pop up as you  
20 walked over it?

21 A. No.

22 Q. Are you bigger than your sister?

23 A. Yes.

24 Q. How much does she weigh?

25 A. I don't know. I have no idea.



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1 right-hand side. (Indicating.)

2 Q. Okay. The hospital bed is right here, the  
3 blue mattress right here? (Indicating.)

4 A. The hospital bed, yeah.

5 Q. And then in looking at this picture, can you  
6 take a pen -- and I'm gonna borrow yours -- and draw  
7 an X or circle over the area where you fell, or is it  
8 not in that picture?

9 A. I'm not really good at -- this is it, then I  
10 went -- the rest is big, but I don't -- right here.  
11 I'm not sure which door, going through here.

12 (Indicating.) Where do you want me to put the X?

13 Q. Wherever you want to put it. If you were  
14 walking through there, what I'm trying to do is have  
15 you put on that exhibit an X showing the area where  
16 you fell.

17 A. Right here. (Indicating.) I don't know.  
18 Down here, or I don't know if you want me to put it  
19 there or down here. (Indicating.)

20 Q. You could put a circle if you don't want to  
21 put an X. Just put a circle around the general area.

22 A. (Complies with request.)

23 Q. Okay. And what you've circled -- can you pass  
24 the pen because I know she'll need it back. I'm  
25 sorry.

1 A. (Complies with request..)

2 Q. You've circled an area that is in between the  
3 carpet and the linoleum or tile which is in the  
4 kitchen; is that right?

5 A. Uh-huh.

6 Q. You have to say "yes" or "no."

7 A. Yes.

8 Q. And then what I see here is there's a door  
9 coming in. Is that the front door of the house?

10 A. That's -- that's to the garage.

11 Q. This is the garage door that we looked at that  
12 was pulled shut with the rope.

13 A. No. The -- the -- the other door to the back  
14 door is locked with a rope.

15 Q. A different door to the garage. So where does  
16 this door go that I'm looking at in this picture?

17 A. To the garage.

18 Q. This goes to the garage? Are there two doors  
19 to the garage?

20 A. Yes. One to the living room and one to the  
21 dining room and one to the back -- the back of the  
22 house. The rope was to the -- to the back of the  
23 house.

24 Q. And then this is the last picture I have.  
25



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1 Q. During all the times you had walked in the  
2 kitchen during the year you lived there before this  
3 happened or the 11 months you lived there before this  
4 happened, had you ever noticed that the molding  
5 between the kitchen and the living room was loose?

6 A. No.

7 Q. You've told me about some of the problems that  
8 you've had as a result of breaking your ankle. Can  
9 you tell me any other problems that you've had or any  
10 other way the broken ankle has limited you in the  
11 last four years?

12 A. Arthritis.

13 Q. You now have arthritis in your ankle?

14 A. (Nods head.)

15 Q. Who treats you for that?

16 A. Nobody.

17 Q. And the arthritis in your ankle, how does that  
18 affect you?

19 A. Oh, I have to crawl for something if I'm not  
20 in the wheelchair. I can feel it.

21 Q. Any other problems that you've had as a result  
22 of this fall?

23 A. No.

24 Q. Earlier when I asked you about family you had  
25 in Richland County, you didn't tell me about Brandon.



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1 is that correct?

2 A. Valkyrie, right.

3 Q. Okay. And you mentioned that other than  
4 giving rent to Sam, that you had no involvement with  
5 Sam or Jackie; is that correct?

6 A. None at all.

7 Q. So is that right?

8 A. Yeah.

9 Q. Okay. And would you say that as far as  
10 dealing with Sam and Jackie, that your sister pretty  
11 much handled that?

12 A. Yes, that's right.

13 Q. All right. You mentioned that your rent at  
14 Hickory Ridge was 300 dollars. So was that the total  
15 rent, or was that your share?

16 A. My share.

17 Q. And when you were --

18 A. That's about.

19 Q. Okay. And you mentioned that you and your  
20 sister split the rent?

21 A. Yeah.

22 Q. Okay. And did you all split that equally?

23 A. Uh-huh.

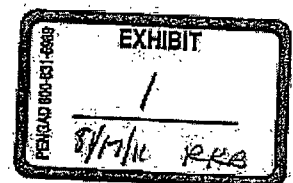
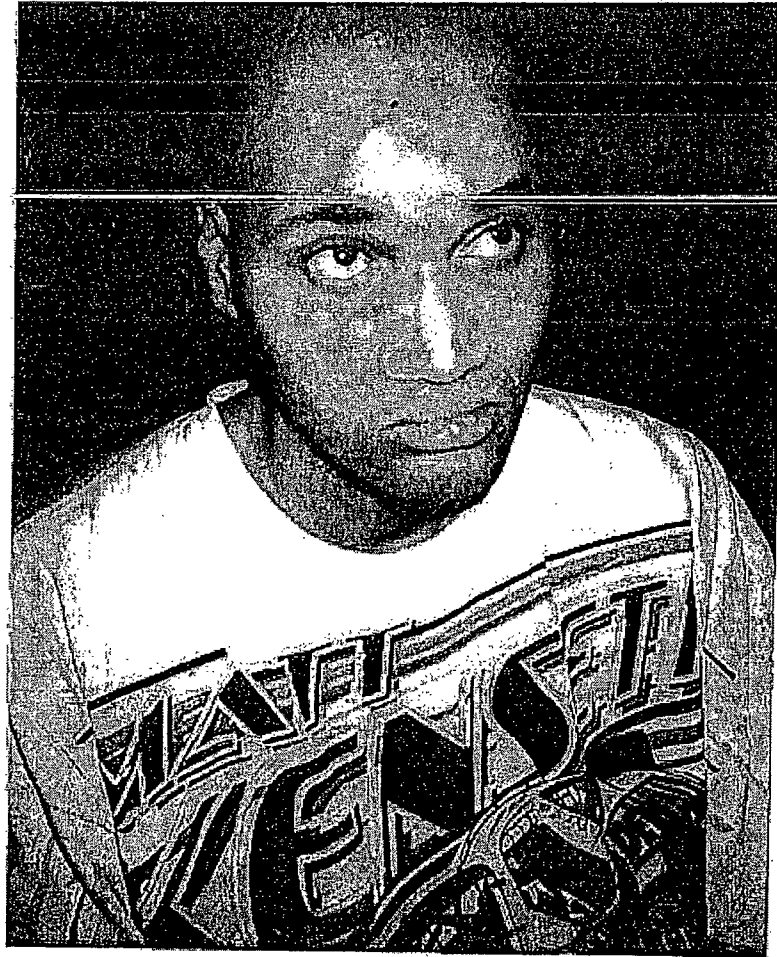
24 Q. So if you paid some amount around 300 dollars,  
25 she also paid some amount around 300 dollars?

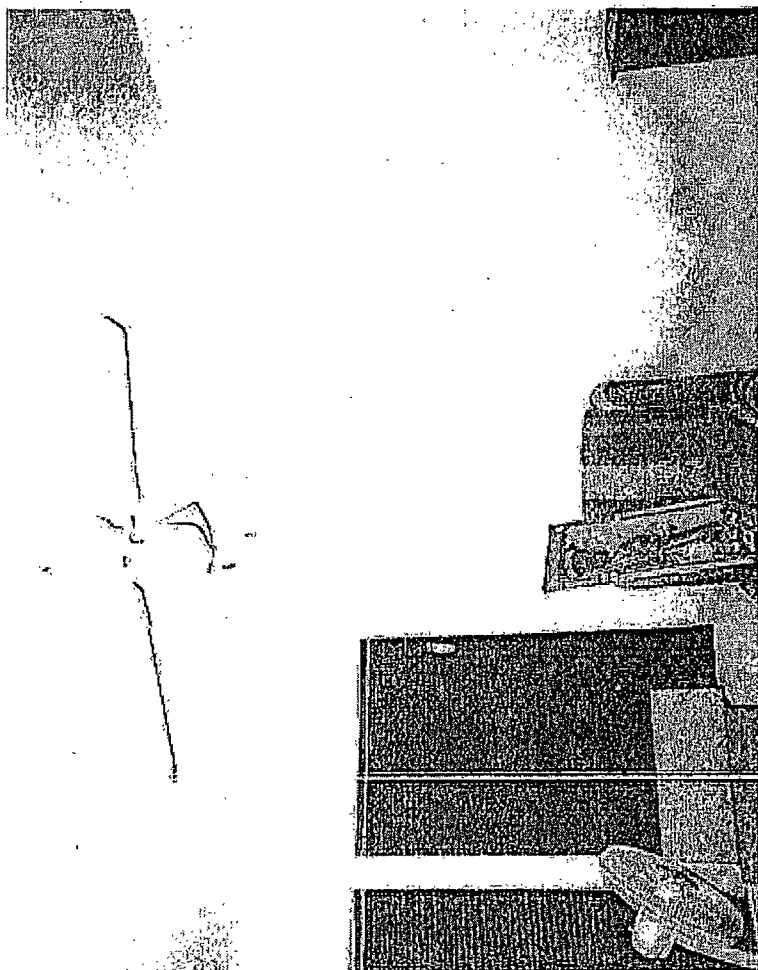


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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Raymond Armstrong,  
Plaintiff,

vs.

Jacqueline Berry and  
Samuel J. Thompson,  
Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-40-04883R

**COPY**

DEPOSITION OF

BEVERLY ARMSTRONG-WASHINGTON

\*\*\*\*\*

Tuesday, December 13, 2011  
10:09 a.m.-12:08 p.m.

The deposition of BEVERLY ARMSTRONG-WASHINGTON, taken on behalf of the Defendants at the offices of Baker, Ravenel & Bender, LLP, 3710 Landmark Drive, Suite 400, Columbia, Carolina, on the 13th day of December, 2011, before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Allen Court Reporting  
1103 Three Chop Run  
Lexington, South Carolina 29072  
(803) 767-2766

1 Q: So you have a lawsuit as a result of a car accident?

2 A: Yes.

3 Q: And you have given one deposition but it's taken a  
4 number of different times to go and give your  
5 testimony?

6 A: Yes.

7 Q: And why is that?

8 A: Because of my injuries.

9 Q: Is it because of your strength level?

10 A: Because of my injuries.

11 Q: Because of your injuries you are having continuing  
12 problems so they have to come back and talk to you  
13 about another injury? I'm trying to find out is it  
14 because you can't sit still for an hour? Because I  
15 don't want to go over those conditions with you or if  
16 those conditions affect your ability to testify I want  
17 to know about them.

18 A: They're broken up because I'm in a lot of pain and it's  
19 difficult to sit for long periods of time. I also  
20 suffer memory loss.

21 Q: So in the car accident that you had you had a closed  
22 head injury?

23 A: I'm not here to talk about my injuries.

24 Q: Well, you can talk to your attorney about it but I'm  
25 entitled to find out about that because that could

1 A: While I lived there, ma'am. I had been there a while.  
2 I don't know.

3 Q: Did you deduct the cost of fixing the plumbing from  
4 your rent?

5 A: No.

6 Q: Were you current on your rent to Mr. Thompson when you  
7 moved out?

8 A: Yes.

9 Q: Do you remember when the dishwasher stopped working?

10 A: Six months maybe. Seven months, something like that.

11 Q: And you lived there about eleven months?

12 A: Around. Yeah.

13 Q: So for five, four to five months you didn't have a  
14 dishwasher?

15 A: No. I didn't have a dishwasher for several months. I  
16 was washing dishes by hand. I don't remember how long  
17 it was.

18 Q: What about your refrigerator? When did that stop  
19 working?

20 A: I don't know. Let's see. There's no way I would be  
21 able to remember that. I just, I was mad because my  
22 freezer was full. So I took pictures of all the food.  
23 And it was hot. So it had to be in the summer because  
24 it was hot. That's all I remember.

25 Q: Did you complain to Mr. Thompson about the refrigerator

1 A: I don't know where Sam lives.

2 Q: Do you know if he kept the house?

3 A: I never checked. I don't know.

4 Q: So what I want to make sure is that we've discussed  
5 each conversation you had with them about the house.  
6 And what you've told me about is the plumbing issue,  
7 the Roto-Rooter, the broken refrigerator.

8 A: I can't remember every conversation I had with Sam  
9 because I have memory trouble. I do not remember every  
10 conversation I had with Sam. I remember realizing that  
11 this might be a money issue and then he said he was  
12 letting the house go. People who let their houses get  
13 foreclosed do not come in and fix things when they're  
14 broken. He was pretty, you know, nasty about it. He  
15 wasn't fixing nothing. We were her friends. They were  
16 divorcing. You know, I was her friend. So he was like  
17 nasty. He was nasty.

18 Q: What else was broken in the house other than the  
19 plumbing broke at one point, the refrigerator and the  
20 dishwasher?

21 A: Somebody tried to break in the house through the back  
22 door. Of course he wouldn't come put a lock on. I  
23 asked him about that. It was just useless. You know,  
24 it wasn't a lot of stuff. It was a nice house.

25 Q: Anything else you can remember? Now you have the

1 A: I wouldn't remember, ma'am. It would have been before  
2 I called the ambulance, whatever time of day that was.  
3 I'm thinking it was late afternoon or evening but I  
4 could be wrong. It wasn't breakfast.

5 Q: So you put the food on the table, you asked him to come  
6 in to eat. And tell me what happens.

7 A: He came and he, we were still talking. I was facing  
8 him like I'm facing you. And he started falling and he  
9 screamed. I heard some wood cracking. And then he  
10 fell. He screamed. And it's not a big kitchen. The  
11 table was right here. And I came around. And he was  
12 sprawled on the floor. And it was a piece of molding,  
13 I'm saying molding from what I know about houses. It  
14 was a piece of wood that was in the floor. It was up  
15 like this like a seesaw. I told him not to move. His  
16 foot was under it. I thought his foot was, he had  
17 twisted his ankle. I removed the molding. It had  
18 nails in it, rusty nails. So I told him to stay still.  
19 I pulled off my jacket. And it was blood everywhere.  
20 So there's just blood coming from everywhere. I pulled  
21 that molding out of his foot. I thought at that point  
22 his foot was, ankle was twisted because it was turned  
23 around like. I told him not to move. I called 911. I  
24 tried to stop the bleeding. And I was concerned that  
25 those rusty nails might have went in his ankle because

1           There's no way I would remember that, ma'am. If I  
2           walked in there it would have been, it couldn't have  
3           been that day.

4       Q:   When you walked over that area before he fell, did you  
5           notice anything about the wood?

6       A:   No.

7       Q:   Had you ever noticed anything about this wood strip,  
8           the molding that you've described earlier as where he  
9           tripped?

10      A:   I know it was there.

11      Q:   And what I understand you're telling me is the living  
12           room had a wooden floor like hardwood floors?

13      A:   Yes.

14      Q:   And then there was the piece of molding and then there  
15           was linoleum or tile in the kitchen. Is that the way  
16           it was?

17      A:   Yeah. It was wood. I'm used to aluminum molding.

18      Q:   Okay. This was --

19      A:   This was wood that was actually down in the floor. It  
20           was like a quarter, half-inch thick down in the floor.  
21           It's an older house. It was wood molding. Not your  
22           typical molding that Raymond and I would install when  
23           we used to install kitchen floors. It was in the  
24           floor.

25      Q:   How many times --

1 molding. He went under it and tripped because somehow  
2 I thought, I was scared that the nails were in his  
3 foot. I pulled it out of his shoe. I did not pull  
4 nails out of his flesh. But at that time I thought the  
5 nails were in his flesh. I guess I was worried about  
6 tetanus and stuff. I told him not to move. I just  
7 pulled them out and he, it was just awful. It was  
8 awful.

9 Q: How much of the molding had come up?

10 A: It was --

11 Q: Was it the entire piece?

12 A: No. It was up in the air like a seesaw. So I don't  
13 know what you would call that degree. It was up on top  
14 of his foot. The bottom, the other end of it was down  
15 in the floor.

16 Q: The other end was still --

17 A: In the floor.

18 Q: -- nailed into the floor?

19 A: I wouldn't say it was nailed because all I did was lift  
20 it up. Maybe it had been nailed and came loose. It  
21 was no effort to remove it or anything like that. I  
22 just pulled it up. Just old house, ma'am. Stuff  
23 happens. Bad luck.

24 Q: Then you told me that you called 911, the ambulance  
25 came and got him. What do you know about the treatment

1 the house go and come back and get your rent.

2 Q: Uh-huh (affirmative response).

3 A: I could understand he didn't care because he was  
4 letting the house go. He said Jackie wanted that  
5 house, not him. And that's what he would say over and  
6 over again. So it was just a mess.

7 Q: But is it your testimony that you never told him that  
8 there was anything wrong with this piece of wood?

9 A: There was nothing to see that there was wrong with that  
10 piece of wood. How would I know that?

11 Q: So because there was nothing to see there's nothing you  
12 ever asked him to fix; is that right?

13 A: The wood?

14 Q: Right.

15 A: No. It dislodged when Raymond walked into the kitchen.  
16 No. I never asked him to fix that piece of wood. We  
17 had no conversations about that piece of wood. Had I  
18 known that the piece of wood was going to come  
19 dislodged I probably would have had it repaired. But  
20 there's nothing you could see or predict. I'm not a  
21 prophet. Like I said, I have some degree of compassion  
22 for their situation. Enough to get him a second job.  
23 And I think we did help because Jackie thanked us  
24 because she said she would be in jail if she was still  
25 in South Carolina because there were warrants for her.

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) C/A #2009-CP-40-03531  
)  
)  
)  
Raymond Armstrong, )  
Plaintiff, )  
)  
v. )  
)  
Jacqueline Berry and, )  
Samuel J. Thompson, )  
Defendants, )  
----- )

(COPY)

THE DEPOSITION OF  
**SAMUEL J. THOMPSON**

\*\*\*\*\*

Friday, March 16, 2012  
10:05 a.m. - 11:52 a.m.

The deposition of Samuel J. Thompson, taken on behalf of the Plaintiff at Baker, Ravenel & Bender, LLP, 3710 Landmark Drive, Columbia, South Carolina, on the 16th day of March, 2012, before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 specifically what you did?

2 A: I put in the flooring.

3 Q: What type of flooring did you put in?

4 A: It was Magnoleum, but I just did the flooring  
5 itself, I did not put the covering on it.

6 Q: Okay. Say that one more time because I'm not  
7 sure I'm understanding it?

8 A: I put the flooring in. I ripped up the old  
9 floor and put a floor in.

10 Q: So a sub-flooring -- the wood --

11 A: Yeah. The wood --

12 Q: -- underneath?

13 A: Yes.

14 Q: Okay. When you ripped up the sub-flooring,  
15 what type of sub-flooring had been in the home?

16 A: It was Magnoleum that I had put down prior to  
17 when we moved in.

18 Q: So you had put some linoleum. It looks like  
19 tile, but you roll it?

20 A: No. It was tile.

21 Q: Okay. What was under the tile when you --

22 A: Magnoleum.

23 Q: Okay. I'm not familiar with Magnoleum, can you  
24 just kind of --

25 A: That's a roll. That's a whole roll that they

1 roll out.

2 Q: Okay.

3 A: It can look like tile -- you know.

4 Q: Right. Yeah. They come in rolls.

5 A: Right. They come in rolls.

6 Q: Okay. All right. So when you moved in the  
7 home, there was linoleum in the kitchen?

8 A: Yes.

9 Q: We're back in 2001?

10 A: Yeah.

11 Q: And you put tile over the linoleum?

12 A: Yes.

13 Q: And do have any knowledge as to what was under  
14 the linoleum?

15 A: No.

16 Q: So when you did the remodel, you took the tile  
17 up?

18 A: And the original Magnoleum.

19 Q: And the linoleum?

20 A: Yeah.

21 Q: Okay. And when you remodeled, what was under  
22 the tile and linoleum?

23 A: There wasn't any other tile.

24 Q: Right. There was wood sub-flooring down there?

25 A: Yes.

1 Q: Okay. In the remodel, did you replace that  
2 wood sub-flooring or did you just remove the  
3 tile and the linoleum?

4 A: I replaced the wood sub-flooring.

5 Q: And why did you replace the wood sub-flooring?

6 A: It needed redoing. It just needed another  
7 floor.

8 Q: And why did it need to be redone?

9 A: There was part -- I wanted to make sure I knew  
10 -- had knowledge of what was under there. I  
11 mean, it wasn't anything wrong with it, but I  
12 just wanted to replace the flooring with a  
13 thicker wood.

14 Q: So when you replaced it, you used a thicker  
15 wood?

16 A: Yes.

17 Q: All right. When you lived in the home and you  
18 put -- when you first moved in, in 2001, and  
19 you put the tile over the linoleum, as you left  
20 the kitchen to go into -- I believe it's the  
21 living room, what separated -- first of all,  
22 what type of flooring was there in the living  
23 room then?

24 A: Hardwood.

25 Q: So when you moved into the home in 2001, in the

1 kitchen they had linoleum, and then in the  
2 living room there was hardwood, correct?

3 A: Yes.

4 Q: Okay. And was there any stripping, anything  
5 dividing the linoleum from the hardwood between  
6 the two rooms?

7 A: Yes, it was a piece of wood in the doorway  
8 about four inches wide.

9 Q: All right. So that four-inch-wide piece of  
10 wooding, did it span the entire doorway between  
11 the kitchen and the living room?

12 A: Yes.

13 Q: Okay. And you mentioned in your remodel that  
14 you refinished the original wood flooring. So  
15 the living room, you refinished the floor, is  
16 that correct?

17 A: Living room refinished the floor, yes. Or  
18 contractors did.

19 Q: Oh, I understand. We can clarify that. All  
20 right. When you put the tile down when you  
21 first moved in, did you do -- did you do  
22 anything with that four-inch-wide strip of wood  
23 in the doorway?

24 MS. GRIFFIN: Object to the form.

25 A: It was just in the doorway holding down the

1 tile on the other side. That's all that was  
2 the purpose of the four-inch strip.

3 Q: Right. And you stated that, when you moved  
4 into the house in 2001, that there was linoleum  
5 in the kitchen, correct?

6 A: Uh-huh (affirmative response).

7 Q: Was that four-inch piece of wood already there  
8 or did you put that in when you put the tile  
9 down?

10 A: I put it in when I put the tile down.

11 Q: Did you do that yourself or did you have a  
12 contractor do it?

13 A: I did that.

14 Q: And what did you use to secure that four-inch  
15 piece of wood that was in that doorway?

16 A: To my recollection, I think it was screws.

17 Q: Do you recall what type of screws?

18 A: No, just wooden screws.

19 Q: Was it a screw that you use with a screwdriver  
20 or was it a nail used with a hammer?

21 A: I used it with my battery --

22 Q: The electric --

23 A: -- screwdriver.

24 Q: -- screwdriver or drill?

25 A: Like, I mean, battery operated.

1 Q: Okay. Do you recall how many screws you put  
2 down?

3 A: No.

4 Q: Do you recall where you placed those screws?

5 A: If I'm not mistaken with my recollection, I  
6 placed one on each end and I'd guess it was  
7 about six screws in the whole -- throughout  
8 evenly.

9 Q: Okay. So you placed one on each end and where  
10 were the other screws?

11 A: In between those --

12 Q: Kind of evenly spaced throughout?

13 A: Yes.

14 Q: You say you used about six screws?

15 A: Yes.

16 Q: Before you put that piece of wood strip there,  
17 when you moved into the house and the linoleum  
18 was there, was there anything down there  
19 dividing the linoleum from the hardwood?

20 A: No.

21 Q: Okay. So when you moved into the house, there  
22 was nothing in between the two rooms, but when  
23 you put the tile down, you put that wood strip  
24 down?

25 A: Yes.

State of South Carolina

Court of Common Pleas

County of Richland

2011-CP-40-04883R

Raymond Armstrong

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Jacqueline Berry and

:

Samuel J. Thompson

:

May 8, 2012

Columbia, South Carolina

B E F O R E:

The Honorable Alison R. Lee, Judge.

A P P E A R A N C E S:

Shannon L. Felder, Esquire  
Attorney for the Plaintiff

Catherine G. Griffin, Esquire  
Attorney for the Defendants

Daphne D. Helms  
Circuit Court Reporter

1           The Court: The next matter is docket number  
2 2011-CP-40-04883R, Raymond Armstrong versus Jacqueline Berry  
3 and Samuel Thompson. The plaintiff is represented by Shannon  
4 Felder. The defendant is represented by Catherine Griffin.  
5 We're here on a motion for summary judgment that was filed by  
6 Ms. Griffin. Yes, ma'am.

7           Ms. Griffin: May it please the Court? Your Honor, this  
8 is a case which involves a trip and fall by the plaintiff in  
9 a premises owned by Mr. Thompson and rented to the plaintiff,  
10 Mr. Armstrong. Just as some background, the plaintiff and  
11 his sister whose name is Beverly Armstrong-Washington - and  
12 who is referred to throughout my memo as Washington - moved  
13 into Mr. Thompson's premises back in November of 2005 and  
14 lived there for approximately 11 months 'til October 1st,  
15 thereabouts, 2006, when Mr. Armstrong had this accident in  
16 the house.

17           During the time they lived there, the testimony from Mr.  
18 Armstrong and his sister was consistent that they didn't have  
19 any problems with the area of the house where Mr. Armstrong  
20 fell. Now, where he fell in this house - and I've attached a  
21 couple of pictures to show you - is going from the living  
22 room in the house into the kitchen, transitions from hardwood  
23 floor to linoleum tile and there's a piece of wood, the  
24 threshold, because there's an opening -- there's sort of a  
25 bar kind of area or a half-knee wall over to the left as you

1 walk in from the living room, and Mr. Armstrong says as he  
2 walked into the kitchen that the wood popped up and that he  
3 tripped.

4 Ms. Washington, his sister, says as he walked to the  
5 area, a piece of molding, like a quarter round of molding,  
6 popped up. The pictures that we have that they took show a  
7 piece of threshold molding that's there at the door, but  
8 whether it's a quarter round or whether it's the other  
9 molding, for purposes of this motion it doesn't make any  
10 difference because in this case the plaintiff never notified  
11 the landlord who had given possession of his residence to the  
12 plaintiff as the tenant that there was anything wrong with  
13 the molding or threshold in that kitchen area.

14 I questioned both the plaintiff and his sister  
15 extensively on this issue: Had they ever had the molding pop  
16 up before? The answer was no. Had they ever noticed that  
17 the floor was loose in that area? No. Had they ever noticed  
18 anything about this area? No, not until after Mr. Armstrong  
19 fell.

20 Ms. Beverly Washington said in her deposition that there  
21 was essentially nothing wrong with it until he caught his  
22 foot on it and dislodged it and popped it up. She said if  
23 she had known the wood was going to become dislodged, she  
24 would have had it repaired, but there's nothing you could see  
25 or predict; I'm not a prophet.

1        So with that background that there was nothing that they  
2        knew about this wood and no notice given to the landlord, Mr.  
3        Thompson, we filed this motion for summary judgment. In  
4        looking at the law that would apply in this case, the  
5        plaintiff essentially has pled negligence and has pled that  
6        we owe a duty to keep the premises safe.

7        Now, in South Carolina the common law is that the  
8        landlord doesn't owe a duty to keep it safe unless it falls  
9        within one of the recognized exceptions, and the exceptions  
10       include whether we undertake a repair which we didn't  
11       undertake any repair during the leasehold of the time of  
12       Armstrong; whether it was a common area which it's not;  
13       whether it was open to the public and it's not; whether there  
14       was an existing or foreseeable danger to a third party, it's  
15       not; and then whether or not it was a concealed danger and  
16       one that the landlord should have known about or knew about  
17       and there's no evidence that the landlord knew about this  
18       particular condition in the house or should have known about  
19       the condition in the house. So under the common law applying  
20       to the landlord-tenant relationship, this Court should grant  
21       summary judgment.

22       Now, in the plaintiff's complaint they don't raise the  
23       issue under the South Carolina Residential Landlord Tenant  
24       Act, but assuming that they raise it now, then under that law  
25       which there are at least two cases that have addressed that

1 the Residential Landlord Tenant Act gives a cause of action  
2 to a tenant to bring an action against a landlord for failing  
3 to make repairs upon notice, the case law is not very clear  
4 but it seems to imply that the notice has to even be in  
5 writing because that's what the statute provides for is that  
6 the notice must be in writing.

7 But if you analyze it under the Residential Landlord  
8 Tenant Act, then the plaintiff has not produced any evidence  
9 that they gave notice to Mr. Thompson that there was anything  
10 wrong with this floor and gave him a reasonable amount of  
11 time to repair it, and that's important because under the  
12 Residential Landlord Tenant Act it's twofold. They have to  
13 give the notice, whether in writing or oral. I think that  
14 the -- the case of Robinson versus Code seems to indicate  
15 that according to the statute it should be in writing, but  
16 there's not a case on point in South Carolina yet on that  
17 issue and these are Court of Appeals cases that have  
18 addressed the duties under the Residential Landlord Tenant  
19 Act.

20 But assuming that you have to give notice, then the  
21 plaintiff has no evidence that they gave notice to the  
22 landlord and absolutely no evidence in writing. And what do  
23 they have? They produced something on Friday, and it's the  
24 affidavit of a friend, Ms. Moore, and I filed a motion to  
25 exclude portions of that affidavit, and the reason I filed a

1 motion is because the affidavit is full of hearsay and the  
2 main hearsay in the affidavit which I'm asking the Court not  
3 to consider is that Ms. Washington, the sister, testified  
4 that she never told the landlord about this condition before  
5 the fall.

6 The Court: I'm sorry. Did you say there was an  
7 affidavit filed?

8 Ms. Griffin: Yes, Your Honor. It was filed on Friday,  
9 I believe.

10 Ms. Felder: Your Honor, if it's not in the court file  
11 before you, it is Exhibit 3 attached to my memo.

12 The Court: Got it.

13 Ms. Griffin: Okay. With respect to this affidavit, I  
14 would ask the Court not to consider portions of the affidavit  
15 because it's not based on Ms. Moore's personal knowledge.  
16 And specifically in this affidavit she relates a conversation  
17 she had with the plaintiff's sister where she says the  
18 plaintiff's sister told her that she told the landlord that  
19 there were problems with the floor. Well, that is hearsay  
20 without an exception to it, and I would ask -- I'm asking the  
21 Court not to consider it.

22 But even if you decide you're going to consider it for  
23 purposes of just thinking through whether this makes any  
24 difference, Ms. Moore doesn't say in the affidavit when the  
25 conversation allegedly took place between Armstrong-

1 Washington and Thompson because she wasn't a party to it.  
2 She didn't hear it. She doesn't have the personal knowledge.  
3 Ms. Armstrong-Washington says I didn't have the conversation  
4 until after my brother fell. So that is the first problem  
5 with what she says.

6 The second problem is that what she relates in this  
7 affidavit where they're trying to defeat the motion for  
8 summary judgment is that the sister told the landlord that  
9 there was a problem with the floor. Well, that is very  
10 broad. What kind of problem with the floor? What area of  
11 the floor? There was some testimony in her deposition that  
12 there was some softness on the floor near the dishwasher in  
13 the kitchen, but that's far away from this threshold and far  
14 away from this issue of whether the molding came up or that  
15 we knew it was going to come up or should have known it was  
16 going to come up.

17 So those issues of -- she doesn't say when the  
18 conversation took place, what area of the house allegedly was  
19 reported to Thompson through the sister, and then finally she  
20 says shortly after this conversation allegedly occurred,  
21 Moore - I mean Armstrong - the plaintiff fell. Well, in  
22 analyzing it under South Carolina Residential Landlord Tenant  
23 Act, they have to not only just give notice which I contend  
24 that this is not notice, not what is contained within this  
25 affidavit, but if you assume it's notice, then the landlord

1 -- landlord has time to respond to the notice that there is a  
2 repair that needs to be done in the house. There's no  
3 indication within this as to how much time went by from the  
4 alleged conversation that may have taken place that the  
5 sister denies ever took place and when Mr. Armstrong fell.

6 So for those reasons I'm asking the Court not to  
7 consider this affidavit, and even if you consider it, it's  
8 not raising a genuine issue of material fact because it's too  
9 vague, it's too speculative, and it doesn't answer the  
10 questions that are put to this Court and that is whether  
11 there's notice given to the landlord under the Residential  
12 Landlord Tenant Act.

13 Those questions are answered clearly by the witnesses,  
14 the people who live in the home, and they both answer them  
15 that they never gave him notice because they didn't know  
16 anything about it because it wasn't obvious and it wasn't  
17 something that had ever given them any problems until Mr.  
18 Armstrong stepped in that area that day and the board popped  
19 up. For those reasons we ask both under the common law  
20 interpretation of the landlord's duties to their tenants and  
21 under the Residential Landlord Tenant Act that this Court  
22 grant summary judgment to Mr. Thompson.

23 The Court: Ms. Felder?

24 Ms. Felder: Thank you, Your Honor. May it please the  
25 Court? In this particular matter -- and I'm not going to

1 rehearse the facts that Ms. Griffin has already given, but  
2 Mr. Raymond Armstrong testified that - and also his sister -  
3 that as he was walking between the living room of this  
4 particular home and the kitchen that there was a piece of  
5 molding and that as he stepped forward, it seesawed. A piece  
6 of the molding actually went into his shoe. He fell and  
7 sustained a fracture, and because it's a pre-existing medical  
8 condition, there's some significant injury as a result of  
9 that particular injury.

10 During Mr. Armstrong's deposition, he testified that  
11 when it came to complaining to the landlord, addressing  
12 issues with the landlord that his -- he did not converse with  
13 the landlord regarding those matters, that his sister who  
14 lived there along with him at that time would have been the  
15 one to address those matters. Ms. Armstrong-Washington in  
16 her deposition did say that she did not complain to Mr. -- to  
17 Mr. Thompson regarding this particular piece of wood, but in  
18 her deposition immediately she stated that she had had an  
19 incident that had caused her significant brain memory loss.  
20 She stated that the memory loss affected both her short and  
21 long-term memory, and she also said I cannot remember every  
22 conversation I had with Sam - that's the defendant in this  
23 case - because I have memory trouble. I do not remember  
24 every conversation I had with him.

25 And so although she did deny it, there are some issues

1 concerning her ability to recall, and the affidavit which was  
2 submitted by Ms. Karen Moore does counter or contradict some  
3 of what Ms. Washington said in her deposition. Ms. Moore was  
4 a business partner of Ms. Armstrong-Washington's at the time.  
5 They were doing a television show called *Carolina Mom*, and  
6 they did not have an office space so they worked out of the  
7 home. And so she talks about she spent a significant amount  
8 of time with her and including the time at issue here where  
9 she lived in the home that was owned by Mr. Thompson, and  
10 then she talks about conversations between herself and Ms.  
11 Washington wherein they were talking about the condition of  
12 the home.

13 In the affidavit she goes on to say that as a result of  
14 those conversations where Ms. Washington was constantly  
15 complaining about the condition of this home and about the  
16 landlord's failure to repair the issues that she actually  
17 kind of assisted the plaintiff and his sister in locating  
18 another home to move into. Also, specifically she states  
19 that prior to this particular incident when she was in the  
20 home that she was walking through that same doorway and that  
21 as she walked through that doorway her evidently foot hit the  
22 piece of wood in between the doorway a certain way and it  
23 caused her to trip, but she did not fall or sustain  
24 significant injury. But at that point in time it was pointed  
25 out to Ms. Washington, and then she says in her affidavit and

1 she -- I want to quote it exactly. She said Ms. Arm --  
2 "Beverly Armstrong-Washington witnessed me trip over this  
3 piece of wood, and she related to me that she informed the  
4 landlord, Mr. Samuel Thompson, that the floor needed to be  
5 repaired."

6 And admittedly in her affidavit she does not clarify  
7 what she meant by related to me. I'm not sure if she was  
8 there on the other end but obviously not able to hear the  
9 landlord's response, and she has not been deposed as of yet  
10 to kind of flesh out the details of what she meant. But --  
11 so we do feel that if Ms. Moore's statement is considered and  
12 taken as true that there is evidence -- additional discovery  
13 would be needed to kind of flesh it out to determine whether  
14 or not the landlord knew or should have known.

15 But as a separate issue in this particular case, when I  
16 deposed the landlord, the defendant in this action, Mr.  
17 Samuel Thompson, he testified that the piece of wood in this  
18 entryway at issue was not original to the home, that at some  
19 point in time prior to the plaintiff and his sister moving  
20 into this premise that he had redone the floors in the  
21 kitchen himself and that when he redid the floor that he put  
22 that piece of transitional wood down and he -- also in his  
23 deposition he did not indicate any background in contracting  
24 or building, repair, maintenance, construction.

25 And as I said, what happened in this particular

1 situation, according to the deposition testimony, is when --  
2 when the plaintiff stepped into the doorway, the wood became  
3 dislodged. Ms. Karen Moore's affidavit also says that when  
4 she stepped into that doorway a certain way that that piece  
5 of wood became dislodged. And in her affidavit she also says  
6 that you could not visualize that it was loose as you  
7 approached it. You didn't know it was loose, but when you  
8 got there, it appeared that it was not properly secured in  
9 the flooring.

10 In his deposition, Mr. Thompson testified that when he  
11 put the tile in the kitchen and redid the flooring that he  
12 did not -- that he put the new flooring on top of the old  
13 flooring and that he used -- he characterized the wood. He  
14 wasn't sure the length of the screws he used or, you know, he  
15 testified remembering that he used his battery-operated  
16 screwdriver to secure them.

17 After we left his deposition, we served some follow-up  
18 discovery on him seeking to get more information concerning  
19 the nature of what he had installed on this particular  
20 property, and we received the responses to that discovery on  
21 Friday, and those discovery responses, you know, give us some  
22 information from which a jury could infer that he actually  
23 created the hazard that caused this particular fall. You  
24 know, if he had perhaps had a contractor to come in and do  
25 the remodeling of this home we might have a different factual

1 scenario, but in this particular case it's his uncontradicted  
2 testimony that he was the one that installed this particular  
3 piece of wood -- this transitional wood in the doorway. It's  
4 his testimony that he installed it on top of existing  
5 flooring.

6 It's also his testimony -- I'm sorry. It's also Ms.  
7 Beverly Armstrong-Washington's testimony was that when her  
8 brother fell and this particular piece of flooring fell --  
9 was lodged in his shoe that it didn't seem to be secured,  
10 that she was able to just lift the rest of it up. After he  
11 fell and it kind of seesawed and it was caught in his shoe,  
12 she went ahead and removed the piece of wooding from the  
13 flooring. Therefore, it -- and, you know, she said it wasn't  
14 -- it wasn't difficult to remove this piece of wooding from  
15 the flooring at that particular time.

16 And so we feel as if there is an issue of material fact  
17 as to, number one, whether or not he had notice of -- the  
18 landlord had notice of this defect. Secondly, we feel  
19 there's an issue of material fact as to whether or not this  
20 was a hazard that was not open and obvious, that was latent,  
21 which the landlord knew or should have known of because he  
22 himself created that particular issue.

23 As Ms. Griffin stated, this case is a negligence action.  
24 We have not alleged any cause of action under the Landlord  
25 Tenant Act; we do agree with that. We do agree that there is

1 indication in the case law that that would require writing,  
2 and we do not have any evidence of Ms. Armstrong-Washington  
3 having complained in writing to the landlord in this  
4 particular case. I don't think we even have a written lease  
5 agreement in this particular case because there was a  
6 relationship between Ms. Washington and the defendant,  
7 Jacqueline Berry. And so it was kind of I guess among  
8 friends, and so I don't think we have any evidence of  
9 anything having been in writing.

10 However, under the summary judgment standard I do feel  
11 we have evidence to support an issue for the factfinder  
12 regarding whether there was notice to the landlord, first of  
13 all, and, secondly, whether the defendant landlord is  
14 responsible for having created the hazard which caused the  
15 injury.

16 The Court: Any response?

17 Ms. Griffin: Yes, Your Honor. Just in response to  
18 that, what I hear her saying is that they would abandon any  
19 argument under the Residential Landlord Tenant Act but that  
20 they're proceeding under common law negligence and under this  
21 exception for a concealed danger within the house and that  
22 the landlord knew or should have known. With respect to  
23 that, as far as the notice issue, I stand on the same  
24 argument I made before that Ms. Moore's affidavit does not  
25 meet the Rule 56(e) standard. Based upon her personal

1 knowledge, it wouldn't be admissible at trial because it's  
2 full of hearsay.

3 Ms. Washington, the sister who has memory loss, also  
4 testified fully regarding lots of different topics within her  
5 deposition, and so you can't have somebody who has got memory  
6 loss and an unavailable witness and only be unavailable in  
7 certain aspects of the testimony. So Ms. Moore's affidavit  
8 is simply contradicting what the tenant herself says and is  
9 rank hearsay.

10 With respect to this created a hazard, there's no  
11 evidence that what Mr. Thompson did created a hazard. In  
12 fact, the second part of the memo I filed - and I wasn't sure  
13 that this would come up - is on res ipsa and that is that you  
14 can't just argue because somebody fell there must be  
15 something wrong with something in the house. There has to be  
16 some evidence that Mr. Thompson did something negligently.

17 The only evidence is that he installed that piece of  
18 threshold wood that's still there in the pictures. Ms.  
19 Washington says it was another piece of quarter round molding  
20 that she pulled up that's not in the pictures that was the  
21 offensive piece of wood. But assuming that that wood is what  
22 caused the problem, they've got to show that there was  
23 something negligent about the way he put it in there after  
24 11 months of those tenants living there, walking in and out  
25 of that entranceway every single day and never having any

1 problem with it, until Mr. Armstrong trips that day. So  
2 there's no evidence from the day he installed it and they  
3 moved in until the day something happened that there was  
4 anything wrong with the installation itself.

5 So for those reasons the plaintiff has not met her  
6 burden on Mr. Thompson creating the dangerous condition. He  
7 did put the threshold down, but that doesn't satisfy the  
8 requirement that they have to show that what he did was  
9 negligent in some way.

10 The Court: Okay. I'll review the memoranda that you  
11 presented today and issue an order.

12 Ms. Griffin: Thank you, Your Honor.

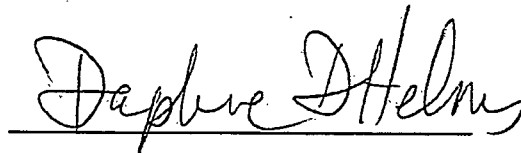
13 Ms. Felder: Thank you, Your Honor.

14 (Whereupon, the proceedings were concluded. There were  
15 no exhibits introduced.)  
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 8th of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 28, 2013

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

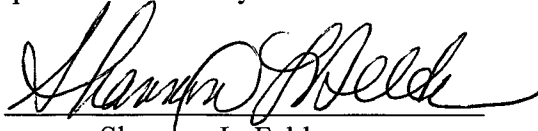
Daphne D. Helms, court reporter

Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 14, 2014



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APR 15 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

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Appellate Case No. 2013-001102

Case No. 2011-CP-40-04883R

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APR 16 2014

SC Court of Appeals

Raymond Armstrong,

Appellant,

v.

Samuel J. Thompson,

Respondent.

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PROOF OF SERVICE

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I certify that I have served the Appellants Record on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to his attorney of record, Catherine G. Griffin, Baker Ravenel Bender, P.O. Box 8057, Columbia, SC 29202, on April 14, 2014.

April 14, 2014

  
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