

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable R. Markley Dennis, Jr.

Case No. 2013-CP-10-7203

Nationwide Property & Casualty
Insurance Company, Plaintiff, Appellant,

v.

Gary McCombs and Ragan McCombs Albert, Defendants, Respondents.

**RETURN IN OPPOSITION TO
PETITION TO REINSTATE APPEAL**

Pursuant to Rules 240 and 260, SCACR, Respondent Ragan McCombs Albert hereby opposes Appellant Nationwide Property & Casualty Insurance Company's Petition to Reinstate Appeal ("Petition"). Appellant has provided no good reason why it did not comply with this Court's September 29, 2014 letter directing it to order the transcript, along with a motion requesting permission to order the transcript out of time, within 10 days of the date of that letter. In addition, Appellant still has not moved this Court for permission to order the transcript outside of the filing deadlines set by Rule 207, SCACR.

Appellant's only excuse for not complying with this Court's September 29, 2014 letter is its allegation that it "did not receive this correspondence." However, in its Petition, Appellant acknowledges that this Court requested a copy of the summons and

complaint filed below, which was promptly provided. This Court's letter requesting a copy of the summons and complaint was dated September 11, 2014 and sent to the exact same address. Appellant complied five days later, on September 16, 2014. In contrast, over a month passed before Appellant made any response whatsoever to this Court's September 29 letter and Appellant has provided no good reason for its failure to comply on a timely basis.

In addition, as noted above, Appellant still has not moved for permission to order the transcript out of time. This Court's Appellate Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Forner v. Butler, 319 S.C. 275, 277 n.1, 460 S.E.2d 425, 427 n.1 (Ct. App. 1995). Therefore, Appellant's attempt to provide this Court with a copy of the transcript at this late date and without moving to order it out of time is ineffective and should be rejected.

Finally, Respondent Ragan McCombs Albert notes that the caption as revised by this Court is not completely accurate, as both she and Respondent Gary McCombs were named in the Amended Complaint filed in this matter. (Amended Complaint; Negligence, filed February 19, 2014, Att. A).¹ Both Respondent Ragan McCombs Albert and Respondent Gary McCombs moved for summary judgment, (Defendant Ragan Albert's Memorandum in Support of Motion for Summary Judgment, filed August 1, 2014, Att. B) (Motion for Summary Judgment, filed July 14, 2014, Att. C), which the Circuit Court granted. (Form 4 Order granting summary judgment, filed

¹ Appellant did not copy or serve Respondent Ragan McCombs Albert with its September 16, 2014 response to this Court forwarding the Summons and Complaint. *See* (Petition, Exhibit 3). Therefore, Respondent Ragan McCombs Albert cannot discern what document was provided to

August 4, 2014, Att. D). Therefore, Respondent Ragan McCombs Albert respectfully asks this Court to revise the caption as follows:

Nationwide Property & Casualty
Insurance Company, Plaintiff, Appellant,

v.

Gary McCombs and Ragan McCombs Albert, Defendants, Respondents.

CONCLUSION

For all the reasons stated above, this Court should deny Appellant's Motion to Reinstate Appeal, and should revise the caption of the appeal as set forth herein.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

November 18, 2014



Helen F. Hiser
S.C. Bar No.: 76124
Robert R. Sansbury, III
S.C. Bar No.: 77384
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

Attorneys for Respondent Ragan McCombs Albert

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the Court. The Amended Complaint, however, names only Gary McCombs and Ragan McCombs Albert as Defendants in this case.

Attachment A

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)
)
NATIONWIDE PROPERTY &)
CASUALTYINSURANCE COMPANY)

IN THE COURT OF COMMON PLEAS
Case No.:2013CP107203

PLAINTIFF,
vs.)
)
GARY MCCOMBS)
)
RAGAN MCCOMBS ALBERT)
)
DEFENDANT(s) .

BY
AMENDED COMPLAINT
NEGLIGENCE
JULIE J. ARMSTRONG
CLERK OF COURT

2014 FEB 19 PM 3:00

FILED

Comes now PLAINTIFF, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY, and for its Complaint states:

Jurisdiction and Venue

1. The PLAINTIFF, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY, (hereinafter "PLAINTIFF,") is a foreign corporation.
2. On information and belief, the Defendant(s), GARY MCCOMBS (hereinafter "Defendant(s)") is citizen and resident of the above named County, State of South Carolina, who resides at 1282 CHRISMILL LANE , MOUNT PLEASANT SC 29466.
3. On information and belief, the Defendant(s), RAGAN MCCOMBS ALBERT (hereinafter "Defendant(s)") is citizen and resident of the above named County, State of South Carolina, who resides at 1282 CHRISMILL LANE , MOUNT PLEASANT SC 29466.

Facts:

4. Defendant(s) ROBERT ALBERT AND REGAN MCCOMBS ALBERT owned a rental property.
5. Plaintiff's insured owned property directly below the Defendant(s) property.
6. Due to Defendants Negligence, Plaintiff insured's property was damaged from water coming from Defendant's property, on or about December 2011.
7. The total amount of the damage caused is \$18,923.91 as evidenced in the attached photographs and documentation of estimated costs for repairs (Exhibit A, B and C). These documents detail the address, date of loss, and other pertinent information in addition to detailing the costs and details of the damage and repair to the property.
8. Defendant(s) is not insured for this damage and has not provided payment for the cost of the damages.

Count One: Negligence


9. PLAINTIFF realleges the foregoing paragraphs as if fully set forth and is incorporated herein by reference.
10. Defendant has a duty, among other duties, to keep his unit in such a fashion that his plumbing and fixtures do not leak onto the unit below. Defendant has failed to maintain his property and has thus breached his duty to the below property owners.

11. Defendant(s) has negligently caused harm to Plaintiff as alleged above through his behavior or lack of behavior which caused water damage, and other damage to the Plaintiff's Insured's property.
12. Plaintiff has suffered damages due to Defendant's negligence as described above.

Wherefore, PLAINTIFF prays that it be granted judgment for the following amounts:

- 1) For Count One, Negligence, PLAINTIFF prays that it be granted \$18,923.91 in principal, \$5,144.46 in prejudgment interest from December 17, 2010 through January 24, 2014, court costs and post judgment interest at the legal rate.

This 18 day of February, 2014.


NATALIE POWERS or TRACE DILLON
Bar No. 80705 or 16857
Attorney for PLAINTIFF
THE DILLON LAW FIRM PC
1130 Hurricane Shoals Rd
Suite 600
Lawrenceville, GA 30043
(770) 513-6400 (Office)
(770) 513-6577 (Facsimile)

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Attachment B

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knowledge as to whether Ms. Albert did anything to cause or contribute to the 2009 water intrusion incident. (Id.; p. 39, 21 – p. 40, 5). As it turns out, Mr. McCombs replaced Ms. Albert's water heater in June of 2009 with a brand new one. (Exhibit "C" - Affidavit of Ragan Albert; *see also* Exhibit "D" - Affidavit of Gary McCombs).

Then, on December 17, 2010, Ms. Thornley made another claim for water intrusion in her condominium, this time with Nationwide, and Nationwide paid for various repairs to Ms. Thornley's condominium – the December 2010 claim is the subject of this lawsuit. Ms. Thornley is the only witness named in Plaintiff's answers to interrogatories. (Exhibit "E").

Discussion

I. DEFENDANT, RAGAN ALBERT IS ENTITLED TO SUMMARY JUDGMENT AS PLAINTIFF'S ENTIRE CASE IS BASED ON SPECULATION

In order to survive Summary Judgment in this case, the Plaintiff must set forth evidence *admissible at trial* of what caused water intrusion into Alison Thornley's condominium in December of 2010; the Plaintiff cannot merely speculate as to the cause. SCRE 602 (a witness must have personal knowledge in order to testify – a witness may not speculate); *see also Hanahan v. Simpson*, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997) ("verdicts may not be permitted to rest upon surmise, conjecture or speculation.").

Here, Ms. Thonley has no personal knowledge as to the cause of the water intrusion into her condominium in December of 2010 as she (1) never spoke with Ms. Albert or Mr. McCombs regarding the December 2010 incident (Deposition of Alison Thornley; p. 25, 4-6), and (2) she never went upstairs to see the source of the water intrusion (Id.; p. 30, 25 – p. 31, 4). Indeed, Defendants Ragan Albert and Gary McCombs both deny any problems with water leaking from Ms. Albert's condominium in December of 2010, and therefore have no knowledge of the cause of the water intrusion either. (Exhibits "C" and "D"). Plaintiff's entire case is based on

speculation.

II. THERE IS NO EVIDENCE THAT RAGAN ALBERT WAS NEGLIGENT IN THE CAUSATION OF THE DECEMBER, 2010 WATER INTRUSION INCIDENT

Plaintiff's sole cause of action in this case is negligence. (See Complaint and Amended Complaint). To prevail on a negligence claim, a plaintiff must establish duty, breach, causation, and damages. Sherrill v. Southern Bell Tel. & Tel. Co., 260 S.C. 494, 499, 197 S.E.2d 283, 285 (1973).

In the instant case, the Plaintiff cannot prove negligence as its sole witness, Alison Thornley, readily admits that she has no personal knowledge as to whether or not Ragan Albert did anything to cause or contribute to water intrusion into Ms. Thornley's condominium in December of 2010.

p. 40

- 2 **Q: Do you have any personal knowledge as to whether or not**
3 **Ragan Albert did anything to cause or contribute to water**
4 **intrusion into your condo in December of 2010?**
5 **A: No.**

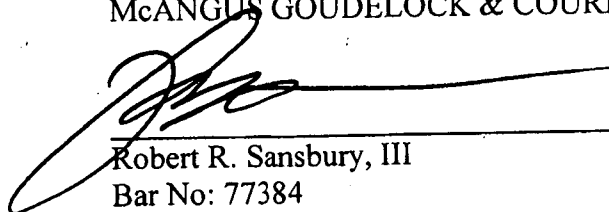
(Deposition of Ragan Albert, p. 40, 2-5) (bold emphasis added). As Ms. Thornley is Plaintiff's only witness, they have put forth no evidence of negligence, or to the cause of the 2010 water intrusion. Both of the Defendants deny negligence, or any water leaks. (Exhibits "C" and "D").

Conclusion

Defendant, Ragan Albert asks that the Court GRANT Defendant's Motion for Summary Judgment as to all causes of action.

[SIGNATURE ON NEXT PAGE]

McANGUS GOUDELOCK & COURIE, L.L.C.



Robert R. Sansbury, III

Bar No: 77384

Post Office Box 650007

735 Johnnie Dodds Blvd, Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANT, RAGAN
MCCOMBS ALBERT

July 23, 2014

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Attachment C

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Nationwide Property & Casualty)
 Insurance Company,)
)
 Plaintiff,)
)
 vs.)
)
 Gary McCombs and Ragan)
 McCombs Albert,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO: 2013-CP-10-7203

2014 JUL 14 AM 11:32
 JULIE A. BISHOP
 CLERK OF COURT
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MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRPC, the Defendant, Gary McCombs, moves the Court for an Order granting summary judgment in his favor on the ground that there is no genuine issue of material fact, and he is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence on his part that caused or contributed to the damages claimed by the Plaintiff in this case, nor are there any witnesses listed by the Plaintiff who could so testify. This motion is supported by the pleadings and discovery, including the affidavit of Gary McCombs attached hereto and filed contemporaneously herewith.

HALIO AND HALIO
 Attorneys for Gary McCombs

Andrew S. Halio
 ANDREW S. HALIO
 13 North Adgers Wharf-Box 747
 Charleston, SC 29402-0747
 (843) 577-5200

July 14, 2014
 Charleston, South Carolina

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 SC Court of Appeals

HALIO & HALIO, CHARLESTON, SOUTH CAROLINA

AFFIRMATION

I affirm that consultation with opposing counsel is not necessary prior to the filing of this motion.


BY _____
ANDREW S. HALIO

FILED
2014 JUL 14 AM 11:32
JULIE J. ANDERSON
CLERK OF COURT

CERTIFICATION

This is to certify that the undersigned attorneys did this date serve the *Motion for Summary Judgment* upon the attorneys below listed by mailing a copy of the same to their address, postage prepaid on July 14, 2014:

Trace Dillon
1130 Hurricane Shoals Rd
Suite 600
Lawrenceville, GA 30043

Robert R. Sansbury, III
735 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29465


ANDREW S. HALIO

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NOV 21 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Nationwide Property & Casualty)
 Insurance Company,)
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 Plaintiff,)
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 vs.)
)
 Gary McCombs and Ragan)
 McCombs Albert,)
)
 Defendants.)
 _____)


IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO: 2013-CP-10-7203

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 CLERK OF COURT
 BY _____

AFFIDAVIT

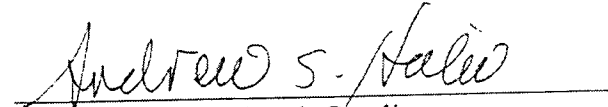
Personally appeared before me, Gary McCombs, who being first duly sworn, alleges and says:

My daughter, Ragan McCombs Albert, is the owner of a condominium at Cambridge Lakes Horizontal Property Regime, #1531 Cambridge Lakes Drive. In June 2009, I was notified of a leak at her unit that was found to be caused by the hot water heater. I replaced the hot water heater with a brand new one that I purchased from Lowe's. That hot water heater is still in use at the unit today. I am unaware of any problems with the hot water heater and was not aware of any issues with it until I was served with this lawsuit.



 Gary McCombs

SWORN to before me
 this 11th day of July, 2014



 Notary Public for South Carolina
 My Commission Expires: 9/5/22

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Attachment D

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

CASE NO. 2013- CP-10-7203

Nationwide Property and Casualty
PLAINTIFF(S)

~~Joseph C. Fischer LPA~~
GARY M. COMBS et al.
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

FILED
2014 AUG -14 AM 11:31
JULIE J. ARMSTRONG
CLERK OF COURT

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: Court granted Motions for summary Judgment in favor of all defendants.

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 (List amount(s) below)
N/A		\$
		\$
		\$

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.

R. P. ...
Circuit Court Judge

2060
Judge Code

8/11/14
Date

For Clerk of Court Office Use Only

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable R. Markley Dennis, Jr.

Case No. 2013-CP-10-7203

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SC Court of Appeals

Nationwide Property & Casualty
Insurance Company, Plaintiff,Appellant,

v.

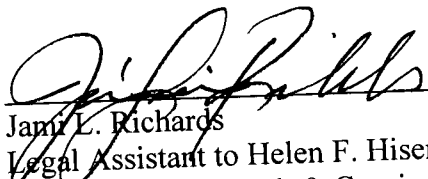
Gary McCombs and Ragan McCombs Albert, Defendants,..... Respondents.

PROOF OF SERVICE

I certify that on the 18th day of November 2014, I served Respondent Ragan McCombs Albert's **Return in Opposition to Petition to Reinstate Appeal** on the other parties to this appeal by depositing a copy of it in the United States Mail, postage prepaid, addressed to counsel of record as follows:

Trace Dillon, Esq.
THE DILLON LAW FIRM PC
1130 Hurricane Shoals Rd, Ste 600
Lawrenceville, GA 30043

Andrew Halio, Esq.
LAW OFFICE OF HALIO & HALIO
P.O. Box 747
Charleston, SC 29402



Jani L. Richards
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondent Ragan McCombs Albert

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

November 18, 2014

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Nationwide Property & Casualty Insurance Company v. Gary McCombs
and Ragan McCombs Albert
Civil Action No.: 2013-CP-10-7203 (Charleston)
Date of Incident: December 17, 2010
Carrier Claim No.: U7V3528
MGC File No.: 20527.14072
Appellate No.: 2014-001907

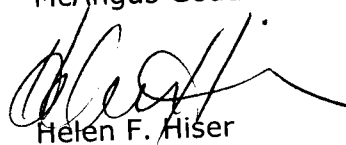
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent Ragan McCombs Albert's Return in Opposition to Appellant's Petition to Reinstate Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

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SC Court of Appeals

Enclosures

cc: Trace Dillon, Esq.
Andrew Halio, Esq.
Alexis T. Winburn, Travelers Insurance

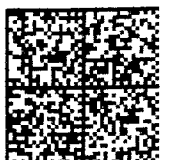
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POST OFFICE BOX 550007
MOUNT PLEASANT, SC 29465

20527.14072/HFH/jlr
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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