FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 19 CP-21-441

RECEIVED
JUN 18 2019
SC Court of Appeals

Lonnie William Britt and Bernice Britt
PLAINTIFF(S)

Marshall's Marine, Inc.
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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ 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 (List amount(s) below)
		$
		$
		$

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

CERTIFIED: A TRUE COPY
Connie Reel Strain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2019 APR 29 P 2:11

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of April, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of April, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

A. Lori Jones
600 Foxtail Dr.
Longs SC 29568
ATTORNEY(S) FOR THE PLAINTIFF(S)

M.N. Tyler
PO Drawer 1931
Florence, SC 29503
ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Bell-Shearin
CLERK OF COURT

Court Reporter: _____

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C/A NO.: 14-CP-21-441
	)	
Lonnie William Britt and Bernice Britt,	)	
	)	
Plaintiffs,	)	**ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT**
	)	
vs.	)	
	)	
Marshall's Marine, Inc.,	)	
	)	
Defendant.	)	
	)	

This matter comes before the court upon the Defendant's motion, pursuant to Rule 56, South Carolina Rules of Civil Procedure, for summary judgment. Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, *Pittman v. Grand Strand Entertainment, Inc.* 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Rule 56, SCRCP. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *McCall v. State Farm Mutual Automobile Insurance Company*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The non-moving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Company, Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

FACTS

In determining whether any triable issues of fact exist, the evidence and all inferences that can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007). Recognizing this standard, counsel for the Defendant submitted to the court the deposition of the Plaintiff Lonnie W. Britt, to which reference was craved outlining all facts from the Plaintiff's perspective. This testimony revealed that Mr. Britt, a former heavy equipment operator from Nichols, South Carolina, had done business with the Defendant Marshall's Marine for twenty-five years, and he had taken a boat to Marshall's for customization. Specifically, a center console with steering wheel and throttle functions were being made and installed in Mr. Britt's boat for his ease and convenience. On or about July 3rd Mr. Britt was informed by Marshall's Marine that the boat was ready for pickup. After receiving this call, he contacted his brother and asked that his brother take him to the Defendant's place of business, to pick the boat up so the family would have it for the holiday (4th of July).

Upon arrival at the Defendant's business, approximately sixty (60) miles from his home, the Plaintiff was greeted by Marshall Altman, one of the owners of Marshall's Marine. Marshall's Marine had a test lake, and the boat was in the water, thus Mr. Britt and Mr. Altman went to the boat where Mr. Altman invited Mr. Britt to take a test drive. Mr. Britt initially declined because "a cloud came up," but ultimately agreed to the test drive. The two of them then went out on the dock of the test lake and climbed in the boat. The Plaintiff acknowledged in his testimony that he walked on the dock without any problem, and unassisted, and entered the boat without any problem, again unassisted. He entered the boat on his own, and testified that he had done this many times before, and did not require assistance.

Mr. Britt and Mr. Altman then began the test drive with Mr. Britt driving. They had been on the test lake for approximately ten (10) minutes when they heard thunder and saw lightning, and it began raining. They headed back to the dock, with the Plaintiff testifying he had driven the boat enough time to adequately test it, and that he was extremely pleased with the work that had been done. The Plaintiff docked the boat, his testimony being that he was very experienced in docking the boat. The Plaintiff then stepped out of the boat, confirming that he requested no help, did not need help getting out of the boat, and again had done this many times without assistance. After getting out of the boat and standing on the dock, the Plaintiff slipped and fell. His testimony was "I just slipped somehow. I don't know. I just slipped and I fell." (Britt deposition, page 66 line 24). He speculates it was due to rain and the dock was slick, but acknowledged that he did not know, and "just slipped." He further acknowledged that the deck had a sandpaper type non-skid surface. The Plaintiff further stated that he was unaware of which foot slipped. As a result of the fall, the Plaintiff received injury, and ultimately he was taken by ambulance to the hospital for treatment. This lawsuit followed.

ANALYSIS

The Plaintiff contends that the Defendant was negligent in failing to provide reasonably safe premises and creating a dangerous condition and/or the Defendant breached their duty of care to the Plaintiff while he was on their premises. Both parties recognize that the Plaintiff occupied the status of an invitee. Generally, the owner of property owes an invitee the duty of exercising reasonable or ordinary care for his safety and is liable for injuries resulting from the breach of such duty. *Larimore v. Carolina Power and Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). However, in addressing premises liability as it relates to an invitee, in *Callander v. Charleston Doughnut Corporation*, 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991)

our South Carolina Supreme Court adopted §343A of the Restatement (Second) of Torts (1965). §343A reads as follows:

> §343A. Known or obvious dangers.
>
> 1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.
>
> 2. In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, as a factor of importance indicating that the harm should be anticipated.

Importantly, comment e. to §343 reads "In the ordinary case, an invitee who enters land is entitled to nothing more than knowledge of the conditions and dangers he will encounter if he comes. If he knows the actual conditions, and the activities carried on, and the dangers involved in either, he is free to make an intelligent choice as to whether the advantage to be gained is sufficient to justify him in incurring the risk by entering or remaining on the land. The possessor of the land may reasonably assume that he will protect himself by the exercise of ordinary care, or that he will voluntarily assume the risk of harm if he does not succeed in doing so. Reasonable care on the part of the possessor therefore does not ordinarily require precautions, or even warning, against dangers which are known to the visitor, or so obvious to him that he may be expected to discover them."

In the case sub judice, the Plaintiff now argues that the Defendant should not have invited him to take a test drive due to weather conditions. The Plaintiff further argues that the weather conditions included rain, which rendered the dock slick.

As to the first point, it was the testimony of the Plaintiff Britt, that, at his age, he was fully capable of making his own decisions and voluntarily walked to, entered and test drove the boat, testifying "well, he didn't grab me by the arm and lead me out there. He – I finally agreed and told him okay. And so we went and got in it...he didn't drag me out there or – or whatever" (Britt deposition P106, lines 9 – 14). He likewise acknowledged that the purpose for the test drive was to avoid later discovery of a problem requiring him to return the boat for further repair (Britt deposition, page 106, line 15 - page 107, line 12). It is apparent from the Plaintiff's own testimony that him walking to, entering, driving, docking and departing from the boat were all voluntary decisions agreed upon and performed by Mr. Britt, testifying that he neither asked for assistance nor did he need any (and that it likely would have been provided if he had asked for it), and that he had gotten in and out of the boat on his own many times without assistance (page 72, lines 1 through 8; page 128, lines 2 through 21). Further, the testimony of the Plaintiff (consistent with Mr. Altman, the only other witness to this accident) is that the rain began to fall upon them after they were already on the water, taking the test drive: "well, we got in and I took the boat and drove it around the lake there and all. And then I told them it handled good, you know, I really liked it. And then it started thundering and lightning and raining, so we headed back up to the dock." (Britt deposition page 61, lines 19 through 24).

As noted in comment e. to §343A, reasonable care on the part of the defendant does not require precautions or warning against dangers, such as a rain storm, which are known to the plaintiff and/or so obvious to the plaintiff that he may be expected to discover them. Here, the

testimony of the Plaintiff himself confirms that he was aware of the weather conditions that came upon them as he and Mr. Altman were on the lake. In this circumstance, the Defendant cannot be responsible for such a weather condition, as this would make the Defendant an insurer of the safety of the Plaintiff, and this is not the law in the state of South Carolina. Under our law, a merchant is not an insurer of the safety of his customers, but rather owes the customer only the duty to exercise ordinary care to keep the premises in a reasonably safe condition. Felder v. K-Mart Corporation, 297 S.C. 446, 377 S.E.2d 332 (1989). A merchant, such as the Defendant, is not required to maintain the premises in such a condition that no accident could happen to a patron using them. *Denton v. Winn Dixie Greenville, Inc.*, 312 S.C. 119, 439 S.E.2d 292 (Ct. App. 1993) citing *Panoz v. Gulf and Bay Corporation*, 208 So.2d 297 (Fla. App.), cert. denied, 218 So.2d 166 (Fla. 1968); *Garvin v. Bi-Lo*, 8343 S.C. 625, 629, 541 S.E.2d 831, 833 (2001). This court finds that, as a matter of law, the Restatement Second of Torts 343A, when read in conjunction with the Plaintiff's own testimony, makes it obvious that the Plaintiff was aware of the conditions and exercised his freedom to make an intelligent choice by remaining on the Defendant's property and engaging in the acts now complained of. Similarly, although the Plaintiff alleges negligence on behalf of the Defendant due to the Plaintiff's slip after standing on the dock (in the rain), the record, and specifically the deposition testimony of the Plaintiff, reflects that the Plaintiff himself was unsure as to how or why he slipped stating "....it was caused because it was raining and it was – and the deck was slick, I guess. I – I don't know. I just slipped." (Britt deposition page 67, lines 10 - 13, "that's (the rain) what made it slick, I guess." (Britt deposition page 67, lines 21, 22), "and I got out of the boat, and when I got on that deck, my – I just slipped somehow. I don't know. I just slipped and I fell." (Britt deposition page 66, lines 23 – 25).

710, 712 (2000). If the plaintiff fails to prove the defendant owed him a legal duty of care, the plaintiff fails to prove actionable negligence. *Doe v. Greenville County School District*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007). Further, a plaintiff must identify a duty that the defendant has, to protect him from a particular harm, to merit consideration of his claim by a jury. *Steinke v. South Carolina Department of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999).

CONCLUSION

It is clear, based upon the Plaintiff's own testimony, that any dangers to which he was exposed, if any, were known or obvious to him, and, thus, the Defendant is not liable under §343A of the Restatement (Second) of Torts (1965) which has been adopted by our courts and is the law in South Carolina. Thus, since the Plaintiff is owed no duty under our law to warn him of open and obvious dangers, I find that there has been no breach of any duty owed to the Plaintiff. All evidence indicates that any conditions complained of were known or obvious to the Plaintiff as established through his own testimony. Accordingly, summary judgment, pursuant to Rule 56 SCRCP, is hereby granted to the Defendant.

IT IS SO ORDERED.

Thomas A. Russo
Presiding Circuit Court Judge
Twelfth Judicial Circuit

April 24, 2015
Florence, South Carolina

FILED
2015 APR 28 PM 3:02
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

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FLORENCE COUNTY, S.C.