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SC Court of Appeals

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Judicial Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-5876



Jack Powell, Appellant,

v.

Marshland Communities LLC. Respondent,

NOTICE OF APPEAL

July 12th, 2015

The Appellant Pro se, Jack Powell hereby submits this Appeal because of the mistakes made by Judge R. Markley Dennis Jr during the Respondents Motion for Dismissal during case 2013-CP-10-5876, Marshland Communities LLC. that was granted on 8-4-14. Also, during the Order on Defendants Motion to Dismiss that was entered on 5-6-15 and the Appellants Motion for Reconsideration.

Therefore Judge Dennis erred in his decision to Grant the Dismissal because

of the following laws & ordinances violated by the Respondent that also caused their contracted partner the Folly Oaks Center to violate laws and ordinances.

Also, Judge Dennis erred in his decision when he stated; "Thus, having failed to state facts sufficient facts to constitute a cause of action, Plaintiff's complaint must be dismissed in it's entirety. Judge Dennis erred when he did not allow the Appellant to state any facts or submit any argument that did in fact reveal the laws and ordinances violated by the Respondent.

The Respondent stated they did not own the property or the cable lines and this was irrelevant concerning Marshlands negligence and violations. Judge Dennis erred in his ruling to dismiss the case the when the Property Manager, Marshland Communities , **EXHIBIT A, B** exercised Gross Negligence when they allowed the unburied cable lines to recklessly run through their contracted account's front yard for about one hundred feet and then trespassing across the adjacent Charleston County property for an unreasonable amount of time before the 56 year old Plaintiff tripped over the unburied lines in the dark.

The Defendant is in fact responsible for the Plaintiff's physical and emotional injuries because the Respondent/Property Manager was professionally and legally responsible for their contracted property at 930 Folly Road. Respondent owed a duty to this property's community by fulfilling their guarantees by abiding by the local laws & ordinances. Therefore, the Defendant is liable for the Plaintiff's injuries

caused by their negligent omission to protect and maintain the property where the hazardous condition originated.

Property Manager, Marshland Communities allowed this hazardous condition to negligently render the county property defective when breaching the standard of reasonable care. Defendant failed to inspect and maintain their contracted property and protect the Plaintiff & community from foreseeable harm by posting warning signs, warning cones or roping off the hazardous area or notifying their contracted partner about the "2" unburied cable lines that also crossed public right of way and connected to a telephone.

The Respondent failed their duty & violated their guarantees to;

EXHIBITS, C & D

A. OVERSEE ALL activities that are necessary to MAINTAIN their community.

B. REGULARLY INSPECT the property.

C. OBSERVE, RECORD and MONITOR contractor performances.

D. ENSURE EVERYTHING from negotiating contracts for LANDSCAPING.

The Respondent did in fact negligently fail to be responsible as they stated in their GUARANTEES to OBSERVE, ENSURE, OVERSEEING ALL ACTIVITIES THAT ARE NECESSARY TO MAINTAIN THE COMMUNITY BY REGULARLY INSPECTING and MONITOR CONTRACTOR PERFORMANCES to MAINTAIN the Folly Oaks Center's

Common area which is in fact their responsibility to their contracted client to ensure the safety of potential customers and pedestrians coming to the property for business, going next door to the Good Will store or walking up the road to other businesses nearby.

ALSO; the Charleston SCDOT representative stated; they were not responsible for Mr. Powell's injuries because they were never notified by the Property Manager or owner that the lines were just lying on top of the ground and were a hazard to the community. AGAIN, Marshland Communities LLC. the property manager owed a legal duty of care to their contracted account to abide by local laws and ordinances that also protect the adjacent community & the local pedestrians walking in the right of way.

Judge Dennis erred when he did not allow the Appellant to introduce an argument revealing the following laws and ordinances that were violated;

EXHIBIT E & F,

Pursuant section 27-52-110, South Carolina Homeowner's Association act

(4) "Common area" means all property within a community owned or leased by an association or dedicated for use or maintain by the association or it's members, regardless of whether title has been conveyed to or retained by the association.

The Defendant was hired to maintain their common area and failed to do so.

EXHIBIT G. Pursuant Charleston Ordinance Section 14-5 (b)

Owners/occupants property that faces a city right of way are responsible for keeping up, including the curb, gutter or street line free of litter and unsightly growth.

It was the duty of the Property Manager, Marshland Communities LLC. to protect their contracted account the Folly Oaks Center Condominium Unit Owners Association Inc. which is the acting Home Owners Association, all the way to the curb which in this case includes the right of way. Therefore, Respondent was negligent when allowing the unburied cable lines to cross the right of way.

Stewart v Wallace Street Inc. 87 N.J. 146 (1981)

Commercial landowners are responsible for maintaining in reasonably good condition the sidewalks abutting their property and are liable to pedestrians injured as a result of their negligent failure to do so.

Hurst v East Coast Hockey league Inc. 371 S.C. 33. 37.637 S.E. 2d 560,

562 (2006)

1. A duty of care owed by Defendant to Plaintiff
2. Defendant's breach of that duty by a negligent act or omission.
3. Damage approximately resulting from the breach.

EXHIBIT H, SECTION 27-3-60. Certain liability not limited. [SC ST SEC 27-3-60]

Nothing in this chapter limits in any way liability which otherwise exists.

(A) For grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

Therefore the Respondent was the hired by the Folly Oaks Center Home Owners Association to protect their community by maintaining the common area and the sidewalks, to the curb. It is obvious there was a hazardous condition and the condition did in fact cause the injuries to the Appellant. The Respondent was contracted to know the conditions of the property and legally owed a duty of care to pedestrian Jack Powell walking through the right of way.

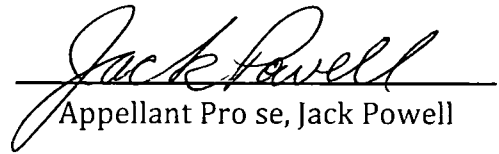
CONCLUSION

Judge Dennis erred when he did not allow the Plaintiff to enter his arguments of submitting relevant evidence, laws & ordinances the Defendant violated while being responsible for their contracted account where the hazardous condition originated. The Respondent's negligence was the proximate cause of the injuries to Appellant Jack Powell.

Judge Dennis also erred when not allowing the Discovery to proceed since he did not compel the Respondent to submit discovery during the Appellants Motion to Compel Production, Interrogatories and Evasive Admissions **EXHIBITS I - J** and **Exhibit K** of the Home Owners Association Responsibilities Regarding Maintenance of the Common area revealing other violations that the Appellant wasn't allowed to submit to the court, including S.C. Code of laws; 27-3-60 (a) 27-31-20 (f)(7)

27-40-440 (a)(1)(2)(3) 14-5 (a)(b)(c)

Dated, Signed and Mailed on 7-12-15


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