THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2011-CP-40-4068
Appellate Case No. 2013-002157
Opinion No. 5326 (Ct. App. filed July 15, 2015)

Denise Wright ..... Petitioner

v.

PRG Real Estate Management, Inc.; Franklin Pineridge Associates; Karen Campbell Individually, and in her Representative Capacity as an Agent of PRG Real Estate Management ..... Respondents.

PETITION FOR A WRIT OF CERTIORARI

Brian A. Comer
Christian Stegmaier
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(803) 256-2660
(803) 771-4484 (fax)

S. Randall Hood
Jordan C. Calloway
Deborah G. Casey
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 (fax)

Attorneys for Respondents PRG Real Estate Management, Inc., Franklin Pineridge Associates and Karen Campbell

Whitney B. Harrison
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201
(803) 779-0100

E. Wayne Ridgeway, Jr.
Burris Ridgeway
907 Elmwood Avenue
Columbia, SC 29201
(803) 779-5842
(803) 227-0384 (fax)
wayne@burrisslaw.com

Attorneys for Appellant Denise Wright

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, Petitioner's counsel certifies that a Petition for Rehearing was made on July 24, 2015, and denied on Aug. 20, 2015.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the court of appeals erred in failing to recognize that the residential landlord-tenant relationship creates a duty on the landlord to secure its premises when the public is invited to the premises for purposes other than visiting tenants.

2. Whether the court of appeals erred in failing to apply Restatement (Second) of Torts § 323 to Petitioner's allegation that Respondents voluntarily assumed a duty to secure its premises.

3. Whether the court of appeals erred in failing to consider the circuit court's proximate cause ruling.

STATEMENT OF THE CASE

This petition for writ of certiorari seeks a review of the court of appeals' decision finding that a landlord promising to provide its tenant security and attempting to provide it still owed no legal duty to use reasonable care in its security program. Petitioner Denise Wright was a resident of Wellspring Apartments in Columbia, South Carolina, which are owned/managed by Respondents PRG Real Estate Management, Inc., Franklin Pineridge Associates, and Karen Campbell. (App. p. 396 at 65, lines 1-5). Wellspring is part of the Harbison community, a group of neighborhoods and outdoor recreation destinations connected by a series of walking trails and the Harbison Community Center. One of the trails proceeds directly through Wellspring's common areas. (App. p. 451). The trails are not only publically accessible; they are also advertised online to the public by local and state governmental agencies. (App. pp. 453-54). Respondents are aware of the public's use of the trails and also invited the public to enjoy the trails. (App. p. 493 at 36 lines 6-19).

When Ms. Wright first considered moving to Wellspring, Respondents told her about their "security officer" program to secure the premises. (App. p. 425 at 116). Respondents contracted with "courtesy officers" who agreed to, among other things, patrol the premises on a daily basis and respond to reports of criminal activity. (App. p. 457). For every month she was a Wellspring tenant, Ms. Wright received a newsletter from Respondents boasting that security was a top priority at the apartment complex and providing Ms. Wright the number to a security pager to call with security-related concerns.

Ms. Wright left choir practice and drove home to Wellspring Apartments at approximately 10:30 p.m. on September 18, 2008. As she walked across the dimly lit parking lot toward her apartment, she was captured, assaulted, and robbed by two armed men. (App. p. 396 at 65, lines 1-5). There were no courtesy officers patrolling the premises. While the security pager line was in service, it is not clear that anyone was monitoring it or answering calls. As Ms. Wright approached her front door, armed men leapt from behind overgrown shrubbery and accosted her. Her captors forced Ms. Wright to drive to various ATMs to withdraw hundreds of dollars before finally releasing her several miles away. (App. pp. 401-02).

On January 24, 2011, Ms. Wright brought suit against Respondents alleging claims for breach of warranty, negligence, and for violating the South Carolina Unfair Trade Practices Act. (App. p. 79-84). Respondents moved for summary judgment on all claims on August 2, 2012. (App. p. 152-54). Ms. Wright did not contest Respondents' motion as to the breach of warranty claim. In its September 23, 2013 order, the circuit court granted Respondents motion on all remaining claims. (App. p. 56-76). After a timely Notice of Appeal and briefing, the court of appeals heard oral arguments on January 15, 2015. On July 15, 2015, the court of appeals issued an opinion affirming the circuit court's order. A majority of the court held that Respondents had no duty to fulfill its promise to reasonable secure Wellspring's common areas. A dissenting opinion concluded Respondents did have a duty based on failings in the security program they chose to undertake, the increase risk of harm to Ms. Wright flowing from those failings, and Ms. Wright's reliance on the program. Ms. Wright filed a Petition for Rehearing, which was denied on August 20, 2015.

ARGUMENT

Respondents represent the present and future way in which many landlord-tenant relationships will be formed. Apartment seekers no longer want just a dwelling unit. Instead, they seek out an apartment complex offering community amenities and public spaces. Property owners recognize this change in consumer expectation and have reacted by adapting their premises to meet market demand. Apartment complexes no longer advertise simply square footage, floor plans, and number of bedrooms. They hope to entice the modern renter with amenities like community centers, fitness clubs, and walking trails. The goal is to create a living arrangement that draws renters closer to their fellow tenants, to residents of neighboring properties, and to members of the public that are enjoying the public spaces. While the interior of a tenant's apartment remains her castle, the apartment complex grounds surrounding each dwelling unit are increasingly and intentionally becoming public gathering places.

The court of appeals' decision failed to recognize that a landlord offering these public amenities should also take reasonable security actions to protect against the hazards they impose. This is especially true when a landlord like Respondents knows that criminals have utilized the public amenities as a tool in their criminal endeavors. By concluding that public amenities are irrelevant to a landlord's duty to its tenant, the court of appeals had established a dangerous precedent allowing a landlord to freely offer prospective tenants the perks that renters demand while disclaiming any responsibility for their foreseeable harm.

This case presents a novel issue and includes a dissent in the decision of the Court of Appeals. Petitioner's claim represents the first time South Carolina appellate courts

have addressed a security duty in the type of residential landlord-tenant relationship Respondents formed with Ms. Wright. The court of appeals relied on the Cramer v. Balcor Property Management, Inc., 312 S.C. 440, 443, 441 S.E.2d 317, 318-19 (1994), but failed to recognize the crucial ways in which Respondents' relationship with Ms. Wright is different than the one described in Cramer. By offering and advertising an amenity like the walking trails, Respondents have blurred Cramer's ostensibly bright line of demarcation between the landlord-tenant relationship and other relationships creating a duty to secure premises.

The court of appeals' decision should also be reviewed because the majority opinion failed to apply the established standard governing the formation of a voluntarily assumed duty. In numerous previous rulings, South Carolina appellate courts have used Restatement (Second) of Torts § 323 to determine the existence of a voluntarily assumed duty. The dissenting opinion correctly concluded that section 323 has been applied to determine a landlord's duty to secure its premises and should have been applied here. When the proper standards are applied, the dissenting opinion correctly concluded Ms. Wright "expected security would be provided and that the respondents accepted the duty." Wright v. PRG Real Estate Mgmt., Inc., ___ S.C. ___, 775 S.E.2d 399, 407 (Ct. App. July 15, 2015) (Lockemy, J. concurring in part, dissenting in part).

1. South Carolina Courts have Never Addressed a Residential Landlord's Duty to Secure its Premises when the Public is Invited for Recreation Purposes.

South Carolina courts have never before considered a security duty for a relationship like the one Petitioner formed with Respondents when she became a tenant at Wellspring Apartments. Several types of business relationships have been found to

impose a duty on a property owner to provide security for the benefit of others using the property. E.g. Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977) (retail store); Daniel v. Days Inn of Am., Inc., 292 S.C. 291, 356 S.E.2d 129 (Ct. App. 1987); Courtney v. Remler, 566 F. Supp. 1225, 1232 n. 2 (D.S.C. 1983) (motel). To date, the courts have only generally considered security duties for the landlord-tenant relationship. A South Carolina federal district court order has hypothesized a description of a typical residential landlord-tenant relationship. Cooke v. Allstate Mgmt. Corp., 741 F. Supp. 1205, 1213 (D.S.C. 1990) (quoting Feld v. Merriam, 485 A.2d 742, 745-46 (Pa. 1984)). This Court later used this description to create a common law rule providing that a residential landlord generally does not owe its tenants a duty to secure the landlord's premises. Cramer v. Balcor Prop. Mgmt., Inc., 312 S.C. 440, 443, 441 S.E.2d at 317, 318-19 (1994).[1]

However, neither Feld nor Cooke nor Cramer considered the issue underlying Petitioner's claim. Specifically, whether the landlord-tenant relationship is analogous to the relationships supporting a duty when, unlike the typical landlord-tenant relationship described in Cramer, the landlord invites the public to its common areas and knows the public accesses the common areas for purposes other than visiting tenants. Moreover, while Cramer included a general rule, the Court also provided an exception, the parameters of which have never been fully delineated. 312 S.C. at 443 n. 1, 441 S.E.2d at 319 n. 1 (holding that "[a] duty may arise under the particular circumstances of the individual case"). This Court should review the court of appeals' decision to address the

[1] Jackson v. Swordfish Investments, LLC, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005), noted Cramer's general rule when determining a commercial landlord's duty to a tenant's invitee.

question left unanswered in Cramer or, in the alternative, to define the "particular circumstances" in which a landlord may owe a duty to secure its premises. Using either framework, Respondents owed a duty to reasonably secure Wellspring Apartments and should be liable for their security failures that resulted in Ms. Wright's brutal attack.

Although Cramer's holding was stated as a general rule, it is based on a specifically stated conception of the landlord-tenant relationship and its effect must be limited to relationships meeting that description. The Court held that the landlord-tenant relationship is "fundamentally different" than those creating a duty because typically tenants "do not live where the world is invited to come" and the common area of an apartment complex "is not a place of public resort." Cramer, 312 S.C. at 443, 441 S.E.2d at 318-19. Generally, the common area of an apartment complex "is of its nature private." Id. At the typical complex, the property's private character relieves the landlord of any duty to anticipate and protect against criminal attacks. Id. Unlike a hotel or retail store, the public is not invited to the typical apartment complex, and a landlord need not guard against the expectation of crime that flows from operating public premises. Id.

Wellspring Apartments is not Cramer's typical apartment complex. Walking trails connecting Wellspring to neighboring communities and other recreation destinations pass directly through Wellspring's common area, only a few feet from where Ms. Wright was abducted. (App. p. 451). The trails are not only publically accessible they are advertised for public recreation use. County and state agencies provide maps to encourage the public to take leisurely strolls on trails that pass only a few feet from tenants' front doors. (App. pp. 453-54). Respondents acknowledge that the public uses the trails and that criminal acts have been initiated by individuals using the trails. (App. p. 480) (noting criminal

"coming down the trails from a troubled property nearby"). Respondents even personally invited the public by advertising the trails as an amenity to entice potential renters. (App. p. 480). Respondents specifically invited the public to "Come stroll along our walking path . . ." (App. p. 493 at 36 lines 6-19).

Petitioner's claim demonstrates an important component of the modern residential property rental business. The landlord-tenant relationship has shifted from the time when courts adopted common law rules absolving landlords of any duty to secure their premises. Timothy O'Rourke, *Landlords have no Affirmative Duty to Protect Tenants from Criminal Activity*, 46 S.C. L. Rev. 184, 185 (1994) (noting Cooke and Cramer "viewed the lease as a traditional conveyance of a property interest" and "[t]his view is by no means universally accepted"). That shift has continued if not accelerated since 1994 when Cramer described the traditional landlord-tenant relationship.[2] Apartment complex amenities that blur the line between public and private spaces are part of how property owners/operators like Respondents now attempt to respond to the shifting desires of the modern tenant.[3] While Respondents' court filings have refused to recognize this shift, their operation of Wellspring not only acknowledges the evolving landlord-tenant relationship but also demonstrates Respondents' profit-motivated efforts to meet the modern tenant's evolving expectations. Respondents' advertisement inviting the public to stroll the Harbison trails is no anomaly. Instead, it is emblematic of the property features landlords now offer to entice new renters.

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[2] In fact, Cramer's conception of the typical landlord-tenant relationship is much older than the opinion itself. Feld, which the Court quoted to define the typical landlord and tenant, was decided in 1984.

The court of appeals' opinion refused to acknowledge that when legal relationships fundamentally change, the parties' duties might also require a change. Over time, business industries sometimes shift as a result of changes in consumer expectations or other circumstances. In response, business owners naturally and rightly alter their business practices to meet market demand. This shift in business practice only serves to validate the change in consumer expectations. With a substantive shift in the relationship comes a corresponding shift in the business owner's duty to its customers. For example, since modern patients now look directly to hospitals for emergency room services and hospitals have responded by advertising emergency room services as hospital-provided care, this Court recognized that a hospital's duty to its patient has increased in the modern healthcare marketplace. See generally Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000).[4]

The same principle applies to this case. Respondents have recognized the shift in renter expectations and have responded by advertising the public amenities they believe their potential customers want and are willing to pay for. This conduct, in turn, validates potential renters' expectations that the amenities are part of what they are paying for in each month's rent. Thus, Respondents' duty to reasonably secure Wellspring's common areas was an intrinsic component of the modern landlord-tenant relationship initiated when Ms. Wright moved to the complex.

[4] The Court of Appeals' opinion in Simmons, which this Court affirmed as modified, specifically based the duty it recognized on "[t]he change in public reliance and public perceptions" and the fact that the defendant business owners "contributed to the shift in public perception through commercial advertisement." Simmons v. Tuomey Reg'l Med. Ctr., 330 S.C. 115, 498 S.E.2d 408 (Ct. App. 1998).

By reading Cramer's general rule to apply to Respondents' relationship with Ms. Wright, the court of appeals overlooked the "particular circumstances" of this case. The ruling also establishes a dangerous precedent governing the modern residential landlord-tenant relationship. As landlords increasingly boast community-gathering amenities to entice new renters, the court of appeals' ruling would allow landlords to make these offers without assuming a corresponding increase in their responsibility for the hazards these amenities create. As such, South Carolina law will lag behind how landlords and tenants view their relationship in the marketplace. South Carolina law will also lag behind its neighboring states, both of which recognize a landlord's duty in similar cases. See Davenport v. D.M. Rental Props., Inc., 718 S.E.2d 188, 189-90 (N.C. App. 2011); Johns v. Housing Auth. for City of Douglas, 678 S.E.2d 571, 573 (Ga. App. 2009).

In sum, this case presents a novel issue of law affecting a large number of South Carolinians[5] regarding the contours of a residential landlord-tenant relationship and renters' personal safety. Landlords continue to compete for new renters by offering community-based amenities, and South Carolina law should recognize landlords have a duty to take reasonable precautions against the foreseeable harms inherent to these amenities. The Court of Appeals' ruling misinterpreted Cramer, and the Court should grant this petition to address a novel question of law.

2. The Court of Appeals Erred in Refusing to Apply the Established Standard Governing a Voluntarily Assumed Duty.

Even if the parties' landlord-tenant relationship did not create a duty, Respondents chose to assume one. Respondents undertook a security program that was supposed to

[5] In 2013, over 350,000 South Carolinians were apartment residents. Quick Facts: Resident Demographics, National Multifamily Housing Council, *available at* http://nmhc.org/Content.aspx?id=4708.

include courtesy officers patrolling Wellspring's common areas, a security pager hotline that tenants could call at any time, along with adequate common area lighting and properly maintained landscaping. In finding Respondents did not assume a duty to secure its premises by undertaking these tasks, a majority of the Court of Appeals disregarded a long line of South Carolina precedent on the source and standard for voluntarily assumed duties. In contrast, the dissenting opinion[6] applied the established common law standard and properly concluded that Ms. Wright presented the trial court with evidence that Respondents assumed a duty, breached it, and proximately caused Ms. Wright's losses. The Court should review the Court of Appeals' decision and apply to Ms. Wright's negligence claim the same standard for voluntarily assumed duties that South Carolina courts have applied for decades.

South Carolina law has long recognized that a party undertaking a duty to provide services for another must use due care in performing the services even if no principle of law required the party to act in the first place. Shopshire v. Jones, 277 S.C. 468, 471, 289 S.E.2d 410, 411 (1982). Shopshire and many other cases[7] recognized this common law doctrine and relied on the Restatement (Second) of Torts to provide the standard for applying the common law rule. A cause of action for "alleged negligent performance of a gratuitous promise to render services" is "summarized in" Restatement (Second) of Torts § 323. Id. Section 323 states:

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[6] Judge Lockemy authored a separate opinion agreeing with the majority's ruling on Petitioner's South Carolina Unfair Trade Practices Act claim and disagreeing with the majority's ruling on the negligence claim. Since this Petition is limited to the negligence claim, Judge Lockemy's opinion is referred to simply as the dissenting opinion.

[7] See Johnson, 401 S.C. at 504 n. 3, 737 S.E.2d at 514 n. 3 (collecting cases recognizing and applying section 323).

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

As the Court of Appeals recently acknowledged, "The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in the Restatement of Torts." Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504, 737 S.E.2d 512, 514 (Ct. App. 2012) (citing Restatement (Second) of Torts § 323). Section 323's generally applicable standard has been applied to voluntarily assumed duties in a variety of scenarios and has been recognized as the proper standard for judging a landlord's voluntarily assumed security program. In a previous apartment security case, a plaintiff claimed a landlord assumed a duty by "undertaking to provide security to tenants and their guests." Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 444, 494 S.E.2d 827 (Ct. App. 1997). To test that claim, the Court of Appeals cited and applied section 323. Id. As the dissenting opinion recognizes, there was no basis for the court of appeals to ignore this legal standard in this case. Wright v. PRG Real Estate Mgmt., Inc., ___ S.C. ___, 775 S.E.2d 399, 409 (Ct. App. July 15, 2015) (Lockemy, J. concurring in part, dissenting in part) ("I interpret Goode to mean a tenant injured by a third party criminal attack at an apartment complex may be able to establish a duty owed by a landlord who has undertaken to provide security pursuant to section 323").[8]

[8] In Jackson, this Court again acknowledged the common law rule on voluntarily assumed duties and at least implicitly acknowledged section 323 as its standard. 365 S.C. at 613, 620 S.E.2d at 56 (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991) (relying on section 323 as standard for voluntarily undertaken duty)).

Respondents acknowledge operating a courtesy officer program and undertaking lighting and landscaping services in part for security purposes. According to Respondents' records, courtesy officers were supposed to be patrolling the area where Petitioner was attacked for hours every day. However, on the day of Petitioner's attack, there were no patrolling officers. The security pager Respondents advertised to their tenants was functional, but Respondents have no idea who if anyone was answering tenants' distress calls. The lighting in Wellspring's common area did not meet industry standards for brightness and the overgrown shrubbery near Petitioner's apartment furnished the hiding spot from which her attackers emerged. If Respondents' security officers had been conducting their required patrols, then the attackers likely would have chosen a different complex to conduct their crime. If the common area lighting and landscaping had been properly maintained, then Petitioner could have seen her attackers much earlier and avoided the encounter all together. In short, as the dissenting opinion identified, Petitioner's evidence established all required elements of section 323.

The Court should grant the petition and correct the deviation from precedent represented by the court of appeals' decision. Restatement (Second) of Torts § 323 is the voluntarily assumed duty standard that South Carolina courts have consistently applied for more than three decades. Section 323 should have been applied to Ms. Wright's claim and, when it is applied, the evidence demonstrates that Respondents undertook and breached a duty to secure the premises at Wellspring.

3. The Court of Appeals Erred in Refusing to Consider the Circuit Court's Proximate Cause Ruling.

The court of appeals' majority opinion declined to address proximate causation based on its resolution of the duty issue. Wright v. PRG Real Estate Mgmt., Inc., ___

S.C. ___, 775 S.E.2d at 406 n. 5 (citing Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)). As discussed above, Ms. Wright's duty assertion was supported by the "particular circumstances" of this case and the duty governed by section 323. Accordingly, the Court should review the court of appeals' ruling and reach the merits on Ms. Wright's proximate cause argument. The record contains the required scintilla of evidence supporting the conclusion that Ms. Wright's attack was foreseeable and that the attack was a cause-in-fact of Respondents' negligent conduct. See Dissenting Opinion, 775 S.E.2d at 410-11. Accordingly, Respondents should not have been granted summary judgment based on the proximate cause issue.

CONCLUSION

For the reasons stated above, Petitioner respectfully asks this Court to grant her petition for writ of certiorari and review the court of appeals' decision to affirm the circuit court. Wellspring's walking trails are the type of public amenity that landlords like Respondents routinely offer and tenants have come to expect. Conditions have changed substantially since Cramer, and a landlord's duty to secure its premises should be reexamined in light of the modern residential landlord-tenant relationship.

Respectfully submitted,

S. Randall Hood
Jordan C. Calloway
Deborah G. Casey
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 (fax)

E. Wayne Ridgeway

Burris Ridgeway
907 Elmwood Avenue
Columbia, SC 29201
(803) 779-5842

Attorneys for Petitioner

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PROOF OF SERVICE

The undersigned hereby certifies that on this 15th day of September, 2015, he served Respondents' counsel with a copy of the Petition for Writ of Certiorari in this matter by mailing a copy by United States Mail with first class postage prepaid to the following address:

Brian A. Comer, Esquire
Christian Stegmaier
COLLINS & LACY, PC
Post Office Box 12487
Columbia, South Carolina 29211

Jordan Calloway