

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

MARK and ELIZABETH HEIL)

Plaintiffs,)

vs.)

STEWART and CHRISTINA)
HINES and SAM IMLER d/b/a)
SAM'S TREE SERVICE)

Defendants,)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2013-CP-07-1231

**ORDER
DENYING MOTION TO
ALTER OR AMEND**

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This matter comes before this Court by way of motion of the Plaintiffs, Mark and Elizabeth Heil, for reconsideration of the grant of summary judgment in favor of the Defendants, Stewart and Christina Hines as to all of the causes of action alleged against them by the Plaintiffs. The Plaintiffs have filed a Complaint in this matter against Stewart and Christina Hines and Sam Imler d/b/a Sam's Tree Service for property damage the Plaintiffs allege related to the removal of tree limbs from their property. The Amended Complaint alleges a claim for negligence and a claim of breach of fiduciary duty against Christina Hines and Stewart Hines.

A hearing on the Plaintiff's motion to Alter or Amend was held before Judge Perry M. Buckner on June 16, 2015. In attendance at the hearing for the parties was Defendant Stewart Hines, Brian McDaniel, counsel for the Defendants Stewart Hines and Christina Hines, and Charles Thomson, counsel for the Plaintiffs, Mark Heil and Elizabeth Heil.

The Plaintiffs contend that the record demonstrates that there exists evidence of breach of a duty of care owed by the Defendants, Stewart and Christina Hines, to "inspect and maintain" their trees. In the Order of March 12, 2015 this Court held that there is enough evidence to

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support a finding of a duty for neighbors in the current case to exercise reasonable care to avoid an unreasonable risk of harm from encroaching trees. Upon review the court concludes that the Plaintiff failed to demonstrate the existence of admissible evidence that the duty, such as was held may exist, was breached in this case. "A complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008).

The Plaintiffs contacted the Defendants and requested that they pay for a tree trimmer to trim the remaining branch, to which the Defendants agreed. Though the Amended Complaint alleges that the work was completed by January 2012, other evidence presented, including the December 10, 2011 email from Sam Imler to Stewart Hines attached to Defendant's Motion for Summary Judgment, evidences that by December 10, 2011 the work had been completed. In either circumstance it is the finding of this court that the response by the Defendants in swiftly scheduling a tree trimmer, once they became aware of the concerns of their neighbors about the potential risk of the encroaching limb, was reasonable and supports the summary judgment ruling in favor of the Defendants.

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The Plaintiffs cite deposition testimony of Sam Imler and Elizabeth Heil to argue that the trees were encroaching on the Plaintiffs' property. However, even in the light most favorable to the Plaintiffs, this testimony does not dispute that the Defendants acted without delay in hiring Sam's Tree Service when asked to do so. In other words, the Defendants did not fail in their duty to inspect and maintain the tree. In addition, the Plaintiffs' counsel did not argue at the hearing that any damage occurred during the time between the Defendants being asked to hire a tree trimmer and the tree trimming itself.

Finally, as to the granting of summary judgment as to the breach of fiduciary duty claim the Plaintiffs attempts to recast the parties in this case as "absentee neighbors" is not persuasive. The Plaintiffs fail to provide case law supporting a determination that this case presents such a new situation that it would justify finding a previously unrecognized fiduciary duty. Therefore, the previous ruling is unchanged on this matter. The motion to Alter or Amend is denied. The Order granting summary judgment in favor of the Defendants, Stewart Hines and Christina Hines as to the negligence and breach of fiduciary duty causes of action is unchanged.

AND IT IS SO ORDERED



Perry Buckner
Judge, Fourteenth Judicial Circuit

This 21st day of July, 2015

Walterboro, South Carolina

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