

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 GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

RECEIVED
SEP 21 2015
SC Court of Appeals

2015 MAR 16 PM 2:58

This matter comes before this Court by way of motion of the Defendants, Stewart and Christina Hines, for summary judgment pursuant to SC Rule Civil Procedure 56(c) 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.

#1
PMB
A hearing on this matter was held before Judge Perry M. Buckner on March 3, 2015, at the Beaufort County Courthouse. In attendance at the hearing for the parties was Brian McDaniel, counsel for the Defendants, Stewart Hines and Christina Hines, and Charles Thomson, counsel for the Plaintiffs, Mark Heil and Elizabeth Heil.

Rule 56, SCRPC, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming

v. Rose, 350 S.C. 488, 493 (2002). The nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. Rule 56, SCRPC. Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 610 (1976).

The Court will first address the negligence claim and then move on to the claim for breach of fiduciary duty. In order to establish a claim for negligence, a party must prove the following elements: (1) a duty of care owed by one party to another; (2) a breach of that duty by negligent act or omission, and (3) damage proximately caused by the breach. Doe ex rel. v. Batson, 345 S.C. 316, 322 (2001).

First, the Plaintiff alleges that there was a duty as a landowner in a residential or urban area to others outside his land to exercise reasonable care to prevent an unreasonable risk of harm arising from defective or unsound trees on his premises, including trees of purely natural origin. Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 288 (Ct. App. 1986). The Plaintiff admitted photographs on the record, as Exhibit 14, from which an inference could be drawn that the subject tree was encroaching over the Plaintiff's roof in an unsound manner. In the light most favorable to the non-moving party, these photographs are evidence that the Defendants had a duty to their neighbors to exercise reasonable care of these allegedly unsound trees.

#2
MB
Next, the Plaintiffs argue that there was a breach of this duty because the Defendants improperly vetted the tree contractor Sam Imler and his company Sam's Tree Service, who the Defendants hired to remove the trees, and failed to inspect their work. The Defendants argued at the hearing that Sam's Tree Service specialized in the work he was hired to do and that the job

occurred without incident. There has been no evidence presented that the Defendants breached their duty by hiring Sam's Tree Service, a contractor specializing in tree removal, and therefore the Defendants are entitled to judgment as a matter of law, as to the negligence claim.

The Court now considers the breach of fiduciary duty claim. A fiduciary duty exists when "... one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." SSI Medical Services, Inc. v. Cox, 301 S.C. 493 (1990). A fiduciary relationship is not casual and as a general rule cannot be created unilaterally, but requires that the fiduciary must have actually accepted or induced the confidence placed in him or her. Steele v. Victory Savings Bank, 295 S.C. 290 (Ct.App. 1988). Fiduciary relationships have traditionally been reserved for legal or business settings—often where one person entrusts money to another such as with lawyers, brokers, corporate directors and corporate promoters. Hendricks v. Clemson University, 353 S.C. 449 (2003).

#3
AMB

The Defendants argued that an agreement for one neighbor to pay to remove some trees that encroach on another neighbor's property does not create a fiduciary duty. The Plaintiffs cite Steele, at 94 (Ct. App. 1988), to argue that whether a plaintiff reposed special confidence and trust in a defendant, and whether the defendant accepted that confidence and trust was a question of fact for a jury. However, in that case, the plaintiff had entrusted a 3rd party to buy a certificate of deposit from the defendant bank, who allowed the 3rd party to purchase the CD for himself. The question of fact for the jury was whether the defendant bank knew of the plaintiff's relationship to the 3rd party. Additionally, although whether a fiduciary relationship has been


breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court. Hendricks, at 459 (2003).

Here, there are only the two parties in which to consider a fiduciary duty, and there is not a question of one party's knowledge of the other's existence. Fiduciary relationships have traditionally been reserved for business or legal relationships. In this case, there is an agreement for one neighbor to pay to remove trees encroaching on another neighbor's property; there is no entrustment of money or property that both the Plaintiffs and Defendants have acknowledged at one point in time. Id., at 459 (2003). Therefore, there is no fiduciary relationship between the Plaintiffs and Defendants, and the Defendants Stewart and Christina Hines are entitled to judgment as a matter of law, as to the breach of fiduciary duty claim.

The Defendants Stewart and Christina Hines' Motion for Summary Judgment is granted as to both the negligence and breach of fiduciary duty causes of action. The case continues as to Sam Imler d/b/a Sam's Tree Service.

AND IT IS SO ORDERED

#4



Perry Buckner
Judge, Fourteenth Judicial Circuit

This 12th day of March 2015

Walterboro, South Carolina