

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No.: 2015-01328

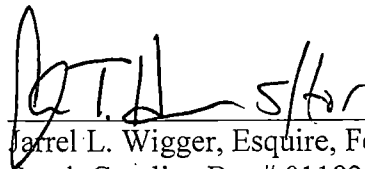
Donna Douglass, Appellant,

v.

Berkshire on St. Ives,
Berkshire Property Advisors, LLC,
BVF North Cove, LLC, and
The Berkshire Group, Respondents.

INITIAL BRIEF OF APPELLANT

September 11, 2015



Jarrel L. Wigger, Esquire, Fed. I.D. # 6345
South Carolina Bar # 011824
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406
(843) 553-9800
Attorney for Appellant

TABLE OF CONTENT

Table of Contents and Cases	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	4

Arguments:

1. DID THE TRIAL JUDGE ERR IN ITS APPLICATION OF THE RELEVANT CASE LAW REQUIRING NOTICE IN A CASE WHERE THE DEFENDANTS CREATED THE HAZARDOUS CONDITION? 9
2. DID THE TRIAL JUDGE ERR BY ASSESSING COMPARATIVE FAULT WHICH IS THE PROVINCE OF THE JURY? 11
3. DID THE TRIAL JUDGE ERR BY FAILING TO APPLY THE STANDARD OR PROOF OF SUMMARY JUDGMENT? i.e. THE SCINTILLA STANDARD WHICH HAS BEEN ADOPTED BY SOUTH CAROLINA? 11

Conclusion	12
------------------	----

ii
TABLE OF AUTHORITIES

CASES

Burke, et al vs. Republic (Case No.: 2013-CP-10-1400).....	6
Cook v. Food Lion, 328 S.C. 324	5,
Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986)	13
	10
Froneberger v. Smith (S.C. App. 2013) Appellate Case No.: 2011-191306 No. 5168	11
Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336, 339 (1977).....	13
Henderson vs. St. Francis Community Hospital, 303 S.C. 177, 399 S.E. 2d 767 (1990)	10
Hill v. York County Sheriff's Department, 313 S.C. 303, 437 S.E.2d 179, 182 (Ct. App. 1993).....	12
Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001).....	12
Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 293 S.E. 2d 706 (1982).....	13
Schmidt v. Courtney and Kemper Sports of Crowfield, Inc., Opinion No. 3719 (S.C. App. 12/22/2003) (S.C. App., 2003).....	13
Simmons vs. Winn-Dixie Greenville, Inc., 318 S.C. 310,	10
Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447, 448 (1976)..	13

STATUTES

South Carolina Rules of Civil Procedure, Rule 59(e).....	4
--	---

STATEMENT OF THE CASE

This appeal results from the dismissal of the Plaintiff's case by the Honorable R. Markley Dennis, Jr. on April 8, 2015, in the Charleston County Court of Common Pleas, Civil Action Case No.: 2013-CP-10-7133.

The Plaintiff's negligence action was filed on December 9, 2013. The Plaintiff alleges the Defendant was negligent in causing the Plaintiff injuries when she fell down a flight of stairs due to the lack of adequate lighting. As a proximate result of her injuries, the Plaintiff incurred medical bills, lost wages, physical injuries and other damages. The Plaintiff and Defendant engaged in substantial discovery prior to Summary Judgment.

Plaintiff provided their Memorandum in Opposition for Summary Judgment and was prepared to move forward with trial.

Appellant asserts that Judge Dennis erred granting the Defendant's Motion for Summary Judgment. The Plaintiff filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCPP, which was later denied with the Court finding that there was not a need for oral argument. Said Order was filed May 29, 2015. Judge Dennis' Order did not reflect what transpired or comported with the case law of South Carolina.

FACTS

Prior to January 6, 2011, the Defendants built and maintained an apartment complex. The Defendants leased to residential apartment dwellers and retained control over many areas. The Defendants were responsible for all common areas (which are at issue here), sidewalks, stairs, grass, lawns, parking lots, buildings, plumbing, HVAC, etc.

Neither apartment renters, nor visitors, had the right, responsibility, or ability to do anything to the common areas. Any action by an outside person would be a trespass (see attached deposition excerpts of Greg Moran, page 24, lines -16).

Traversing stairs has long been regarded as an inherently dangerous activity. The International Building Code (IBC), and the Southern Building Code (SBC), etc. have special sections just dealing with stairs. Stairs without lighting have long been recognized to create inherently hazardous conditions. Greg Moran, the maintenance supervisor admitted lighting on the stairs was a safety issue (see attached deposition excerpts of Greg Moran, page 27, lines 7-8).

In designing the stairway, it is undisputed the Defendants only had one (1) light for the stairway. The Defendants know that light bulbs burn out. In the deposition of

Greg Moran, testified that the Defendants knew that no lighting in the stairs is a safety issue (see attached deposition excerpts of Greg Moran, page 27, lines 7-8). The Defendants know that resident users of the stairs have no way to fix a burned out light or even report a burned out light in the evening (see attached deposition excerpts of Greg Moran, page 24, lines 1-16). There is no one is on duty at the complex in the evening (see attached deposition excerpts of Greg Moran, page 15, Lines 5-7).

The Defendants' do not check for burned out lights at night (see attached deposition excerpt of Greg Moran, page 28, lines 9-22). The Defendants have a method of checking for burned out lights. (see attached deposition excerpt of Greg Moran, page 13, lines 14-15). Unfortunately and inadequately, the Defendants only use their tool for checking burned out light bulbs once a month (see attached deposition excerpt of Greg Moran, page 13, lines 14-15). This is in spite of knowing vendors and visitors are going to coming and going from the complex at night (see attached deposition excerpts of Greg Morgan, page 30, lines 9-25 and page 31, lines 1-9). Additionally, Defendants repaired stairs within the knowledge of rise and run requirements of the building code.

The owner and manager in this case created the inherently dangerous condition. They would have installed the lights, and controlled their replacement and they created the stairway. As the owner created the hazardous conditions, liability is not conditioned on specific notice. Cook v. Food Lion, Inc., 328 S.C. 324. The Plaintiff was invited to the premises for a business purpose and had no choice but to travel through the area of invitation and the inherently hazardous area created by the apartment complex (see attached deposition excerpts of Greg Moran, page 30, lines 9-25 and page 31, lines 1-16). Unfortunately, the Defendants did not provide a lighted area for the Plaintiff to traverse

in an inherently dangerous area (see attached deposition excerpts of Donna Douglass, page 38, lines 18-21 and page 39, lines 6-7).

On or about January 6, 2011, the Plaintiff was called and directed to deliver a pizza to a resident located at building 700 on the premises of the Defendants, when she fell down a flight of stairs due to the lack of adequate lighting. Plaintiff was injured during said fall and had to seek medical treatment (see attached deposition excerpt of Donna Douglass, page 44, line 1).

The Plaintiff was a pizza delivery driver. Her primary source of income is through tips (see attached deposition excerpt of Donna Douglass, page 28, lines 1-11). If she doesn't deliver her pizza, she doesn't get paid. Also Ms. Douglass has diminished mental capacity. As set out in her Workers' Compensation deposition and as referenced in the deposition taken by the Defendants (see attached deposition excerpt of Donna Douglass, page 7, lines 23-25), she has learning disabilities and does not have the same mental capacity as the general population. She lacked the ability to assess a hazardous condition the same as the general public.

When Ms. Douglass got to the facility, the light was out and she had to deliver her pizza. She had no way to call anyone to replace the light, or even repair it, and she fell due to the lack of lighting (see attached deposition excerpt of Donna Douglass, page 29, lines 1-5).

Although it is not binding precedent, the same Judge, in the same capacity, presiding over a failure to provide lighting in a public space case just three (3) months before, where many of the same arguments were presented, Robert J. Burke, et al vs. Republic Parking System, Inc., Case No.: 2013-CP-10-1400. The case was allowed to

go to the jury and an amount of \$4,000,000.00 was awarded by the jury. The arbitrary and capricious nature of the ruling in this case is highlighted by dismissal compared to what happened in the Burke case.

Pursuant to the testimony of the Defendants' Maintenance Supervisor, Greg Moran, he stated that it would not be unusual for more than one or two of the lights to be out at the same time (see attached deposition excerpts of Greg Moran, page 16, lines 18-19). He further testified that lighting was always a safety issue and that he could not delegate a safety issue to a resident, that he buys the lights and that if he saw a lighting issue it was his responsibility to fix it (see attached deposition excerpts of Greg Moran, page 27, lines 1-24). Mr. Moran went on to state in his deposition that he generally knew the life of a light bulb and that he knew where to locate the life expectancy of a light bulb (see attached deposition excerpts of Greg Moran, Page 27, line 25 and page 28, lines 1-8). He stated that they would not replace the light bulbs until they were burned out and that there were no systems in place to systematically replace the light bulbs (see attached deposition excerpts of Greg Moran, page 28, lines 9-22). He went on to state that he knew when there was a situation where the lighting would burn out, he would wait until it was reported or see before he would replace it, that it was a safety issue and he was aware that it was going to burn out and he should anticipate replacing it. (see attached deposition excerpts of Greg Moran, page 28, lines 23-25 and page 29, lines 1-20). Further in his deposition Mr. Moran went on to state that there was not any other overhead lighting or any lighting that would illuminate the area on the ground at the bottom of the particular stairway where the Plaintiff fell (see attached deposition excerpts of Greg Moran, Page 33, lines 2-7). Mr. Moran also stated he was not familiar with any

of the building codes regarding the rise and run of the stairways, that they were always repairing the stairs because they were about 30 years old, made out of wood, and would become misshapen or disfigured (see attached deposition excerpts of Greg Moran, page 34, lines 24-25 and page 35, lines 1-18). Mr. Moran further stated that the maintenance guys do not always make an entry in the maintenance log every time they change a light bulb (see attached deposition excerpts of Greg Moran, page 35, lines 19-21). He also stated they only checked for light bulbs about once a month and that only residents or employees could put in a work order (see attached deposition excerpts of Greg Moran, page 13, lines 14-15 and page 10, lines 2-3).

The Defendants' previous service manager, Richard King, also testified that sometimes a service request would be written up and sometimes they wouldn't (see attached deposition excerpts of Richard King, page 10, lines 2-4). Mr. King also testified that he would walk through the grounds and that if something needed to be fixed, they would just fix it right away without recording it (see attached deposition excerpts of Richard King, page 10, lines 19-24). Mr. King stated in his deposition excerpts that maintenance work is the apartment complex owner's responsibility and that the stairs were wood and they would constantly have to be nailed down as they were pulling up (see attached deposition excerpts of Richard King, page 13, lines 1-13).

Pursuant to the deposition testimony of both the Defendants' previous service manager and current maintenance supervisor, it appears as if the Defendants do not have any adequate systems in place for the safety issues regarding lighting and that there wasn't always a written log of if and when lights were replaced. The stairs had to be constantly repaired. The stairs had to be repaired and/or replaced. Additionally, although

they knew the life expectancy or knew how to find out the life expectancy of a light bulb and had a tool to see if a light bulb was burned out, but they only used it once a month. There were not any overhead lights or any additional lighting that would illuminate the area on the ground below the particular stairway where the Plaintiff fell and that it was the Defendants' responsibility to provide a safe environment for the tenants and/or visitors on their premises. Plaintiff's counsel was not allowed to set out most of his oral argument and was precluded from providing any more information to the Court.

On April 8, 2015, Plaintiff and Defense counsel attended the Defendant's Motion for Summary Judgment. Plaintiff's counsel began his oral argument when the Honorable R. Markley Dennis, Jr., interrupted several times and stated that (see transcript of April 8, 2015):

... I tried one of these, just recently. They ended up settling because, I think, I threatened at the half what I was going to do. Very similar ...

As counsel continued to attempt to present his argument, he cut counsel off and interjected:

... Well, I've got news for you. Maybe you haven't had the same problems that I have. I've bought light bulbs and they burn out a heck of a lot sooner than one would think. I appreciate your position, you've briefed it, it's covered. I'm granting the summary judgment...

ARGUMENTS

1. DID THE TRIAL JUDGE ERR IN ITS APPLICATION OF THE RELEVANT CASE LAW REQUIRING NOTICE IN A CASE WHERE THE DEFENDANTS CREATED THE HAZARDOUS CONDITION?

While the court relied on Wintersteen vs. Food Lion 344 S.C. 32, 35, 542 S.E. 2d 728, 729 (2001) and Larimore vs. Carolina Power Light, 340 S.C. 438, 445, 521 S.E. 2d 535, 539 (Ct. App. 2000), the Plaintiff submits that those cases are not the cases that applied to this situation. As set out below; however, even if those cases do have any relevance, Plaintiff should still prevail.

Plaintiff contends that the cases of Henderson vs. St. Francis Community Hospital, 303 S.C. 177, 399 S.E. 2d 767 (1990) and Margie M. Cook v. Food Lion, Inc., 328 S.C. 324 (1997) are more analogous to the present case. A look at the facts in those cases is informative as to their applicability here. As those cases set out, if the Defendants' create or are aware of a repeating hazardous situation, specific notice is not required. In Henderson, there was a gum tree that was beside the sidewalk. Gumballs would fall out of the tree onto the sidewalk and be present frequently creating a hazard. Even though it was impossible for the Plaintiff to prove the Defendants were aware of the specific gumballs the Plaintiff fell on, since the Defendants' failed to use a regular maintenance program or maintain records, the Hospital was held liable when someone fell on a gumball. The Plaintiff was not required to prove notice of the specific gumball she fell on.

In Cook v. Food Lion, there were mats that wrinkled up in the entrance way where the sliding glass doors were. It would have been impossible to prove that the Defendant's knew of the specific wrinkle in the mat that caused Ms. Cook's fall; however, as it was an ongoing situation, there was liability. Contrary to analysis which at the time would have been the Simmons vs. Winn-Dixie Greenville, Inc., 318 S.C. 310, the court recognized and

attached liability in the case despite no specific notice. The Plaintiff submits that is what should happen in the present case.

2. DID THE TRIAL JUDGE ERR BY ASSESSING COMPARATIVE FAULT WHICH IS THE PROVINCE OF THE JURY?

As it is clear in the record, Plaintiff's counsel did not get an opportunity to argue. Oral argument is a cherished right and if one side gets the opportunity to fully present their position orally, then the other side should be allowed fair and free discussions. The Plaintiff was prejudiced by not being allowed to fully explain their position on the record prior to the Court making its decision, especially regarding Ms. Douglass' diminished mental capacity.

The Court clearly made the assumption that Ms. Douglass was of average intelligence and was able to make an informed thought out decision. As alluded to in Ms. Douglass' deposition, she is a person who has limited capacity as compared to most of the public and is not capable of analyzing a hazard as it is alleged she did here. Clearly the Court heard no argument on that issue which undercuts its own ruling that as a matter of law Ms. Douglass was more responsible than the landowner who could have fixed the hazard. That decision takes the province of a jury decision away and Ms. Douglass' understanding and comprehension of the situation should be weighed by a jury who has the chance to observe her and weigh that against a commercial business owner that controls the area she was invited to, as to who is responsible.

For all these reasons, the Plaintiff respectfully requests the Court set aside the dismissal and remand the case back to the Court of Common Pleas for a jury trial.

3. DID THE TRIAL JUDGE ERR BY FAILING TO APPLY THE STANDARD OR PROOF OF SUMMARY JUDGMENT? i.e. THE

SCINTILLA STANDARD WHICH HAS BEEN ADOPTED BY SOUTH CAROLINA?

South Carolina is now a scintilla of evidence State. Defendant's Motion should be denied due to the fact that this is the standard adopted by South Carolina. *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013). In *Froneberger*, the Court concluded that the Plaintiff presented sufficient evidence to satisfy the scintilla of evidence requirement that is needed to defeat summary judgment. *Id.* "However, given the minimal amount of discovery the parties had conducted at the time summary judgment was granted, we find the Smiths' answers created a mere scintilla of evidence that precluded summary judgment". *Id.* South Carolina has now universally adopted this standard. The Plaintiff opposes this motion on the grounds that based on the facts, taken in the light most favorable to the Plaintiff, do not entitle the Defendant to judgment as a matter of law. Moreover, there are issues of material fact which make the matter one for a jury.

At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Hill v. York County Sheriff's Department*, 313 S.C. 303, 437 S.E.2d 179, 182 (Ct. App. 1993).

Ms. Douglass clearly has met her burden here. There are many jury issues presented and there are many pieces of evidence which combined and provide more than an scintilla evidence that the Defendants should be held liable.

Granting the Defendant's Motion for Summary Judgment is not proper in this action. South Carolina policy favors "the disposition of issues on their merits rather than on technicalities." *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548

S.E.2d 223, 226 (Ct. App. 2001). While the power to dismiss clearly lies with the courts, it is appropriately exercised only with restraint. Against the power to prevent delays must be weighed the sound public policy of deciding cases on their merits. The policy in South Carolina has always been to decide cases on the merits.

“Summary judgment is inappropriate when reasonable minds can differ as to any material fact.” Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447, 448 (1976). “Generally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party’s conduct, foreseeability, and proximate cause. Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986); Schmidt v. Courtney and Kemper Sports of Crowfield, Inc., Opinion No. 3719 (S.C. App. 12/22/2003) (S.C. App., 2003).

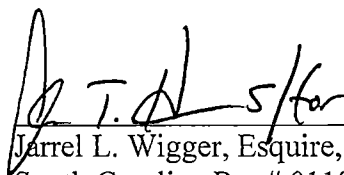
“Summary Judgment must be denied if there is any genuine dispute between the parties.” Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336, 339 (1977). “Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Tupper v. Dorchester County, 326 S.E. 318, 487 S.E. 2d 187 (1997); Baugus v. Wessinger, 303 S.C. 412, 401 S.E. 2d 169 (1991). Even if the only dispute is how to draw conclusions or determinations from undisputed facts, summary judgment should be denied. Tupper, Supra. At the summary judgment stage, the Plaintiff need not prove his case, only that there is a genuine issue of material fact regarding the merits of his claim. For summary judgment to be granted, it must be perfectly clear no issue of facts is involved. Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 293 S.E. 2d 706 (1982).

CONCLUSION

It is clear that the Defendant's Motion for Summary Judgment should not have been granted. The Judge erred by granting the Defendant's Motion for Summary Judgment.

For the reasons set forth above, and for the Judge's error in granting the Defendant's Motion for Summary Judgment, this Order granting said Summary Judgment should be reversed, set aside and the case remanded for trial.

September 11, 2015



Jarrel L. Wigger, Esquire, Fed. I.D. # 6345
South Carolina Bar # 011824
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406
(843) 553-9800
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

- - -

DONNA DOUGLASS	:	CIVIL ACTION NO.
	:	2013-CP-10-07133
Plaintiff,	:	
	:	
vs.	:	
	:	
BERKSHIRES ON ST. IVES,	:	
BERKSHIRE PROPERTY ADVISORS,	:	
LLC, BVF NORTH COVE, LLC, AND	:	
THE BERKSHIRE GROUP	:	
	:	
Defendants,	:	

GREGORY MORAN

DATE TAKEN: MONDAY, APRIL 6, 2015
 TIME BEGAN: 10:34 A.M.
 TIME ENDED: 11:17 A.M.
 LOCATION: THE WIGGER LAW FIRM, INC.
 8086 RIVERS AVENUE, SUITE A
 NORTH CHARLESTON, SOUTH CAROLINA

REPORTED BY: DEIRDRE J. WEYER, RPR
 EVERYWORD, INC.
 P.O. BOX 1459
 COLUMBIA, SOUTH CAROLINA 29202
 803-212-0012

1 off a work order.

2 Q And who would submit a work order?

3 A It could be a resident. It could be an
4 employee.

5 Q Okay. And would they call you or would
6 they call an office? Or how would they submit that
7 work order?

8 A They could call the office. They could
9 tell someone that's out on the grounds. That's
10 basically how it would happen at that time.

11 Q So if someone were to see a light out and
12 they called the office, how would you get knowledge
13 about going to fix that light?

14 A Whoever received the call would do a work
15 order.

16 Q And they would give that work order to
17 you; is that right?

18 A We'd just go on the computer and look at a
19 list of work orders.

20 Q And is that something you would do on a
21 everyday basis, look at work orders?

22 A Every morning.

23 Q Every morning?

24 A Well, throughout day, but in the morning's
25 the big one.

1 specific light bulb, the time that they last could
2 vary; is that right?

3 A Correct.

4 Q Besides reports from residents or anyone
5 else who happened to be or y'all just making rounds
6 through the property and noticing a light being out,
7 are there any other procedures that you use to check
8 lights?

9 A Yes. The property's divided into sections
10 and everyone's responsible for their own section.
11 And they would tape up the photocell, because it's
12 daylight, and check the light. Do a light check.

13 Q And how often was that done?

14 A There wasn't a set time. Maybe once a
15 month. Every so often.

16 Q Do you know who was responsible for the
17 700 building of Phase I?

18 A Not at that time.

19 Q Sitting here today, do you have any reason
20 to believe that the light checks that you just
21 mentioned were not done around the time of the
22 accident?

23 A Were not done?

24 Q Do you have reason to believe they were
25 not done around the time of the accident?

1 Q You mentioned that in order to check the
2 lights you'd have to cover up the photocell; is that
3 right?

4 A Correct.

5 Q Is that because you don't have anybody
6 working at nighttime?

7 A Correct.

8 Q And what does the photocell do?

9 A It detects darkness and turns the lights
10 on.

11 Q So that's to keep the lights from being on
12 all day; is that right?

13 A Correct.

14 Q How long have you been in property
15 management or doing maintenance for property
16 management?

17 A Seven years. Seven or eight years.

18 Q And the length of time you've been doing
19 that, in terms of lights being out and general
20 maintenance issues, do you rely on residents to
21 report those problems?

22 A No. Just my guys check it.

23 Q In terms of lights being out at night, you
24 would need residents to report those problems -- or
25 you would hope that they would report them if they

1 saw them, right?

2 A Yes. That's our best resource.

3 Q The residents?

4 A Yeah.

5 Q Do you recall any residents ever telling
6 you that there was problems with the lighting before
7 January 6th, 2011, at the 700 building, Phase I?

8 A No.

9 Q Are there other lights around the
10 buildings as well?

11 A Yeah. That light -- that whole inside
12 light well has 16 lights, divided by three -- three
13 floors, there's six on each floor.

14 Q In this case, do you know whether or not
15 it was all the lights or just one that was out?

16 A I wouldn't know.

17 Q Would it be unusual for more than one or
18 two of the lights to be out at the same time?

19 A No.

20 Q Bear with me for one minute.

21 Do you have any knowledge how long the
22 light was out in the stairwell of the 700 building of
23 Phase I before Miss Douglass's alleged accident on
24 January 6th, 2011?

25 A No.

1 A Other than an outside ramp or a different
2 toilet -- higher toilets. Something like that.

3 Q Okay. What about if a visitor is there
4 visiting one of the apartment complex residents, do
5 they have the ability to request any changes to be
6 made?

7 A No, not if they don't have a lease.

8 Q In fact, if they did start making
9 alterations to the property, would that be considered
10 a trespass?

11 A Some violation. Some kind of a violation.

12 Q Okay. Sure. I mean, you wouldn't want
13 somebody coming up and changing your sprinkler
14 systems or moving bushes or changing light bulbs or
15 anything like that, right?

16 A Right.

17 Q So would it be fair to say then -- or
18 would it be a fair characterization to say that a
19 visitor has no ability to make changes when they come
20 onto the property?

21 A I would say that's fair to say.

22 Q Yeah. Now, would you agree also as your
23 job as a maintenance person there are some things
24 that are safety related and some things that are
25 aesthetically related?

1 Q And you can't delegate to a resident to
2 fix that, can you?

3 A Not at all.

4 Q Okay. So some safety issues cannot be
5 delegated to residents. Is that fair to say?

6 A Correct.

7 Q Is lighting a safety issues?

8 A Always.

9 Q Okay. And is it fair to say you can't
10 delegate a safety issue regarding lighting to one of
11 the residents?

12 A No, but we can ask them to report.

13 Q Right. But if you see a lighting issue,
14 that's your responsibility to fix, right?

15 A Correct.

16 Q Okay. Have you ever read any of the
17 building codes that are applicable to those
18 apartments regarding lighting issues?

19 A No.

20 Q And you were asked about doing things to
21 prevent this situation. You guys when you -- do you
22 buy the light bulbs or does the company just send
23 them to you?

24 A I buy them.

25 Q Okay. And you know what the life of those

1 bulbs is generally, right?

2 A Generally.

3 Q Sometimes they burn hot?

4 A Yep.

5 Q But is there an expected life expectancy
6 within any of the bulbs that you buy?

7 A I think on that page it tells you how many
8 hours you can expect.

9 Q Right. Is it fair to say there's no
10 system in place -- or there was no system in place in
11 2011 to replace the bulbs prior to the time that they
12 burned out?

13 MR. BROGDON: Object to the form.

14 THE WITNESS: We wouldn't replace them
15 until they burned out.

16 BY MR. WIGGER:

17 Q Right. You would wait till they burned
18 out before you replaced them, right?

19 A Yes.

20 Q So there was no system in place to replace
21 them prior to the time they burned out, was there?

22 A No.

23 Q Right. So what you had was a situation
24 where you knew that the lighting would burn out at
25 some point and then you would wait until it was

1 Q And I'm not even talking about
2 Donna Douglass's situation. I'm asking you in
3 general. You had a situation set up where you waited
4 until the light burned out, you knew it was a safety
5 issue, yet you waited till it burned out before
6 replacing it, right?

7 A I just -- I don't replace light bulbs that
8 are still lit.

9 Q Yeah. Now, as maintenance folks in the
10 apartment complex, you guys knew visitors came to the
11 apartment complex, right?

12 A Always.

13 Q And have you ever seen any pizza delivery
14 people come to the apartments?

15 A Every kind of delivery service comes in.

16 Q Sure. Chinese food, people delivering
17 furniture. All kind of stuff, right?

18 A Right.

19 Q So you can anticipate those types of users
20 for your facilities, right?

21 A Um-hum.

22 Q Is that right?

23 A Yes.

24 Q So it's fair to say that Miss Douglass was
25 an anticipated user of y'all's facilities --

1 A Yes.

2 Q -- as a pizza delivery driver, right?

3 A Correct.

4 Q Okay. Now, if Miss Douglass comes at
5 night, you wouldn't expect her to go find the office,
6 then find a maintenance person to try to get a light
7 bulb changed prior to the time that she traversed the
8 stairs, would you?

9 A No.

10 Q I mean, that's just common sense. She's
11 there delivering pizza. She's going to try to get in
12 and get out, right?

13 A Right.

14 Q And there wouldn't be anybody there for
15 her to find anyway, right?

16 A No.

17 Q Sure.

18 (Moran Exhibit Number 1 was marked for
19 identification.)

20 BY MR. WIGGER:

21 Q Mr. Moran, I'm going to show you what's
22 been marked as Exhibit 1. Do you know if that's the
23 stairway that we have been talking about as far as
24 Donna Douglass's situation goes?

25 A This is the outside of the building.

1 A Something like that, yes.

2 Q What about any overhead lighting, is there
3 any overhead lighting on this particular stairway?

4 A No.

5 Q How about any lighting down below? Any
6 lighting that would illuminate this area?

7 A The landscaping? No.

8 Q And is that designed that way or is it
9 something that lights were burned out?

10 A What do you mean, "lights were burned
11 out"?

12 Q I'm just asking is this a accurate picture
13 of the way these stairways always are, or is it that
14 dark because the lights were burned out?

15 A It's not -- it doesn't look as dark as
16 this picture.

17 Q Yeah?

18 A The picture's darker than it looks.

19 Q Yeah. Where would other lighting be, if
20 any, relative to this picture?

21 A The next floor up above these
22 (indicating).

23 Q Okay. So on the next landing there would
24 be two lights kinda equivalent to these two lights
25 down here?

1 A There's three floors would be that way.

2 Q Okay. Is it fair to say there's no direct
3 light that comes down on the particular stairway
4 itself?

5 A Well, there's a light up here that would
6 shine down to it (indicating).

7 Q Okay. So when you're pointing, you're
8 pointing up north of where the stairway goes to --

9 A Right here's the floor (indicating). It's
10 going to be right (indicating).

11 Q Okay. So there's a light up in this area
12 somewhere (indicating)?

13 A And they all have their own door light.
14 That's their own private light to turn on at their
15 front door.

16 Q For the -- like, the residents?

17 A Right.

18 Q Yeah. Now, looking at this picture, does
19 it look like the light that would have been up here,
20 north, is out?

21 A I couldn't say because I'm not seeing that
22 floor that well. This picture is darker than I would
23 imagine it to be though.

24 Q Yeah. Are you familiar with any of the
25 building codes regarding rise and run of stairways?

1 A No. Whatever the code was when they built
2 that building, I would assume that's how it was
3 built.

4 Q Do you know if the rise and run is
5 consistent on this particular stairway?

6 A Yes.

7 Q Is that because you've actually measured
8 it or --

9 A No. We're always repairing stairs.

10 Q Yeah? Why are the stairs always be being
11 repaired?

12 A Because they're about 30 years old.

13 Q And they're made out of wood?

14 A Pressure-treated wood.

15 Q So the wood sometimes becomes misshapen or
16 disfigured?

17 A Yeah. People moving damage them from time
18 to time.

19 Q Now, every time a light bulb is changed,
20 do you guys make an entry on the maintenance log?

21 A No.

22 Q Is that one of those things that just if
23 you come across it, you change it out and it's --

24 A It's changed.

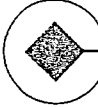
25 Q So even if we have the Berkshire records,

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
CASE NO. 2013-CP-10-7133

DONNA DOUGLASS,) DEPOSITION OF:
) DONNA DOUGLASS
Plaintiff,)
)
-versus-)
)
BERKSHIRES ON ST. IVES,)
BERKSHIRE PROPERTY ADVISORS,)
LLC, BVF NORTH COVE, LLC)
AND THE BERKSHIRE GROUP,)
)
Defendants.)
)

C
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P
Y

DATE: Tuesday, November 11, 2014
TIME: 9:57 a.m.
LOCATION: Wigger Law Firm, Inc.
8086 Rivers Avenue
North Charleston, SC 294406
REPORTED BY: JENNIFER M. HUGGINS,
Certified Shorthand Reporter

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COURT REPORTING SERVICES
www.spectrumcourtreporting.com
465 West Coleman Blvd., Suite 302
Mount Pleasant, SC 29464
SpectrumAAA@gmail.com
843.849.0133

1 said, it was dark. The light was out. And so,
2 when I went down the one set trying to go down
3 the second set, I'm still holding onto the rail.
4 I'm going down the stairs, and I stepped down.
5 Apparently I wasn't to the bottom because I fell.

6 Q. What time of day was it?

7 A. It was around -- I'm not really sure.
8 You know, I can't -- can't really remember. I just
9 know it was dark.

10 Q. So it was night, I assume?

11 A. Yes, sir.

12 Q. Okay. Do you recall what unit you were
13 delivering the pizza to?

14 A. I want to -- I can't remember. I don't
15 want to say a number. I just know that it was all
16 the way up -- all the way up the stairs on the
17 front -- when you pull up in the front, it was the
18 -- the front of the -- when you pull up to the
19 apartment, the 700 building, it's right upstairs,
20 and it was on the right.

21 Q. Okay. Describe for me how you -- the
22 setup of that building. Are the stairs like kind
23 of in between the buildings or where are they?

24 A. Okay. On this particular building,
25 well, all the -- I think most of the buildings, if

1 **A. I haven't speak to them at all.**

2 Q. Okay. So you didn't speak with
3 anybody who lived there after the accident; is that
4 right?

5 **A. No, sir.**

6 Q. Okay. And didn't call and report the
7 accident after it happened; is that right?

8 **A. No, sir.**

9 Q. Okay. Do you recall on your previous
10 trips to that building whether or not there was any
11 lighting?

12 **A. Do I recall?**

13 Q. Yeah, was it -- this instance, you said
14 there was -- it was dark, right?

15 **A. Yes, sir.**

16 Q. Okay. Was it dark in the other
17 instances where you went before this accident?

18 **A. No, sir. There was light out there.**

19 **The light -- I mean, the light was working, the**
20 **particular 700, it -- the light wasn't -- the light**
21 **was out.**

22 Q. Okay. Do you know when that light went
23 out?

24 **A. I couldn't tell you, sir.**

25 Q. Okay. Do you know how -- what caused

1 the light to go out?

2 **A. I couldn't tell you that either.**

3 Q. Okay. Do you know whether or not
4 anyone ever reported the lighting problem to the
5 property manager or anyone who owned the property?

6 **A. No, sir. I just deliver, and I just
7 worked there for business, for pizza.**

8 Q. Okay. Have you ever spoken with --
9 with anyone who lives at those apartments who told
10 you that, yes, that light frequently goes out and
11 that they had told the property owners or property
12 manager about that problem?

13 **A. No, sir.**

14 Q. Besides the person who you delivered
15 the pizza to on that night, have you spoken with
16 anyone who lives there since this accident?

17 **A. No, sir. I don't know nobody who lives
18 there.**

19 Q. Okay. Had you made any other
20 deliveries that day or that night?

21 **A. I made other deliveries that night.**

22 Q. Okay. How many did you make? Do you
23 know?

24 **A. I couldn't tell you, sir.**

25 Q. Okay. The first person you called,

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE CIRCUIT COURT

COPY

DONNA DOUGLASS,
Plaintiff,

vs.

CASE NO. 2012-CP-10-229

J.E.M. RESTAURANT GROUP, INC., d/b/a PIZZA HUT, JEM
PIZZA GROUP, LLC and JEM PIZZA DELIVERY, LLC,

Defendants.

DEPOSITION OF: DONNA DOUGLASS
DATE: December 11, 2012
TIME: 10:00 a.m.
LOCATION: Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: Patricia L. Thompson,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 A. It had just went down a couple of
2 months before to 4.85 when you're on the road, and
3 you get -- I can't remember. I think it was --
4 I can't remember how much it was to run. I don't
5 know if it was a dollar. It was 1.25 a run, and
6 then you get tips.

7 Q. How much did you make in tips each
8 week?

9 A. On a slow day I wouldn't -- I would
10 make no less just in tips 60, 70 dollars. That's
11 on a slow day.

12 Q. Do you file tax returns?

13 A. Yes, I do.

14 Q. Did you file one in 2011? Last year.

15 A. Yes, I did.

16 Q. How about the year before that, 2010?

17 A. I'm pretty sure I did.

18 Q. Do you have copies of those tax
19 returns?

20 A. I'm not sure. I don't know.

21 Q. Did you file them yourself or did --

22 A. I filed them myself on a computer. And
23 I don't never print them off, so -- I use a Web
24 site.

25 Q. You indicated that you had insurance

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1103149

DONNA DOUGLASS,)	DEPOSITION OF
)	
Claimant,)	DONNA DOUGLASS
)	
-versus-)	
)	
JEM PIZZA DELIVERY, LLC,)	
)	
Employer,)	
)	
-and-)	
)	
THE PMA INSURANCE GROUP,)	
)	
Carrier-Defendants.)	

DATE: Thursday, June 28, 2011

TIME: 9:05 a.m.

LOCATION: Wigger Law Firm, Inc.
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406

REPORTED BY: Janice D. Hayward, RMR
NCRA Registered Merit Reporter
CAROLINA REALTIME LLC
P.O. Box 80397
CHARLESTON, SC 29416

1 Q Can you spell that for me?

2 A D-e-s-a-u-s-s-u-r-e.

3 Q Okay. And how long were you married?

4 A For about a year and a half.

5 Q Any kids?

6 A No kids.

7 Q How far did you go in school?

8 A I finished school with the special ed
9 program.

10 Q Okay. A high school program?

11 A No, I had to go to a special school in the
12 city.

13 Q Okay. What was the name of it, do you
14 recall?

15 A I don't remember the name of it.

16 Q Okay. But you said it was a special
17 education school?

18 A Um-hum.

19 Q Did it have like a grade that you
20 completed?

21 A No, it's just, you just get a paper saying
22 that you did equivalent to 12 years in school.

23 Q Okay. And do you have a learning
24 disability?

25 A Um-hum.


STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
CASE NO. 2013-CP-10-7133

DONNA DOUGLASS,) DEPOSITION OF:
) RICHARD KING
Plaintiff,)
)
-versus-)
)
BERKSHIRES ON ST. IVES,)
BERKSHIRE PROPERTY ADVISORS,)
LLC, BVF NORTH COVE, LLC,)
AND THE BERKSHIRE GROUP,)
)
Defendant.)
)

C
O
P
Y

DATE: Friday, April 3, 2015
TIME: 9:58 a.m.
LOCATION: Wigger Law Firm, Inc.
8086 Rivers Avenue, Suite A
North Charleston, SC 29406

REPORTED BY: JENNIFER M. HUGGINS,
Certified Shorthand Reporter

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Mount Pleasant, SC 29464
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843.849.0133

1 ins come in during the daytime that they would just
2 call you and tell you go check it out. Sometimes
3 service requests would be written up on it and
4 sometimes it wouldn't.

5 Q. Now, was there some kind of logbook to
6 keep track of all of the service requests?

7 A. They filed them in the individual
8 apartment residents in folders.

9 Q. What if it was for an area that wasn't
10 an actual apartment, like, if it was a common
11 area?

12 A. A common area? I don't know how
13 they filed those. It -- it should be on file,
14 though. It should be some kind of file in place
15 for that.

16 Q. But that's not something that you
17 handled?

18 A. No.

19 Q. Okay. Was there ever a time where, if
20 you were just walking through the grounds and you
21 saw something simple that needed to be fixed, you
22 would just go ahead and fix it instead of doing a
23 service repair or --

24 A. Fix it right away.

25 Q. -- replace it?

1 maintenance work is the owner of the apartment
2 complex's responsibility?

3 **A. Yes.**

4 Q. Now, Ms. Douglass says -- stated here
5 in this lawsuit that she fell down the stairs at
6 this location because of a light bulb that was
7 burned out on the stairway. Are you aware that
8 stairs kind of have their own set of regulations as
9 far as building codes and things like that?

10 **A. They should be stable at all times,**
11 **being concrete or wood. If it's wood, they**
12 **should be constantly nailed down if they're pulling**
13 **up.**

14 Q. Yeah. And kind of along the same
15 lines, there's guidelines for rails and lighting?

16 **A. Rails and lighting kind of stuff, yes.**

17 Q. Would you agree that those rules are in
18 place to make stairs safe for people to use?

19 MR. BROGDON: Object to the form.

20 **A. Yes.**

21 Q. Would you agree that part of your job
22 as doing -- or when doing maintenance work is to
23 make the area safe for people to use?

24 **A. At all times.**

25 Q. Would you agree that an unlit stairwell

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SEP 11 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No.: 2015-01328

Donna Douglass,Appellant,


v.

Berkshire on St. Ives,
Berkshire Property Advisors, LLC,
BVF North Cove, LLC, and
The Berkshire Group,Respondents.

PROOF OF SERVICE OF
INITIAL BRIEF AND DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

I certify that I have served the Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal on Defendants, Berkshire on St. Ives, Berkshire Property Advisors, LLC, BVF North Cove, LLC, The Berkshire Group, by depositing a copy of same in the United States Mail, postage prepaid, on September 11, 2015, addressed to their attorney of record, James E. Brogdon, III, Esquire, Gallivan, White & Boyd, P.A., Post Office Box 7368, Columbia, South Carolina 29202. I also certify that I have served the above on the Honorable R. Markley Dennis, Jr., by depositing a copy of same in the United States Mail, postage prepaid, on September 11, 2015, addressed to The Honorable R. Markley Dennis, Jr., Charleston County Court of Common Pleas, 100 Broad Street, Suite 106, Charleston, South Carolina 29401.

September 11, 2015


Jarrel L. Wigger, Esquire, Fed. I.D. # 6345
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406
(843) 553-9800
Attorney for Appellant

Wigger Law Firm, Inc.

ATTORNEYS AT LAW

8086 Rivers Avenue, Suite A
North Charleston, SC 29406

JARREL L. WIGGER*

JOSHUA T. HOWLE
MARY F. FISHBURNE
BRICE E. RICKER

*Board Certified Civil Trial Specialist
By National Board of Trial Advocacy

(843) 553-9800
(843) 553-1648 Fax

Summerville Office:
1055-A N. Main St.
Summerville, SC 29483

(843) 851-9900
(843) 851-9044 Fax

RECEIVED
SEP 11 2015
SC Court of Appeals

September 11, 2015

South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Donna Douglass vs. Berkshires On St. Ives, Berkshire Property Advisors,
LLC, BVF North Cove LLC and The Berkshire Group
Case No.: 2013-CP-10-7133

Dear South Carolina Court of Appeals:


Enclosed you will find an original and three (3) copies of the following documents:

1. Initial Brief;
2. Designation Of Matter To Be Included In The Record On Appeal; And
3. Proof of Service of Initial Brief and Designation of Matter To Be Included In The Record On Appeal.

I would appreciate you filing the originals and returning the filed copies to me in the self-addressed stamped envelope provided.

With kindest regards, I am

Yours Very Truly,


Stephanie Tolppa
Litigation Paralegal to Jarrel L. Wigger

/st

Enclosures

cc: R. Markley Dennis, Jr. (w/encl)
James E. Brogdon, III (w/encl)