THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

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.

RESPONDENTS' RETURN TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rule 242(f), SCACR, Respondents PRG Real Estate Management, Inc., Franklin Pineridge Associates, and Karen Campbell ("Respondents") file this Return to the Petition for a Writ of Certiorari ("Petition") filed by Petitioner Denise Wright ("Petitioner") seeking a review of the Court of Appeals' decision in this case. Petitioner contends the Court of Appeals erred in failing to recognize a duty by a landlord to secure its premises from third-party criminal activity. Petitioner also contends the Court of Appeals erred in failing to apply Restatement (Second) of Torts Section 323 to her argument that Respondents voluntarily assumed a duty to secure Wellspring from criminal activity. She also contends the Court erred in failing to consider the Circuit Court's proximate cause ruling.

The Court of Appeals properly analyzed these issues and correctly applied South Carolina law. Accordingly, this Court should not be persuaded by Petitioner's arguments and should deny the Petition.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in finding there was nothing unique about the "particular circumstances" of Petitioner's case to justify a departure from this Court's general rule that a landlord does not owe tenants a duty to protect them from third-party criminal activity.

2. Whether the Court of Appeals erred in its analysis of whether Respondents voluntarily assumed a duty to secure their premises.

3. Whether the Court of Appeals erred in failing to consider the Circuit Court's proximate cause ruling.

COUNTER-STATEMENT OF THE CASE

Respondent Franklin Pineridge Associates is the owner of Wellspring Apartment Complex ("Wellspring") located at 500 Harbison Boulevard in Richland County. (App. pp. 92-93, ¶¶ 2-3). Respondent PRG Real Estate Management, Inc. ("PRG") manages Wellspring. Respondent Karen Campbell was Wellspring's property manager and an employee of PRG at the time of the events giving rise to this case. (App. pp. 92-93, ¶¶ 2, 4).

Petitioner leased an apartment at Wellspring beginning in approximately May of 2003. (App. p. 382 at 39, lines 18-22). She chose Wellspring because several of her friends from church recommended it and because it was in close proximity to her work. (App. p. 381 at 38, lines 21 – 39, line 2; App. p. 382 at 40, lines 3-7).

On September 18, 2008, Petitioner parked her car in Wellspring's parking lot near building 2200 and was walking to her apartment at approximately 10:30 p.m. (App. pp. 218-220 at 1). The closest trail was on the opposite side of her building. (App. p. 612 at 143 lines 13-23; Supp. App. p. S-4 (initial of Plaintiff's expert "WFB" in proximity of site of abduction)). According to the police report, "[t]he [Complainant/Victim] saw two black males sitting in front of the 2200 building." (App. pp. 218-220 at 1). Nothing in the report indicates the perpetrators were concealed by shrubbery or lack of lighting, and Petitioner did not indicate they were concealed to the reporting officer. (App. p. 223, line 25 – App. p. 224, line 7; App. p. 225, lines 7-9).

The two men asked for Petitioner's money, and she responded she did not have any. (App. pp. 218-220 at 1). Wellspring residents were on their balconies and in the parking lot as the incident happened. (App. p. 397 at 67, lines 1-7; App. p. 617 at 164, line 24 – App. p. 618 at 165, line 18). Another resident actually walked up with her dogs as the incident was occurring

and engaged the criminals in conversation. (App. pp 218-220 at 2; App. p. 402 at 74, line 17 – 75, line 6). After the criminals finished talking to the resident, they made Petitioner drive them in her car to various automatic teller machines to make withdrawals from her account. (App. pp. 218-220 at 2). The perpetrators told Petitioner their drug dealer was following them in another vehicle. (App. p. 404 at 79, lines 1-8). After approximately 35 minutes, the men released Petitioner, and she drove to her daughter's house, where police responded. (App. pp. 218-220 at 1). The perpetrators were never caught. Petitioner confirmed that another vehicle was following hers when she reviewed bank surveillance film after the incident. (App. p. 406 at lines 3-6).

Petitioner was not physically injured during her incident. (App. p. 434 at 131, lines 7-11). She admitted in her deposition she was not undergoing treatment for any mental injuries, including mental distress and anxiety. (App. p. 435 at 134, lines 2-6). She was not taking medications for anxiety. (App. p. 435 at 134, lines 7-9). The money she withdrew from her account was returned to her. (App. p. 439 at 140, lines 19-24). She went back to work for ten months after the incident before retiring. (App. p. 437 at 137, lines 15-23).

Petitioner filed a Complaint against Respondents on June 24, 2011, in the Richland County Court of Common Pleas. (App. pp. 77-84). In her Complaint, Petitioner asserted a claim for negligence on grounds that Respondents allegedly breached various duties relating to her security from criminal activity. In addition to her negligence claim, Petitioner asserted claims for breach of implied warranty of safety, fitness and habitability, as well as violation of the South Carolina Unfair Trade Practices Act by Respondents. Respondents answered Petitioner's Complaint on August 1, 2011, as well as two additional amended Complaints. (App. pp. 85-103). Respondents moved for summary judgment in this matter on August 2, 2012, and filed a supporting memorandum on September 27, 2012. (App. pp. 152-323).

The Circuit Court heard oral argument on October 1, 2012. (App. pp. 104-150). At oral argument, Petitioner served her Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. (App. pp. 324-512). Petitioner's counsel stipulated during oral argument that Petitioner did not oppose Respondent's motion with regard to her claim for breach of implied warranty of safety, fitness and habitability. (App. p. 107, line 14 – App. p. 107, line 24). The Circuit Court heard argument relating to the remaining claims.

At the conclusion of the hearing, the Court took the motion under advisement and granted Respondents ten days to review Petitioner's opposition memorandum and file a reply brief. (App. p. 148, line 24 – App. p. 149, line 4). With permission from the Circuit Court, Respondents' filed a reply brief on October 19, 2012, to respond to Petitioner's opposition memorandum. (App. pp. 513-563). Petitioner served a sur-reply brief on or about October 25, 2012. (App. pp. 564-576).

On September 23, 2013, the Circuit Court issued its Order granting summary judgment. (App. pp. 56-76). Petitioner filed her Notice of Appeal on October 2, 2013. After briefing, the Court heard oral arguments on January 15, 2015. On July 15, 2015, the Court of Appeals issued its opinion affirming the order of the Circuit Court. Wright v. PRG Real Estate Mgmt., 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015). A majority of the Court held Petitioner's case was "indistinguishable" from this Court's decision in Cramer v. Balcor Property Management, Inc., 312 S.C. 440, 441 S.E.2d 317 (1994) ("Cramer I") and that Respondents had no duty to provide security for Petitioner. A Petition for Rehearing was denied on August 20, 2015.

ARGUMENT

In Cramer I, this Court held that "a landlord does not owe a duty to a tenant to provide security in and around a leased premises to protect the tenant from criminal activity of third parties." Cramer I, 312 S.C. at 319, 441 S.E.2d at 444. In spite of this law, Petitioner has argued throughout her appeal that her issue is one of "first impression" in South Carolina: "whether the landlord-tenant relationship is analogous to the storeowner-invitee and innkeeper-guests relationship when the landlord knows the complex's common areas are open to the public and knows the public access the common areas for non-visiting purposes." (App. pp 839, 923). In support, Petitioner argued Wellspring was a "unique property" because it was accessible via public trails advertised to, and used by, the general public. (App. pp. 837-838). She argued these particular circumstances gave rise to a duty to provide security.

Applying Cramer I, the Court of Appeals rejected Petitioner's argument for two primary reasons. First, it found that Petitioner cited no authority for focusing on the physical layout of an apartment building or complex as a basis for determining the existence of a duty to provide security. Wright, 413 S.C. at 282-83, 775 S.E.2d at 403. Second, the Court of Appeals noted that although other entities may have invited use of the public trails, Petitioner presented no evidence that these entities invited the public onto Wellspring's property and "conceded at oral argument that respondents took no action to invite the public onto Wellspring's property." Id. at 284, 775 S.E.2d at 403. On these bases, the Court of Appeals found Petitioner's case "indistinguishable" from this Court's holding in Cramer I. Id. at 285, 775 S.E.2d at 404.

Because the Court of Appeals rejected her argument as one of "first impression," Petitioner has now re-cast her arguments in an attempt to have this Court grant her Petition. She largely retreats from her argument that Wellspring is "unique" in its physical layout. Instead,

Petitioner now argues "Respondents represent the present and future way in which many landlord-tenant relationships will be formed." (Petition at 5) (emphasis added). She argues the landlord-tenant relationship has "changed" in the modern era because tenants "seek out an apartment complex offering community amenities and public spaces," and that apartments "entice the modern renter" with amenities that draw them closer to "members of the public that are enjoying the public spaces." (Petition at 5). Petitioner has never argued this paradigmatic shift in the landlord-tenant relationship revolving around public-private spaces. The Petition is devoid of any citation to the record that she preserved this issue for appeal. (See Petition at 5). Furthermore, she retreats from her theme that this is an issue of "first impression" and now argues against precedent. For example, Petitioner now argues "[c]onditions have changed since Cramer, and *a landlord's duty to secure its premises should be reexamined* in light of the modern residential landlord-tenant relationship." (Petition at 15) (emphasis added). Finally, Petitioner now argues Respondents invited the public to Wellspring by advertising the trails as an amenity, in spite of conceding at oral argument that Respondents took no action to invite the public onto Wellspring's property. (Petition at 6, 9); see also Wright, 413 S.C. at 284, 775 S.E.2d at 403.

In short, Petitioner is disregarding the record on appeal and tailoring her arguments in whatever fashion she believes will result in further hearing by a different audience. The Court should not countenance this tactic and should deny her Petition.

I. The Court of Appeals Properly Addressed the "Particular Circumstances" That Petitioner Argued Should Give Rise to a Duty to Provide Security, and Rejected Them.

Petitioner's first argument is that if a landlord invites[1] the public to its common areas and knows the public accesses the common areas for purposes other than visiting tenants, then the landlord's relationship with its tenant is analogous to other relationships that support a duty to provide security (e.g., storeowner-invitee, innkeeper-guest). (Petition at 7). She argues this issue has never been considered by South Carolina's courts and that Cramer I only "generally" considered security duties for the landlord-tenant relationship. (Petition at 7). She then claims that Wellspring is not the "typical apartment complex" because of the presence, advertisement of, and use of public walking trails on the property. (Petition at 8). In short, Petitioner claims these types of public spaces change the landlord-tenant relationship and give rise to a duty. (Petition at 8-11).

Until now, Petitioner has never focused on a change in the landlord-tenant relationship itself. Instead, she has focused on the physical characteristics of Wellspring that she believed made it distinguishable from the "typical" apartment complex and more like a setting that would give rise to a duty to provide security. The Court of Appeals thoroughly addressed this argument. The Court noted that all of the evidence shows that Wellspring is private property and that its tenants are the only people Respondents specifically invited onto the property. Wright,

[1] This is another example of how Petitioner changes her analysis depending on the audience. In her Petition for Rehearing to the Court of Appeals, Petitioner argued the court erred in its analysis of her case because it focused on whether the landlord invited the public onto the premises. (Petitioner for Rehearing at 3-4). She argued that the correct analysis was not the source of the invitation, but whether the public was invited generally (i.e., even by a third-party) and whether the landlord knew about it. (Id. at 4). Since her petition was denied by the Court of Appeals, Petitioner now seems to adopt the Court's reasoning that the invitation must emanate from the landlord.

413 S.C. at 282, 775 S.E.2d at 402. Petitioner's argument that public trails "weave through [Wellspring]" does not change this analysis.

> [T]he trails at Wellspring are the same as public sidewalks or streets that adjoin any apartment complex because the trails – like sidewalks and streets – simply allow tenants and their invited guests to access the property. The fact that uninvited people may access the properties from the trails – like sidewalks and streets – does not change the analysis.

Id. at 282, 775 S.E.2d at 402. The Court further noted that Petitioner "cited no authority for focusing on the physical layout of an apartment or building complex as a basis for determining the existence of a duty." Id. at 282-83, 775 S.E.2d at 403. Accord Cramer I, 312 S.C. at 443, 441 S.E.2d at 318 ("'Tenants in a huge apartment complex, or a tenant on a second floor of a house converted to an apartment, do not live where the world is invited to come.'" (quoting Cooke v. Allstate Mgmt. Corp., 741 F. Supp. 1205, 1213 (1990))).

The Court of Appeals also addressed Petitioner's arguments that Respondents had a duty to secure the premises because the public was invited to use the trails (i.e., based on advertisements by county and state agencies). With regard to this argument, the Court stated that "Wright produced no evidence that these entities invited the public onto Wellspring's property." Id. at 283-84, 775 S.E.2d at 403. In considering whether *Respondents* invited the public onto their premises, the Court noted that "Wright presented no evidence [Respondents] invited the public to use the trails" and that "Wright conceded at oral argument the respondents took no action to invite the public onto Wellspring's property." Id. at 284, 775 S.E.2d at 403.

In an attempt to withdraw this concession, Petitioner now cites to an advertisement for Wellspring apartments, which she claims was a public invitation. She believes that an advertisement stating, "Come stroll along our walking path on your way to the pool or on your way to your spacious apartment home" equates to an invitation to the public to occupy

Wellspring's premises. (Petition at 9) (citing App. p. 493 at 36 lines 6-19). By Petitioner's own admission – and as should be clear from the advertisement's language – this media was directed to "potential renters." (Petition at 9). Any other interpretation would have the effect of inviting the general public to use the pool at Wellspring or the referenced "spacious apartment home[s]."

Petitioner then argues the landlord-tenant relationship has "shifted" from the time when courts adopted common law rules absolving landlords of any duty to secure premises. (Petition at 9) (citing Timothy O'Rourke, *Landlords Have No Affirmative Duty to Protect Tenants From Criminal Activity*, 46 S.C. L. Rev. 184, 185 (1994)). Although Petitioner alluded to a change in the landlord-tenant relationship in argument to the Court of Appeals, it was very different from her present argument. In her argument to the Court of Appeals, Petitioner suggested "[t]enants have changed from expecting full control over the entirety of the landlord's premises to expecting and receiving *a dwelling unit surrounded by land owned and controlled by the landlord.*" (App. at p. 16) (emphasis added). Based on this control, Petitioner argued a landlord should have a duty to provide security. (App. pp. 840-842).

However, now Petitioner argues to this Court that the modern landlord-tenant relationship involves "[a]partment complex amenities that blur the line between public and private spaces," and that Respondents offered these amenities 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." (Petition at 5, 9). Petitioner has never raised this argument, and she is trying to "have it both ways." On the one hand, she has argued that tenants expect a landlord to control the premises, which requires that they provide security. (App. pp. 840-842). Now, she argues the landlord-tenant relationship has changed and that the modern era involves a blending of public and private spaces, which she also believes gives rise to a duty.

She contradicts her prior argument, and she provides no citation in the record to support an argument that has not been preserved for appeal. (Petition at 9-10).

Aside from the fact that the Court of Appeals addressed the only arguments preserved for appeal by Petitioner, the issue of the public trails is largely a red herring in this case. Petitioner represents that the trails were "only a few feet from where Ms. Wright was abducted." (Petition at 8). Petitioner lived in apartment 2210 in building 2200. (App. p. 750 at 44, lines 15-22). She was abducted near the walking ramp to her apartment after she parked her car outside building 2200. (App. pp. 218-221 at 1; App. p. 612 at 143 lines 13-23; Supp. App. p. S-4 (initial of Plaintiff's expert "WFB" in proximity of site of abduction)). The closest trail was on the opposite side of the building. (Supp. App. p. S-4).

Furthermore, there is no evidence to suggest the perpetrators accessed Wellspring via the trails. The only evidence in the record is that Petitioner and the perpetrators were followed *by another vehicle* as they drove to various automatic teller machines. The perpetrators said this vehicle was driven by their drug dealer. (App. p. 404 at 79, lines 1-8; App. p. 406 at lines 3-6). There is no evidence to suggest the perpetrators utilized the trails to access Wellspring.

This Court has addressed the issue raised by Petitioner in Cramer I, and the Court of Appeals properly applied the law to find that there was nothing to distinguish Petitioner's case from the rule established by this Court. Unlike the storeowner-invitee and innkeeper-guest relationship, Respondents did not invite the general public to Wellspring. The fact that the property is accessible by public trails does not change that Wellspring is private property for tenants and invited guests. For this reason, Respondents did not owe a duty to Petitioner to protect her from criminal activity, and the Court of Appeal's correctly applied the law.

II. The Court of Appeals Properly Addressed Petitioner's Argument that Respondents Voluntarily Assumed a Duty to Provide Security.

Petitioner's second argument is that the Court of Appeals erred in not applying Restatement (Second) of Torts Section 323 to her argument that Respondents assumed a duty to provide security. (Petition at 11-14). Although the Court of Appeals did not cite directly to Section 323, it is evident that the Court appropriately considered Section 323 in reaching its decision that Respondents' actions did not give rise to a duty of care under the "affirmative acts" exception to Cramer I's general rule.

Cooke v. Allstate Management Corporation, 741 F. Supp. 1205, 1209-10 (D.S.C. 1990) originally identified the "affirmative acts" exception as one of four exceptions to the general rule that a landlord has no duty to provide security.[2] As set forth in Cooke, this exception holds that "one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care." Id. Since Cooke, no South Carolina court considering the "affirmative acts" exception in a landlord-tenant security case has held that Section 323 displaces the rule set forth in Cooke. In Goode v. St. Stephen United Methodist Church, 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997), the appellant argued Section 323 as a source of the "undertaking duty." However, the Court of Appeals did not adopt it as the applicable analysis for the "affirmative acts" exception, as suggested by Petitioner. (Petition at 13) ("To test that claim, the Court of Appeals *cited and applied* section 323") (emphasis added). Instead, the Court of Appeals applied the appellant's own authority (Section 323) to (again) show that circumstances

[2] As noted in the Court of Appeals' majority opinion, use of the term "security" herein refers to a duty to protect against third-party criminal activity. It is not to be confused with the duty to provide a "safe" premises free from physical/structural defect. Wright, 413 S.C.at 286, 775 S.E.2d at 404-05.

did not warrant the finding of a duty by the landlord to provide security. Id. at 442, 494 S.E.2d at 832.

Nevertheless, the Court of Appeals did not fail to consider this body of law in its decision. At the outset of its analysis, the Court of Appeals cited to Sherer v. James, 290 S.C. 404, 351 S.E.2d 148 (1986) as support for the affirmative acts exception. Wright, 413 S.C. at 287, 775 S.E.2d at 405 (citing to Sherer as "providing that one who undertakes to act, even though under no obligation to do so, becomes obligated to act with reasonable care."). In Sherer, this Court noted this principle was taken essentially verbatim from Restatement (Second) of Torts Section 323(a). Sherer, 290 S.C. at 406, 351 S.E.2d at 150. Therefore, the very law Petitioner argues the Court of Appeals failed to consider is incorporated in the rule applied by the Court of Appeal's opinion to address the "affirmative acts" exception.

The Court of Appeals then appropriately applied the law to each of the three affirmative acts Petitioner contends gave rise to a duty by Respondents.[3] Wright, 413 S.C. at 287-88, 775 S.E.2d at 405-06. The Court found that Respondents' creation of a courtesy officer program did not impose on Respondents a duty to exercise reasonable care in providing security at the complex. Instead, Respondents' undertaking required that they maintain the program itself with reasonable care. Id. at 287-88, 775 S.E.2d at 405 (citing 65 C.J.S. *Negligence* § 40 (2010); Byerly v. Connor, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992)). The Court found that

[3] Before the Court of Appeals, Petitioner argued the common areas exception applied to create duty of care. Wright, 413 S.C. at 285-86, 775 S.E.2d at 404-05. Petitioner did not raise this exception in her Petition. An unappealed ruling is law of the case and requires affirmance. Shirley's Iron Works, Inc., v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). Similarly, this Court should affirm the Court of Appeal's ruling holding that Petitioner failed to prove a claim under the South Carolina Unfair Trade Practices Act. Petitioner also did not appeal that ruling from the Court of Appeals in her Petition.

Respondents' duty was limited to exercising reasonable care in maintaining the courtesy officer program, and there was no evidence that Respondents' failed in this regard. Id.

This analysis is correct both under the applicable law and Section 323. South Carolina's courts have held that Section 323 should not be extended to create a duty that has a chilling effect on conduct that inures to the public good. See, e.g., Johnson v. Robert E. Lee Academy, 401 S.C. 500, 737 S.E.2d 512 (Ct. App. 2012) ("[C]ontorting the Restatement to create a precedent that may have a chilling effect on . . . conduct that inures to the public good is ill-advised and poor public policy."). If Respondents' decision to provide a courtesy officer program also required that they also ensure the security of tenants from criminal activity, then such contortion of Section 323 would discourage landlords from voluntarily providing such programs. Under these circumstances, the Court of Appeals has held that Section 323 should not impose a duty. See also Underwood v. Coponen, 367 S.C. 214, 219 n. 3, 625 S.E.2d 236, 239 n. 3 (Ct. App. 2006) ("If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devises, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability."); Staples v. Duell, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App.1997) (declining to impose duty on defendant to inspect property under circumstances because doing so "would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land").

Even if this was not the case, the Court of Appeals cited to Cramer v. Balcor Property Management, Inc., 848 F. Supp. 1222 (D.S.C. 1994) ("Cramer II"), as a second basis for its decision that the "affirmative acts" exception did not apply to the courtesy officer program. Wright, 413 S.C. at 288, 775 S.E.2d at 406. Cramer II rejected a similar claim, and the Court of

Appeals found it to be "indistinguishable" from Petitioner's case. Id. "The fact that the courtesy officer position was vacant at the time is a circumstance too attenuated from the kidnapping and robbery of Wright to establish a duty to provide security." Id.

The Court of Appeals then turned to Petitioner's claims that Respondents' voluntary provision of lighting and shrubbery maintenance gave rise to a duty to provide security. Id. The Court correctly cited to Cramer I as support for its holding that neither of these actions impose this duty on Respondents. Id. Cramer I held that the duty to provide a "safe" premises (physically/structurally) under the South Carolina Residential Landlord Tenant Act does not impose a duty on landlords to provide a "secure" premises. Cramer I, 312 S.C. at 319, 441 S.E.2d at 444. With regard to any common law exception, the Court of Appeals noted that "[i]f the law recognized these as 'undertakings' sufficient to impose on developers and apartment managers a duty of reasonable care to provide security services, the rule of Cramer I would be swallowed by the affirmative acts exception." Wright, 413 S.C. at 289, 775 S.E.2d at 406. With this language, the Court of Appeals recognized the public policy implications of contorting Section 323 so as to create a duty to provide security, as distinguished from a duty to provide safe premises.

The Court of Appeals was correct in its analysis, and it appropriately considered Section 323 as part of the general body of law underlying the affirmative acts exception. However, even if Petitioner's assertion is correct, Respondents provided substantial evidence from the record to support that Petitioner could not sustain her burden of proof that breach of a voluntarily assumed duty increased her harm, or that she relied on it to her detriment. See Restatement (Second) of Torts 323 (1965). Respondents thoroughly addressed any claims of reliance by Petitioner, as well as her claims that purported negligence in the courtesy officer program and

lighting/shrubbery maintenance increased her risk of harm. (App. pp. 893-905). The Court of Appeals considered all of this evidence in analyzing Petitioner's argument, and its decision should be left undisturbed.

III. The Court of Appeals Correctly Declined to Address the Circuit Court's Ruling That Respondents' Conduct Did Not Proximately Cause Petitioner's Injuries.

Petitioner's last issue is that the Court of Appeals did not address proximate causation based on its resolution of whether Respondents owed a duty. (Petition at 14-15). The Court of Appeals correctly declined to address this issue based on the fact that its determination of the duty issue was dispositive of the appeal. Wright, 413 S.C. at 289, n.5, 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)); see also Whiteside v. Cherokee County Sch. Dist. No. 1, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) ("In view of our disposition of this issue, we need not address appellants' remaining exceptions.")).

Notwithstanding this decision, Respondents presented substantial law and evidence from the record to show that Petitioner cannot prove proximate causation as a matter of law. (App. p. 899) (citing Parks v. Characters Night Club, 345 S.C. 484, 500, 548 S.E.2d 605, 614 (Ct. App. 2001)). Petitioner must show that any negligence by Respondents led directly to her injury. (App. p. 900) (citing Cramer II, 848 F. Supp. at 1224). There must be a strong causal connection between the negligence and the injury, such as where a landlord leaves an apartment door unlocked and a third party enters. (App. p. 900). Furthermore, a willful and malicious crime breaks the causal link between the negligence and the alleged injuries. (App. p. 900) (citing Sheppard v. South Carolina Dept. of Corrections, 299 S.C. 370, 375, 385 S.E.2d 35, 37 (Ct. App. 1989). (See generally App. pp. 899-900).

Based on this law, Respondents presented substantial evidence that Petitioner could not prove proximate causation. Petitioner's expert admitted criminal activity is a "people problem" for which there is no "crystal ball" or "magic pill" that allows it to be predicted with certainty. (App. p. 901). The perpetrators committed their crime in spite of the fact that other residents were on their balconies, and one resident actually engaged the perpetrators in conversation as the crime was occurring. (App. p. 901). Respondents also presented evidence that Petitioner's expert could only find two police reports from the preceding four years involving violent crimes. (App. p. 902). Officers who responded to Petitioner's incident also characterized crime in the area as "average," and Petitioner herself did not know of other criminal incidents at Wellspring. (App. p. 902). Respondents also presented evidence that the perpetrators were not concealed by shrubbery or because of a lack of lighting, as claimed by Petitioner. (App. pp. 902-903). Finally, Respondents showed the lack of evidence to support Petitioner's claim that the perpetrators would not have been in the area to abduct her but for the absence of a courtesy officer. (App. p. 904). Petitioner's expert also could not testify as to whether the perpetrators considered the absence of courtesy officers in their decision to abduct Petitioner. (App. p. 904).

The Court of Appeals did not need to address the issue of proximate causation based on its determination that Respondents owed no duty. However, in spite of this decision, Petitioner cannot prove proximate causation based on the law and evidence in the record.

CONCLUSION

There is nothing "unique" or "rare" about Wellspring or the "particular circumstances" of this case so as to justify a deviation from Cramer I's general rule. The Court of Appeals correctly analyzed the factual and legal issues in Petitioner's case, and there is no reason to reexamine it "in light of the modern landlord-tenant relationship" (Petition at 15), especially

since Petitioner has never provided any foundation to support her argument that the apartment industry has radically changed based on a desire to blend public and private spaces. Accordingly, the Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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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.

PROOF OF SERVICE

I HEREBY CERTIFY THAT I SERVED the Respondents' Return to Petition for A Writ of Certiorari, by placing a copy in the United States mail, postage prepaid, to all counsel of record on October 15, 2015, addressed to the following:

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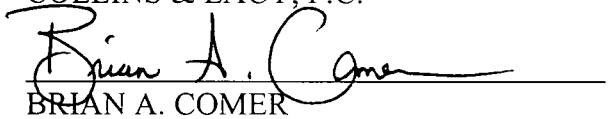
Respectfully submitted,

COLLINS & LACY, P.C.

By: 

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PROOF OF SERVICE – RESPONDENTS' RETURN TO PETITION FOR A WRIT OF CERTIORARI

October 15, 2015
Columbia, South Carolina