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.

INITIAL BRIEF OF RESPONDENTS

James E. Brogdon, III
Jessica A. Waller
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Tel: 803.779.1833
Fax: 803.779.1767

ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUES ON APPEAL

I. WAS THE CIRCUIT COURT'S APPLICATION OF SOUTH CAROLINA'S WELL-SETTLED NOTICE JURISPRUDENCE IN GRANTING SUMMARY JUDGMENT PROPER?

II. WAS THE CIRCUIT COURT'S FINDING THAT APPELLANT'S COMPARATIVE NEGLIGENCE IN TRAVERSING THE OPEN AND OBVIOUS DANGER WARRANTED SUMMARY JUDGMENT AS A MATTER OF LAW PROPER?

INTRODUCTION

In this matter, Appellant Donna Douglass ("Appellant") contends she sustained injuries when she fell down the stairs of an apartment complex owned and operated by the Respondents because of inadequate lighting. Specifically, Appellant asserts an existing light's bulb was burned out. This is the entirety of Appellant's theory to support causes of action of negligence and premises liability about Respondents.

Because no evidence or testimony was presented indicating Respondents knew or should have known that the stairwell light was out, Respondents moved for summary judgment. Based upon the evidence presented in this case, the circuit court properly granted Respondents' motion and entered judgment in its favor as a matter of law. Appellant failed to present any evidence demonstrating that Respondents created the condition of the burned out light bulb or that Respondents possessed actual or constructive notice of the burned out light at the time of Appellant's fall. As such, Respondents did not owe a duty to Appellant to warn of or remedy the lighting condition. Furthermore, Appellant's comparative negligence bars her claims as a matter of law, as she assumed the risk of traversing the dark stairwell despite recognizing the obvious danger of lack of lighting. As a result, Appellant's causes of action fail as a matter of law. Therefore, the circuit court's order granting summary judgment should be affirmed.

STATEMENT OF THE CASE

On December 9, 2013, Appellant filed a Summons and Complaint against Respondents alleging negligence and gross negligence regarding premises liability. Appellant allegedly slipped and fell on January 6, 2011 in a stairwell at an apartment complex owned by Respondents in North Charleston, South Carolina. On February 23, 2015, Respondents moved for summary judgment on Appellant's Complaint. After considering written argument and evidence, and after hearing oral argument on April 8, 2015, the circuit court granted summary judgment in favor of Respondents on April 23, 2015 (the "Summary Judgment Order"). In granting the Motion for Summary Judgment, the circuit court made the following findings:

1. The condition that caused [Appellant's] fall was a burned out light bulb.

2. Despite [Appellant's] contention, [Respondents] did not create the condition of a burned out light bulb.

3. Under South Carolina law, [Appellant] was required to prove [Respondents] had actual or constructive notice of the condition that caused her injury. [Appellant] produced no evidence that [Respondents] possessed actual or constructive notice of the burned out light bulb at the time of [Appellant's] fall.

4. Without notice, [Respondents] did not owe [Appellant] a duty to warn of or remedy the lighting condition that [Appellant] claims caused her fall. As a result, [Appellant's] causes of action against [Respondents] must fail as a matter of law.

5. As an alternative ground, [Appellant] bears greater than fifty-percent (50%) of the fault for causing her fall by assuming the risk of traversing the dark stairwell despite recognizing the danger associated with doing so prior to her fall. As a result, [Appellant's] causes of action against [Respondents] must fail as a matter of law.

(Summary Judgment Order pp. 3-4) The circuit court also dismissed Appellant's "nonsensical" theory that notice was not required because Respondents created the

dangerous condition by placing the light in the stairwell and failing to replace the light bulb prior to it burning out.

On May 7, 2015, Appellant filed a Rule 59(e) Motion for Reconsideration. Respondents filed their Memorandum in Opposition to the Motion. On May 29, 2015, the circuit court issued an order denying Appellant's motion. On June 12, 2015, Appellant filed her Notice of Appeal.

STATEMENT OF FACTS

In her Complaint, Appellant states she was employed as a pizza delivery person with Pizza Hut at the time of the accident and was at the property to deliver a pizza to a resident of the 700 building when she fell down the stairs due to inadequate lighting. (Compl. ¶ 16). In her deposition, Appellant testified that the inadequate lighting was the result of an existing light being "out." (Douglass Dep. p. 38: 16-21). She also conceded that there were no lighting issues during her previous visits to the 700 building, *Id.*, and that she did not know (1) when the light went out, (2) what caused the light to go out, (3) whether the outage had been reported to Respondents, or (4) whether a representative of Respondents knew the light was out. (Douglass Dep. pp. 38:22 – 39:13).

In addition to Appellant's deposition, the Parties have conducted extensive written discovery, deposed several maintenance supervisors employed by Respondents prior to and at the time of the alleged accident and the Pizza Hut general manager who completed the incident report following Appellant's return to work following the accident.

There is no evidence or testimony that Respondents knew or should have known that a stairwell light in the 700 building was out. Greg Moran, the maintenance supervisor at the time of the accident, testified that he had no knowledge of the light being out prior to Appellant's fall on January 6, 2011 either through reports from residents or from other employees (Moran Dep. p. 16:5-8; p. 14:2-5). Mr. Moran further testified that he did not have any knowledge regarding how long the light was out or what caused the alleged lighting outage at the 700 building at the time of Appellant's alleged fall. (Moran Dep. p. 16:21-25; p. 17:1-3). In addition to witness testimony, the

documents produced by Respondents do not reveal any reports of lighting problems at the 700 building in the days leading up to the alleged accident. Finally, Appellant has not identified any experts to testify regarding the alleged insufficient lighting issues at the 700 building at the time of her fall. The only evidence Appellant has produced other than her testimony regarding the lighting condition of the stairwell of building 700 on January 6, 2011 are approximately 6 photographs taken on January 8, 2011 – two days after the accident.

Appellant testified in her deposition that a burned out light in the stairwell caused the dark condition, which caused her to fall. Appellant further testified that she was aware the light was out before her fall before choosing to traverse the dark stairwell. Furthermore, Appellant testified she did not know when the light went out, what caused the light to go out, whether the light outage had been reported to Respondents, and whether a representative of Respondents noticed the light was burned out. In sum, Appellant presented absolutely no evidence demonstrating Respondents had actual or constructive notice of the light outage.

ARGUMENT

I. Standard of Review

Summary judgment is appropriate where, as here, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(e), SCRCP *and Baughman v. Am. Tele. & Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 545 (1991). In determining the appropriateness of granting summary judgment, the circuit court is not "required to single out some one morsel of evidence...to create an issue of fact that is not genuine." *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (quoting *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)). Moreover, "[a] party opposing summary judgment must do more than rely on mere allegations." *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 307, 657 S.E.2d 67, 70 (Ct. App. 2008) (citing *Dyer v. Moss*, 208 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985)). Where a defendant establishes entitlement to judgment as a matter of law, the court must grant summary judgment. *Humana Hosp. Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) *and Dyer*, 284 S.C. at 211, 325 S.E.2d at 70. "When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002) (citing *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)).

Here, Respondents demonstrated they were entitled to judgment as a matter of law. As set forth below, although Appellant takes issue with the circuit court's

application of the summary judgment standard, the record reveals Appellant failed to present even a scintilla of evidence demonstrating the existence of a genuine issue of *material* fact that would defeat a grant of summary judgment on Respondents' behalf.[1] Therefore, the circuit court properly entered summary judgment on behalf of Respondents' as a matter of law and the ruling should be affirmed.

II. The Trial Court Properly Applied South Carolina's Well-Settled Notice Jurisprudence in Granting Summary Judgment.

Appellant contends that South Carolina's well-established premises liability jurisprudence regarding notice was misplaced and in error. Appellant's assertion and arguments related thereto are misplaced and the circuit court's order should be affirmed.

Initially, Appellant's reliance on *Henderson v. St. Francis Community Hospital*, 303 S.C. 177, 399 S.E.2d 767 (1990) is misplaced. In fact, in 1995 the South Carolina Supreme Court seemingly recanted the holding of *Henderson* when it pronounced, "the rule established long ago by this Court [is] that one seeking recovery of injuries sustained in a fall caused by a foreign substance on a storekeeper's floor must establish that the storekeeper had actual or constructive notice that the substance was on the floor." *Simmons v. Winn–Dixie Greenville, Inc.*, 318 S.C. 319, 311–312, 457 S.E.2d 608, 609 (1995) (granting summary judgment to Defendant because there was no actual or constructive notice of the grape on the floor); *Bessinger v. Bi–Lo, Inc.*, 329 S.C. 617, 496 S.E.2d 33 (Ct.App.1998) (holding Appellant is required to prove either actual or

[1] Appellant cites as a third issue on appeal the circuit court's failure to apply the summary judgment standard of proof. For efficiency, Respondents do not separately argue this issue herein, but note that the evidentiary standard and lack thereof presented by Appellant is thoroughly argued throughout the "Argument" section of Respondents' brief. By addressing Appellant's third argument in their first and second issues, Respondents do not concede and/or waive argument with respect to the summary judgment standard of proof issue asserted by Appellant.

constructive notice of the foreign substance).

This Court also noted the abrogation, stating that to the extent *Henderson* "can be read as imposing liability on a storekeeper for negligence in allowing a foreign substance to fall on the floor even in the absence of evidence establishing the storekeeper's actual or constructive knowledge of the foreign substance, we believe that such a reading of the case is no longer viable after the Supreme Court's decision in *Simmons." Wintersteen v. Food Lion,* 336 S.C. 132, 139, 518 S.E.2d 828, 831 (Ct.App.1999) *aff'd,* 344 S.C. 32, 542 S.E.2d 728 (2001) (holding, "we decline to depart from traditional foreign substance analysis: a storekeeper is only liable if it places the substance on the floor, or if it has actual or constructive notice thereof.")

Moreover, *Cook v. Food Lion, Inc.*, 328 S.C. 324 (Ct. App. 1997), which Appellant cites, is distinguishable as well. In *Cook,* the Appellant claimed a wrinkled mat placed by the defendant's employees on the floor for its customers caused her to fall and suffer injury. During the trial, the Appellant proffered testimony from several of the defendant's employees that the floor mats used in the store had a tendency to wrinkle, had to be straightened, and caused people to trip and stumble on several occasions. This Court held the trial judge erred in directing a verdict for the defendant because the tendency of the mats to wrinkle created a dangerous condition and the defendant was aware of the tendency even though it may not have been aware the particular mat in question was in fact wrinkled immediately before the Appellant fell on it. *Cook,* 328 S.C. at 329, 491 S.E.2d at 692.

However, this Court has since held that "[t]he showing that a defendant created a condition that led to a Appellant's injury is not, however, sufficient to survive a summary

judgment motion unless there is evidence that in creating the condition, the defendant acted negligently." *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 404, 675 S.E.2d 783, 787 (Ct. App. 2009); *see also Shain v. Leiserv, Inc.*, 328 S.C. 574, 576, 493 S.E.2d 111, 112 (Ct. App. 1997) (stating the evidence required to show a condition created by the defendant was indeed hazardous must show the defendant was negligent either in the choice of materials used to create the condition or in the manner of their application).

Here, Appellant has not and cannot present any evidence demonstrating that Respondents acted negligently in maintaining the light bulbs at the apartment complex. Thus, there is no evidence that Respondents knew or should have known that the light bulb was an inherently dangerous condition. In fact, Appellant has failed to provide any evidence demonstrating Respondents had a duty to not place a light in the stairwell, take exhaustive measures to determine the lifespan of a light bulb and / or preemptively change light bulbs. *See Pringle* (affirming grant of summary judgment where no evidence was presented that hotel knew or should have known that dining chair was in danger of collapse or other failure). As the circuit court found, such theories are "nonsensical."

Despite Appellant's assertion to the contrary, the law of foreign substance cases necessarily applies to the circumstance at hand, especially because Appellant cannot, as a matter of law, demonstrate notice was not required. *See Pringle*, 382 at 404, 675 at 787 (noting that "to recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a Appellant "must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition

and failed to remedy it").

In *Wintersteen v. Food Lion,* 344 S.C. 32, 542 S.E.2d 728 (2001), a Appellant filed suit against a store owner claiming she suffered injury when she slipped and fell on a clear liquid near a self-service soda machine that was equipped with an ice dispenser at the time of her fall. *Wintersteen*, 344 S.C. at 34. Despite the Appellant's failure to produce any evidence that any store employee had actual or constructive notice of the presence of the substance on the floor prior to the accident, the trial court denied the store owner's motion for directed verdict holding that the store owner created a foreseeable risk that ice would fall onto the floor and create a dangerous condition. *Id.* In affirming the court of appeals' reversal of the trial court's denial of the store owner's motion for directed verdict, the South Carolina Supreme Court refused to implement a "duty to prevent" rule and held that "although there may be a foreseeable risk that substances will wind up on the floor, there is no specific act of the defendant which causes the substance to arrive there," and "[t]o require shopkeepers to anticipate and prevent the acts of third parties is, in effect to render them the insurers of their customers' safety." *Id.* at 37.

In attempting to advance the nonsensical theory discussed above, Appellant essentially concedes that she cannot demonstrate actual or constructive notice regarding the burned out light. Indeed, the situation at hand is directly analogous to the one presented in *Wintersteen.* Just the Appellant in *Wintersteen*, Appellant has failed to produce any evidence that could even remotely be construed as evidence that Respondents created or had actual or constructive notice of the specific light outage that Appellant alleges caused her fall. Instead, Appellant seemingly attempts to argue that because Respondents' were aware that light bulbs generally burn out over time and that

Respondents' procedures did not call for light bulbs to be replaced before they stop working, they should be held responsible for any injuries that may result when a person claims injury because they could not see where they were walking due to a light outage. As noted by the circuit court in its summary judgment order, Appellant's theory defies common sense and does not constitute notice or an inherently dangerous condition under South Carolina law.

Ignoring the fact that Appellant testified she was aware that the light was out before she fell, to extend liability to a landowner or its agents under the Appellant's theory would require landowners and their agents to implement procedures to prevent all instances of darkness in stairwells, common areas, etc. that are the result of a light outage. Essentially, Appellant is asking the Court to require landowners and their agents to anticipate events that cannot be reasonably anticipated. In other words, Appellant seeks to impose a "duty to prevent" – a duty the *Wintersteen* Court rejected. Not only would such a ruling require landowners and their agents to anticipate when a light may have an outage due to normal use, it would require anticipation of light outages that are due to a myriad of other events, including but certainly not limited to a malfunction in the light fixture, acts of third parties, weather-related outages, and countless other events that can cause a light to stop working. To allow a jury to consider liability under such an impossible theory would eviscerate years of well-established jurisprudence and hold that landowners are, in fact, the insurers' of an invitee's safety, which is contradictory to current South Carolina law. *See Wintersteen*, 344 S.C. at 36, 542 S.E.2d at 730 (noting "a merchant is not an insurer of the safety of its customers"). That potential is particularly present in this case where Appellant has not produced *any* evidence or

testimony as to what caused the light to stop working.[2]

For the reasons stated above, namely that Appellant failed to produce any evidence that Respondents created the dangerous condition or had actual or constructive notice of its existence, the circuit court's order granting Respondents summary judgment as a matter of law should be affirmed.

III. The Circuit Court Properly Found Appellant's Comparative Negligence in Traversing the Open and Obvious Danger Warranted Summary Judgment as a Matter of Law.

Appellant contends that the circuit court erred in granting summary judgment on the alternative ground that Appellant's comparative negligence bars her Complaint as a matter of law. Appellant's assertion and arguments related thereto are misplaced and the circuit court's order granting summary judgment should be affirmed.

Initially, Appellant takes issue with the circuit court's allowance of permitting only a brief oral argument before granting summary judgment. Appellant contends that had the circuit court permitted him a longer oral argument, he would have presented evidence regarding Appellant's diminished capacity. This assertion is unfounded for several reasons. First, in *Harley v. City of Spartanburg,* 230 S.C. 478, 96 S.E.2d 828 (1957), the Supreme Court held it was within the discretion of the trial judge to limit the length of time for argument. Appellant's counsel was not barred from presenting argument at the hearing—the circuit court simply limited his argument. Secondly, though Appellant counsel notes what he would have argued to the circuit court regarding

[2] It should also be noted that this case involves commercial property. A ruling in Appellant's favor would expose all landowners, including individual homeowners, to liability for injuries that occur when a light goes out regardless of whether or not the homeowner was aware of the outage. Such an expansion of potential liability is clearly beyond that which the current state of the law intends.

Appellant's diminished capacity, there is no reference to Appellant's diminished capacity in Appellant's memorandum in opposition to Respondents' motion for summary judgment that was submitted to the circuit court prior to the hearing. It is pure speculative hindsight to now assert Appellant's counsel would have orally argued diminished capacity when such argument was not raised in his written submission to the circuit court.

On the merits, Appellant's assignment of error is unfounded. Despite Appellant's assertion, Appellant, a forty-five-year-old female, is held to the same standard of care of all adults – reasonable person. *See Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 251, 734 S.E.2d 161, 164 (2012) ("In determining whether a particular act is negligent, the test depends on what a person of ordinary reason and prudence would do under those circumstances at that time and place.")

Moreover, borrowing from criminal law, except in the case of minors, South Carolina does not recognize diminished capacity as a defense. *See Gill v. State,* 346 S.C. 209, 220, 552 S.E.2d 26, 32 (2001) (upholding the trial court's refusal to charge diminished capacity where Gill argued his borderline intellectual capacity affected his ability to achieve the requisite *mens rea* for the crime charged because South Carolina does not recognize the diminished capacity defense); *State v. Santiago,* 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct.App.2006) (finding the trial judge properly excluded testimony that Santiago's Asperger's disorder caused him to fear for his life because South Carolina does not recognize the diminished capacity defense). Here, the law requires Appellant, like all other ordinary adults, be bound to the reasonable person standard.

Even assuming the law recognized "diminished capacity" of a functioning adult, which Respondents deny, Appellant has presented no evidence regarding a "diminished capacity" which would be recognized by the law. Indeed, as evidenced by her employment with Pizza Hut and deposition testimony, Appellant is able to drive her car. She has been married three times, held numerous jobs which require basic understanding, and has a basic understanding of lawsuits, medications and insurance. (*See Generally* Douglass Deposition). Thus, Appellant does not hold any diminished capacity that would alleviate her from adhering to the reasonable person standard of care.

As such, where evidence of the Appellant's *greater* negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury. *Bloom v. Ravoira*, 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000) (determining summary judgment in favor of defendant as a matter of law where the sole reasonable inference which could be drawn from the evidence was that Appellant's negligence in jaywalking exceeded fifty percent).

In assessing the open and obvious nature and Appellant's comparative negligence related thereto, *Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000) is instructive in this instance. In *Larimore*, the Appellant sued a homeowner and power company after he suffered injury at the homeowner's property when he stepped in a dirt-covered trench that was created by the power company. *Id.*, 340 S.C. at 442. In directing a verdict for the homeowner, the trial court held that "the trench was an open and obvious condition on the property and, as such, [the homeowner] owed no duty to warn [Appellant] of the condition." *Id.* 340 S.C. at 445. On appeal, Appellant argued that "a landowner may still be liable for injuries suffered from an open and obvious

defect if the landowner should have anticipated the harm." *Larimore*, 340 S.C. at 445-46 (citing *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991)). In *Callander*, the issue of liability against a restaurant owner was submitted to a jury when an elderly customer was injured when he sat on a stool that lacked a rounded seat cushion. *Callander*, 305 S.C. at 124-125.

The South Carolina Supreme Court in *Larimore* distinguished *Callander*, finding that the *Callander* Appellant produced evidence that the store owner admitted knowing of the stools condition for over two months, that the store was often frequented by senior citizens who often backed onto the stools to sit down. The Court noted that in *Larimore*, there was no evidence the homeowner was aware of the defect that caused the Appellant's injury. *Id.* at 446. The Court further held that because the homeowner "had no knowledge of the defect's existence prior to the accident, it would be impossible for him to anticipate any harm that might result from it," and to "impose liability under such a theory would make landowners insurers of their invitee's safety; it is well established in South Carolina that they are not." *Id.* at 447.

Like *Larimore*, there is absolutely no evidence that Respondents had actual or constructive knowledge of the specific light outage at the 700 building at the time of Appellant's fall. Respondents cannot be held liable for Appellant's injuries where the alleged dangerous lighting condition that caused her fall was an open and obvious condition to which Respondents did not have actual or constructive notice. Furthermore, as the circuit court correctly concluded, Appellant assumed the risk and was negligent in traversing a dark stairwell, and of which Appellant assumed the risk. By Appellant's own testimony, there can be no dispute that she was aware of dangers created by the light

outage when she elected to proceed up the stairwell. She testified that she proceeded up and down the stairs carefully because she noticed the light was out and it was dark. (Douglass Dep. 42:14 – 43:2). The sole reasonable inference which could be drawn from the evidence presented in this case is that Appellant's negligence in traversing the open and obvious dark stairwell exceeded fifty percent. *Bloom v. Ravoira*, 339 S.C. 417, 424, 529 S.E.2d 710, 714 (2000) (determining summary judgment in favor of defendant as a matter of law where the sole reasonable inference which could be drawn from the evidence was that Appellant's negligence in jaywalking exceeded fifty percent).

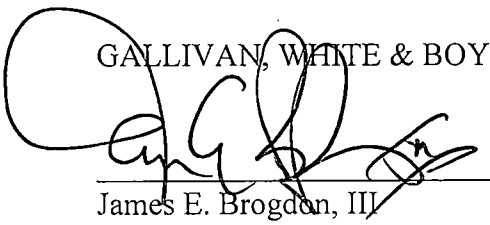
As a result, the circuit court's grant of summary judgment on the alternative ground of Appellant's comparative negligence in traversing the open and obvious danger should be affirmed.

CONCLUSION

The circuit court properly granted Respondents' motion and entered summary judgment in their favor. Viewing the record evidence in the light most favorable to Appellant, it is clear she has failed to present any evidence creating a genuine issue of material fact demonstrating Respondents' negligent creation of a dangerous condition or actual or constructive notice of the dangerous condition as required by South Carolina law, such that the grant of summary judgment on this ground was proper. Furthermore, the only reasonable inference that can be gathered from the evidence is that Appellant's comparative negligence in traversing the obviously dark stairwell was greater than fifty percent, entitling Respondents to summary judgment. Therefore, Respondents respectfully request this Court affirm the circuit court's grant of summary judgment in their favor.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.



James E. Brogdon, III
Jessica A. Waller
1201 Main Street, Suite 1110
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-724-1728

ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
November 12, 2015

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.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the Initial Brief of Respondents complies with Rule 208(a)(2), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court titled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Findings."

November 12, 2015

James E. Brogdon, III
Jessica A. Waller
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Tel: 803.779.1833
Fax: 803.779.1767

ATTORNEYS FOR RESPONDENTS

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

I certify that on November 12, 2015, I served a copy of Respondents' Initial Brief and Designation of Matter to be included in the Record on Appeal by United States Mail, postage prepaid to the following:

Jarrel L. Wigger, Esq.
WIGGER LAW FIRM, INC.
8086 Rivers Ave, Suite A
North Charleston, SC 29406

November 12, 2015

James E. Brogdon, III
Jessica A. Waller
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Tel: 803.779.1833
Fax: 803.779.1767

ATTORNEYS FOR RESPONDENTS

JESSICA A. WALLER
Direct Dial: 803.724.1722
jwaller@gwblawfirm.com

Gallivan, White & Boyd, P.A.
ATTORNEYS AT LAW

1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, South Carolina 29201
Telephone 803.779.1833
Facsimile 803.779.1767
www.GWBlawfirm.com

November 12, 2015

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Donna Douglass v. Berkshires on St. Ives, Berkshire Property Advisors, LLC, BVF North Cove LLC and The Berkshire Group
Civil Action No.: 2013-CP-10-7133
GWB No.: 8356-3

Dear Ms. Kitchings:

Please find enclosed the original and two copies of Respondents' Initial Brief, Designation of Matter and Certificate of Compliance. Please file these documents and return filed copies to this office via our courier.

By copy of this letter, as evidenced on the attached Proof of Service, I am serving opposing counsel with the same.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jessica A. Waller

JAW/ct
Enclosures
cc: Jarrel L. Wigger, Esq.