

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2014-CP-39-00613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs.

**ORDER GRANTING SUMMARY
JUDGMENT**

Fairway Oaks Homeowners Association,

Defendant,

This matter came before the Court on August 7, 2015 pursuant to a Motion for Summary Judgement filed by Defendant Fairway Oaks Homeowners Association. Elliott B. Daniels was present for the Defendant Fairway Oaks Homeowners Association and Raymond T. Wood was present for the Plaintiffs Charles Thomas Hobbs and Mary Hobbs.

2015 SEP 23 PM 9 28
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

FINDING OF FACTS

On August 21, 2012, Plaintiff Charles Thomas Hobbs was injured on Fairway Oaks Homeowners Association, (hereinafter "HOA" or "Defendant") common area grounds in Easley, S.C. when a tree limb being removed by an independent contractor fell and struck Plaintiff Charles Thomas Hobbs on the head.

Plaintiff is a longtime resident of Fairway Oaks, and in the five years before his injury, Plaintiff Charles Thomas Hobbs served as President of the HOA. The HOA had a duty to maintain its common areas, and as President of the HOA, Plaintiff Charles Thomas Hobbs arranged for the maintenance and repairs of Fairway Oaks' common areas.

In August, 2012 a resident called Plaintiff Charles Thomas Hobbs to request the removal of a tree limb hanging over his unit. Testimony from the resident indicates Plaintiff Charles Thomas Hobbs advised he would hire a professional tree service based out of Liberty, S.C. on behalf of the HOA to remove the limb. Instead, during a golf outing, Plaintiff asked a personal friend and local handyman, Lee Lambright, to remove the limb. Although Plaintiff Charles Thomas Hobbs hired Lambright for odd jobs at Fairway Oaks over the years, Lambright was not a licensed contractor, and he had no training in

tree limb removal. Lambright agreed to remove the limb if Plaintiff Charles Thomas Hobbs would help, and Plaintiff agreed. Plaintiff Charles Thomas Hobbs hired Lambright because Lambright was less expensive than a professional tree service.

On August 21, 2012, Plaintiff Charles Thomas Hobbs and Lambright met at Fairway Oaks, where Plaintiff helped remove the ladder from Lambright's truck and set it up against the tree. With Plaintiff Charles Thomas Hobbs holding the bottom of the ladder, Lambright climbed up and began to remove branches. While there is conflicting testimony as to where Plaintiff was standing and what he was doing, it is undisputed that he remained under or near the tree as Lambright was cutting limbs from the tree with a chainsaw. Plaintiff chose to be present and chose to stand in that particular location under the tree. A limb that Lambright cut fell and struck Plaintiff Charles Thomas Hobbs.

On May 14, 2014, Plaintiffs filed suit against Fairway Oaks HOA. Relevant discovery is complete, and there are no material facts relevant to this motion in dispute. Defendant moved for summary judgment on December 29, 2014, requesting the Court to find as a matter of law that the HOA is not liable for the negligence of the independent contractor.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271 (Ct. App. 2002). Summary judgment is appropriate where 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(c), SCRPC.

ANALYSIS

Defendant is not liable for the negligence of an independent contractor that Plaintiff, as the president of the HOA, hired, and no recognized exception to the general independent contractor rule applies. Accordingly, Defendant is entitled to judgment as a matter of law.

I. Defendant is not liable for the negligence of independent contractor Lee Lambright.

Generally, under South Carolina law, a principal that hires an independent contractor is not liable for the negligence of that independent contractor, or for harm caused by that negligence. *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013) (holding that timber company was not responsible for torts of logger hired to harvest and haul timber to mills because the logger was an independent contractor); *See* 18 S.C. Jur. Negligence § 35.

Here, it is undisputed that Lambright was an independent contractor, and that Lambright was negligent. Indeed, Lambright himself admitted to several mistakes that were made in his work. Nonetheless, the general rule applies: Defendant is not liable for the negligence of Lambright because Lambright was an independent contractor. On the other hand, there are no facts which indicate the Defendant HOA was negligent in causing Plaintiff's injury. The general independent contractor rule applies here: "an employer is not liable for the torts of an independent contractor." *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013). Because Lambright is an independent contractor, Defendant is not liable for Lambright's negligence.

II. There are no exceptions to take this case out of the general independent contractor body of law, and the landlord-tenant exception does not apply.

While the general rule is clear – in South Carolina, a principal is not responsible for the negligence of an independent contractor – a few, particularized exceptions have been recognized under the nondelegable duty doctrine. However, no recognized exception applies here.

Plaintiffs raised the landlord-tenant exception, which has only been applied hereto in the landlord-tenant context: "a landlord who undertakes repair of his property by use of a contractor has a nondelegable duty to see that the repairs done properly, and remains vicariously liable for injuries caused by improper repairs." *Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 43, 533 S.E.2d 312, 318 (2000), *citing Conner v. Farmers and Merchants Bank*, 243 S.C. 132, 139–40, 132 S.E.2d 385, 388–89 (1963); *Durkin v. Hansen*, 313 S.C. 343, 437 S.E.2d 550 (Ct.App.1993). However, the landlord-tenant

exception does not apply: Defendant is not a landlord and Plaintiff is not a tenant. Rather, Defendant is an HOA, and Plaintiff was its President. This case has no nexus to a landlord-tenant relationship, and this case does not involve a landlord who undertakes repairs. Plaintiff offers no statutory support or applicable case law that imputes the duties and obligations of a landlord onto an HOA.

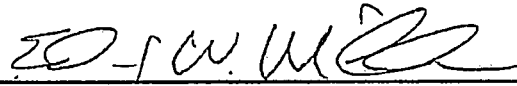
Plaintiff also argued that the present case is analogous to other situations in which a principal was found to have a nondelegable duty so that they were liable for the actions of an independent contractor. However, there is no recognized exception in South Carolina that removes this case from the general independent contractor rule. To find otherwise would require this court to expand the existing body of case law. Because there is no recognized exception to the general independent contractor rule, Defendant is entitled to judgment as a matter of law.

2015 SEP 23 AM 9 30
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CONCLUSION

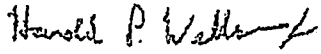
Defendant is not liable for the negligence of an independent contractor that Plaintiff, as president of the HOA, hired, and there is no recognized exception that removes this case from the general independent contractor body of law. The landlord-tenant exception does not apply because Defendant is not a landlord, and Plaintiff is not a tenant. After hearing the arguments of counsel and reviewing the testimony of the witnesses and parties in this case, the Court finds that there is no genuine issue of material fact, and the Defendant is entitled to judgment as a matter of law. The Defendant's Motion for Summary Judgment is accordingly granted.

It is ORDERED, ADJUGED and DECREED that the Defendant's Motion for Summary Judgment is hereby GRANTED. IT IS SO ORDERED.


The Honorable Edward W. Miller
Circuit Court Judge for the Thirteenth Judicial Circuit

Pickens, South Carolina

Date: 9/15/15

Certified Copy

Clerk of Court
Pickens County, SC
Dated Sept 2015
MB

STATE OF SOUTH CAROLINA
2015 SEP 23 AM 9 28
COUNTY OF PICKENS
CLERK OF COURT
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP3900613
RECEIVED
DEC 14 2015
SC Court of Appeals

Charles Thomas Hobbs vs. Fairway Oaks Homeowners Association

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order Granting Summary Judgment from Judge Miller

Court Reporter:

PRESIDING JUDGE -

A copy mailed first class this 23rd day of September, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Raymond T Wooten P.O. Box 1207 Easley, SC 29641

John Martin Grantland PO Box 6648 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

e/ *Harold P. Welborn Jr*

Harold P Welborn, Jr. - Clerk of Court

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF PICKENS
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3900613
 2015 NOV 17 PM 1:33

Charles Thomas Hobbs
 and Mary Hobbs

Fairway Oaks
 Homeowners Association
 PICKENS COUNTY
 SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

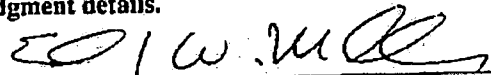
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2130
 Judge Code

11/17/2015
 Date

For Clerk of Court Office Use Only

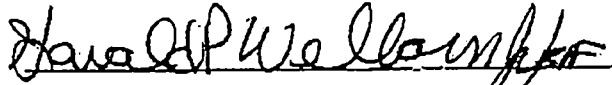
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Raymond T. Woolfen, Smith, Jordan & Lavery, 1810 E. Main St., P.O. Box 1207, Easley, SC 29641

John M. Grantland, Murphy & Grantland, P.O. Box 6648, Columbia, SC 29260
Elliot B. Daniels, Murphy & Grantland, P.O. Box 6648, Columbia, SC 29620

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Harold P. Welborn, Jr. - Pickens County Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The Plaintiff's Motion to Alter or Amend the Order Granting Defendant's Motion for Summary Judgment, filed on October 7, 2015, is hereby denied.
