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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

Case No.: 2013-CP-10-7133
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.

SUPPLEMENTAL RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
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Donna Douglass,.....Appellant,

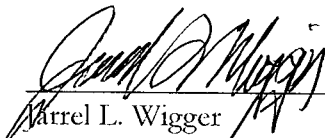
v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Index and Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 12, 2016


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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Donna Douglass,)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-10-7133

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

FILED
2015 FEB 25 PM 4:33
CLERK OF COURT

TO: JARREL L. WIGGER, ESQ., ATTORNEY FOR PLAINTIFF

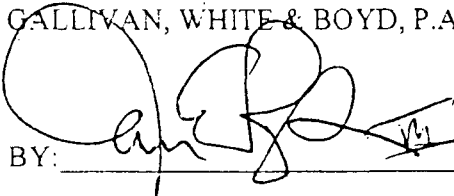
YOU WILL PLEASE TAKE NOTICE that Defendant, by and through its undersigned attorney, will move at a date and time to be set by the Court, but no sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in Defendant's favor as to all causes of action listed in Plaintiff's Complaint. The motion is based on the following:

1. Plaintiff has failed to produce any evidence which tends to prove that the Defendant created a dangerous condition which caused Plaintiff's alleged fall and injuries;
2. Plaintiff has failed to produce any evidence which tends to prove that the Defendant failed to properly maintain the alleged condition which caused Plaintiff's alleged fall and injuries;
3. Plaintiff has failed to produce any evidence which tends to prove that Defendant had notice, actual or constructive, of the alleged dangerous condition that Plaintiff claims caused her alleged fall and injuries.

For the foregoing reasons, Defendant hereby moves the Court for an Order Granting its Motion for Summary Judgment as to all of Plaintiff's claims.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings that have been filed in this action, supporting memoranda of law filed or to be filed prior to hearing, and the applicable common and statutory law of the State of South Carolina. Defendant further reserves the right to supplement this Motion prior to hearing.

GALLIWAN, WHITE & BOYD, P.A.

BY:  _____

JAMES E. BROGDON, III (SC Bar # 79159)
1201 Main Street, Suite 1200
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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
February 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

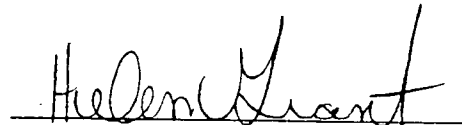
CIVIL ACTION NO.: 2013-CP-10-7133

CERTIFICATE OF SERVICE

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2015 FEB 25 PM 4:33
JULIE A. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that she served a copy of the Defendant's Notice Of Motion And Motion For Summary Judgment on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

Jarrell L. Wigger
WIGGER LAW FIRM, INC.
8086 Rivers Avenue, Suite A
North Charleston, SC 29406


Helen Grant

Columbia, SC
February 23, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-10-7133

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

FILED
2013 APR 13 PM 3:27
CLERK OF COURT
JAMES STRONG

Defendants Berkshires on St. Ives, Berkshire Property Advisors, LLC, BVF North Cove LLC and The Berkshire Group (collectively "Defendants"); by and through their undersigned attorneys, have moved for entry of an Order granting their Motion for Summary Judgment on the grounds that there is no genuine issue of material fact, and Defendants are entitled to summary judgment as a matter of law against Plaintiff Donna Douglass. Defendants submit this Memorandum in Support of their Motion.

I. INTRODUCTION AND BACKGROUND

This case arises out of an alleged trip and fall that occurred on January 6, 2011 at an apartment complex owned by Defendant BVF North Cove, LCC and operated by Defendant Berkshire Property Advisors, LLC. In her Complaint, Plaintiff 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, Plaintiff testified that the inadequate lighting was the result of an existing light being "out." (Pls. Dep. 38: 16-21, **Exhibit A**). 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 Defendants, or (4) whether a representative of Defendants knew the light was out. (Pls. Dep. 38:22 – 39:13, **Exhibit A**).

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

There is no evidence or testimony that Defendants' 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 Plaintiff's fall on January 6, 2011 either through reports from residents or from other employees (Moran Dep. 16:5-8; 14:2-5, **Exhibit B**). 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 Plaintiff's alleged fall. (Moran Dep. 16:21-25; 17:1-3, **Exhibit B**). In addition to witness testimony, the documents produced by Defendants do not reveal any reports of lighting problems at the 700 building in the days leading up to the alleged accident. Finally, Plaintiff 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 Plaintiff 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.

II. SUMMARY JUDGMENT STANDARD

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 judgment as a matter of law.” Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). However, “[i]t is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or an issue of fact that is not genuine.” *Shuler v Tuomey Reg’l Med. Ctr.*, 313 S C 225, 437 S E 2d 128, 129 (Ct. App. 1993). “In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial.” *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

III. SOUTH CAROLINA LAW

“The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty.” *Larrimore v. CP&L*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000) (quoting *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 289, 356 S.E.2d 123, 128 (Ct. App. 1987), *cert. denied*, 293 S.C. 406, 360 S.E.2d 824 (1987) (citation omitted)). To recover for injuries caused by a dangerous condition, “a plaintiff must show either (1) that the injury was caused by a specific act of the defendant which created the dangerous condition; or (2) that the defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Wintersteen v. Food Lion*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001). Generally, landowners are under no duty to warn invitee’s of open and obvious conditions. *Larimore*, 340 S.C. 438, 445, 521 S.E.2d 535, 539 (Ct. App. 2000).

IV. ARGUMENT

- a. Plaintiff has produced no evidence that Defendants' created or had actual or constructive notice of the defective lighting condition that allegedly caused Plaintiff's fall.

In *Wintersteen*, a plaintiff 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 Plaintiff'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.

Although Defendants concede the present case does not involve a foreign substance, the factual scenario presented to the Court in *Wintersteen* is directly analogous to this case. As stated in the facts section above and like the plaintiff in *Wintersteen*, Plaintiff has produced no evidence or testimony that even remotely could be construed as evidence that Defendants' created or had actual or constructive notice of the specific light outage that Plaintiff alleges caused her fall. Instead, Plaintiff seemingly attempts to argue that because Defendants' were aware that light bulbs generally burn out over time and that Defendants' 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. Plaintiff's theory defies common sense and does not constitute notice under South Carolina law.

Ignoring the fact that Plaintiff testified she was aware that the light was out before she fell, to extend liability to a landowner or its agents under the Plaintiff'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, Plaintiff is asking the Court to require landowners and their agents to anticipate events that cannot be anticipated; or, as stated in *Wintersteen*, a "duty to prevent." 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 other things such as a malfunction in the light, 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 a theory, would cut against the current state of South Carolina law and find that landowners are, in fact, the insurers of an invitee's safety. That potential is particularly present in this case where Plaintiff has not produced any evidence or testimony, lay or expert, as to what caused the light to stop working.

Finally, while the current case involves a commercial property, a ruling in Plaintiff'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.

For the reasons stated above, Plaintiffs' claims against all Defendants should be dismissed for failing to produce any evidence that Defendants created the dangerous condition or had actual or constructive notice of its existence.

b. The alleged dangerous lighting condition was an open and obvious danger and thus Defendants had no duty to warn Plaintiff of its existence.

In *Larimore*, the plaintiff sued a homeowner and power company after he suffered injury at the homeowners' 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 [plaintiff] of the condition." *Id.* 340 S.C. at 445. On appeal, Plaintiff 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* by stating that in *Callander*, the plaintiff 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 and its patrons often backed onto the stools to sit down; whereas in *Larimore*, there was no evidence the homeowner was aware of the defect that caused Plaintiff'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.

As evidenced by Plaintiff’s 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. (Pls. Dep. 42:14 – 43:2, **Exhibit A**). Furthermore, like the facts in *Larimore*, there is no evidence that Defendants had actual or constructive knowledge of the specific lighting outage at the 700 building at the time of Plaintiff’s fall. Pursuant to the ruling set forth in *Larimore*, Defendants are not liable for Plaintiff’s injuries as the alleged specific dangerous lighting condition that caused her fall was an open and obvious condition to which Defendants did not have actual or constructive notice. As a result, Defendants respectfully request the Court grant summary judgment as to all of Plaintiff’s claims on the basis that the alleged dangerous condition which caused her fall was open and obvious as a matter of law.

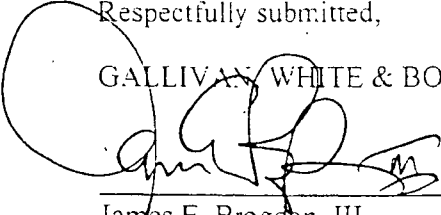
V. CONCLUSION

Based upon the foregoing authorities and argument, Defendants respectfully submit that there is no evidence that they created the alleged dangerous lighting condition or had actual or constructive notice of the alleged dangerous lighting condition prior to Plaintiff’s alleged fall and that to the extent a dangerous condition existed, it was open and obvious to Plaintiff. As such, Defendants respectfully request that the Court grant its Motion for Summary Judgment as to all of Plaintiff’s claims on the basis that there is no genuine issue of material fact as to any of Plaintiff’s causes of action.

[signature page attached]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.



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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
April 7, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

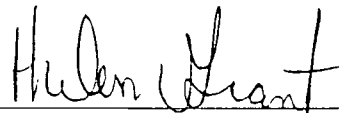
CIVIL ACTION NO.: 2013-CP-10-71335

CERTIFICATE OF SERVICE

FILED
2015 APR 13 PM 3:27
JULIE L. ARMSTRONG
CLERK OF COURT

The undersigned of Gallivan, White & Boyd, P.A., hereby certifies that she has served the following with the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by mailing a copy of same, postage prepaid and return address clearly indicated, to the below address as well as emailing a copy of the same to the below electronic mail address below on this 7th day of April, 2015.

Jarrell L. Wigger
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Helen Grant, Legal Assistant

EXHIBIT

A

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

DONNA DOUGLASS,

Plaintiff,

-versus-

DEPOSITION OF:
DONNA DOUGLASS

BERKSHIRES ON ST. IVES,
BERKSHIRE PROPERTY ADVISORS,
LLC, BVE NORTH COVE, LLC
AND THE BERKSHIRE GROUP,

Defendants.

C

O

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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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,

1 the lights was still -- the light was still
2 out.

3 Q. Okay. Was there anything -- did there
4 appear to be anything wrong with the stairs
5 themselves?

6 A. I'm not sure. I couldn't answer you, I
7 mean.

8 Q. Okay. But you're not claiming that the
9 stairs caused you to fall? It was just that you
10 weren't able to see where you're walking; is that
11 right?

12 A. No. It was too dark. The light --
13 like I said, the light was out.

14 Q. Okay. And I think that you said when
15 you went up to deliver the pizza, the light was
16 also out at that point in time, too; is that
17 correct?

18 A. Yes, sir.

19 Q. As you were proceeding down the stairs,
20 I think you said you did it carefully because you
21 realized that it was dark; is that right?

22 A. I did it careful going up and coming
23 down.

24 Q. Okay. And why did you do it carefully
25 going up and down?

1 A. Because I -- I want to prevent myself
2 from falling.

3 Q. Okay. Why did you feel in that
4 instance you needed to --

5 A. Because you --

6 Q. -- do it carefully?

7 A. Because you couldn't see -- you
8 couldn't -- you couldn't see.

9 Q. Were you able to drive yourself from
10 the apartment complex back to Pizza Hut?

11 A. Yes, sir. I drove myself. I had to
12 use my left foot.

13 Q. Okay. And you drove with your left
14 foot?

15 A. Uh-huh.

16 Q. How far is the Pizza Hut?

17 A. The Pizza Hut from the apartment
18 building?

19 Q. Yeah.

20 A. I don't want to guess how far it is. I
21 can't guess. It's not too far.

22 Q. Okay. At some point, you went to the
23 hospital; is that right?

24 A. Yes, sir.

25 Q. And what hospital did you go?

EXHIBIT

B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

DONNA DOUGLASS

Plaintiff,

vs.

BERKSHIRES ON ST. IVES,
BERKSHIRE PROPERTY ADVISORS,
LLC, BVF NORTH COVE, LLC, AND
THE BERKSHIRE GROUP

Defendants,

: CIVIL ACTION NO.
: 2013-CP-10-07133
:
:
:
:
:
:
:
:
:

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

APPEARANCES:

WIGGER LAW FIRM, INC.
JARREL L. WIGGER, ESQUIRE
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North Charleston, SC 29406
843.553.9800
jwigger@wiggerlawfirm.com
Representing the Plaintiff

GALLIVAN, WHITE & BOYD
BY: JAMES E. BROGDON, III, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jbrogdon@gwblawfirm.com
Representing the Defendants

1 A No.

2 Q Before January 6th of 2011, did you ever
3 receive any reports of problems with the lighting in
4 the stairwell of building 7 -- Phase I, 700 building?

5 A No.

6 Q Around January 6th of 2011 or right before
7 that, in the days before it, did you ever see any
8 work orders to replace any lights being out in the
9 700 building of Phase I?

10 A I would never be able to recall that.

11 Q That's records that would exist, right?

12 A I wouldn't have them. Berkshire took all
13 their stuff when they...

14 Q Is it fair to say that, you know -- if
15 they did have the work orders for around that period
16 of time and there were no work orders in those
17 documents that relate to a light being out, is it
18 fair to state that a light being out was never
19 reported?

20 A Oh, yeah.

21 Q After January 6th, 2011, did you ever go
22 to the 700 building and check the lighting in the
23 stairwell after hearing the report of the fall?

24 A I haven't -- we never knew which building
25 it was. We knew there was a lawsuit.

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 Q Do you know what caused the light to be
2 out on January 6th, 2011?

3 A Absolutely not.

4 Q Are there handrails leading up the
5 stairwells of all the buildings?

6 A Yes.

7 Q So I assume there was handrails leading up
8 to the 700 building; is that fair?

9 A Um-hum.

10 Q Yes?

11 A Yes.

12 Q If a visitor or a resident noticed a
13 problem which they thought presented them some
14 danger, what would you expect them to do?

15 A Report it to the office.

16 Q If a visitor or a resident came to a
17 stairwell and noticed that a light was out and the
18 stairwell was dark and saw that to be a dangerous
19 situation, would you expect them to proceed up or
20 down the stairwell regardless of that fact without
21 reporting it?

22 A I would say so. There was still plenty of
23 light.

24 Q But if they felt that it was a dangerous
25 condition or a dangerous situation, would you still

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-10-7133

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION PURSUANT TO
RULE 59(e)**

FILED
2015 MAY 11 PM 3:04
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court upon Plaintiff's Motion for Reconsideration regarding this Court's April 23, 2015 Order Granting Defendants' Motion for Summary Judgment. Defendants submit this Memorandum in Opposition to Plaintiff's Motion. Based on the reasons set forth below, Defendants respectfully request that Plaintiff's Motion be denied.

I. INTRODUCTION

In its April 23rd decision, this Court, after consideration of the relevant facts and arguments of counsel and applying the relevant law, properly granted Defendants' Motion for Summary Judgment. In its April 23, 2015 Order, this Court correctly held, among other things:

- The condition that caused Plaintiff's fall was a burned out light bulb.
- Despite Plaintiff's contention, Defendants did not create the condition of a burned out light bulb.
- Under South Carolina law, Plaintiff was required to prove Defendants had actual or constructive notice of the condition that caused her injury. Plaintiff produced no evidence that Defendants' possessed actual or constructive notice of the burned out light bulb at the time of Plaintiff's fall.

- Without notice, Defendants did not owe Plaintiff a duty to warn of or remedy the lighting condition that Plaintiff claims caused her fall. As a result, Plaintiff's causes of action against Defendants must fail as a matter of law.
- As an alternate ground, Plaintiff 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, Plaintiff's causes of action against Defendants must fail as a matter of law.

II. LEGAL STANDARD

Rule 59(e) of the South Carolina Rules of Civil Procedure provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. The purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, a motion for reconsideration is governed by Rule 59(e) of the South Carolina Rules of Civil Procedure. Federal case law is also instructive on this issue, as the comments to South Carolina's Rule 59 state that "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ... court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *See 389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.1999); *McCall v. Williams*, 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. *See National Ecological Foundation v. Alexander*, 496 F.3d 466, 477 (6th Cir. 2007).

III. ARGUMENT

Applying the law to the case at bar, it quickly becomes clear that Plaintiff is attempting to use a Rule 59(e) Motion to re-litigate old issues. Plaintiff's Motion indicates that Plaintiff has no basis for her request other than her mere disagreement with how the Court applied the law in this case. Plaintiff's Motion does not present any new evidence that was previously unavailable, nor does it present intervening changes in controlling law. Thus, the only possible basis for Plaintiff's Motion is that the Court made a clear error of law. However, Plaintiff has presented no evidence in this regard.

a. The Court correctly found that Plaintiff failed to prove Defendants owed a duty to Plaintiff.

In her Motion for Reconsideration Plaintiff asserts several unsupported measures she contends Defendants could have taken that may have prevented her fall. Those measures include: (1) "[design] the steps to have (2) lights so if (1) burned out, the other would still be lit"; (2) use a light meter to check the lights more than once a month; and (3) "conduct regular nighttime inspections." This is the first time Plaintiff has attempted to argue specific actions Defendants should have taken despite having ample opportunity to raise these arguments prior to her Motion for Reconsideration. As a result, to consider Plaintiff's argument would be to allow her to re-litigate a previously decided issue.

However, even if the Court reaches the merits of Plaintiff's arguments, it should still deny Plaintiff's Motion for Reconsideration because Plaintiff produced no evidence, expert testimony or otherwise, to show that Defendants had a duty to take the measures Plaintiff asserts in her Motion for Reconsideration. Plaintiff simply lists several measures which she believes may have prevented her fall, and cites for the first time what she purports to be sections of the

International Property Maintenance Code without any supporting evidence, testimony or otherwise, that establishes that the cited language is relevant or authoritative in the present case. Plaintiff also failed to produce any evidence that Defendants' violated the select sections of the cited code language. Without such evidence or testimony, the purported code sections cited by Plaintiff are nothing more than irrelevant words on paper. For these reasons, this Court correctly found that Plaintiff failed to prove Defendants owed a duty to remedy the lighting condition that Plaintiff claims caused her fall.

b. The Court correctly held as an alternate ground that Plaintiff was more than fifty-percent (50%) at-fault for causing her fall.

Plaintiff argues that because she is a person of "diminished capacity," a jury question exists as to whether or not it was reasonable for her to make the conscious decision to traverse the stairwell on the night of her fall. As stated above, Plaintiff had ample opportunity to raise this argument prior to her Motion for Reconsideration but failed to do so. To consider Plaintiff's argument would be to allow her to attempt to re-litigate a previously decided issue.

Regardless, even if the Court reaches the merits of her argument, her argument fails because it is contradicted by her own deposition testimony where Plaintiff clearly states that she attempted to *carefully* traverse the stairwell *after noticing* the dark condition. Defendants submitted this testimony to the Court in support of their Motion for Summary Judgment. Plaintiff's testimony proves that she was of sufficient mental capacity to recognize the condition and the potential danger that it caused.

Plaintiff also argues in her Motion for Reconsideration that she had no option but to traverse the stairwell to deliver the pizza. Once again, Plaintiff had ample opportunity to raise this argument prior to her Motion for Reconsideration but failed to do so. To consider Plaintiff's

argument would be to allow her to attempt to re-litigate a previously decided issue.

However, even were the Court to address the merits of Plaintiff's argument, the argument is contradicted by the testimony of Plaintiff's supervisor at the time of the accident, Richard Fortenberry, who testified that Plaintiff had the ability to call the customer and ask the customer to meet her at the bottom of the building if she did not feel comfortable walking up and down the stairwell. (Fortenberry Dep. 18:12-22, **Exhibit A.**) Clearly, Plaintiff is grasping at straws to the extent that her new arguments even contradict the evidence in the case.

Based on the evidence and testimony submitted by the Parties, this Court correctly found as an alternate ground that Plaintiff's fault for causing her fall was greater than fifty percent (50%) thus barring her recovery as a matter of law.

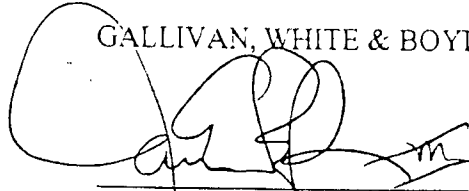
IV. CONCLUSION

There is no clear error of law warranting reconsideration of this Court's April 23rd decision. Plaintiff simply seeks to re-litigate issues that were fully briefed and argued by the Parties and properly decided by this Court. As a result, Defendants respectfully request the Court deny Plaintiff's Motion for Reconsideration.

[signature page attached]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

A handwritten signature in black ink, appearing to read 'James E. Brogdon, III', written over a horizontal line.

James E. Brogdon, III
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-724-1801

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
May 7, 2015

EXHIBIT

A

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

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

DATE: Monday, April 6, 2015
TIME: 12:56 p.m.
LOCATION: Wigger Law Firm, Inc.
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
REPORTED BY: JENNIFER M. HUGGINS,
Certified Shorthand Reporter

1 Q. -- that type of thing?

2 A. Bad areas of town, dark situations, you
3 know.

4 Q. Sure.

5 A. She's female, you know, definitely have
6 to be cautious.

7 MR. WIGGER: Sure. Okay. Those are
8 all the questions I had.

9 MR. BROGDON: One follow-up to that.

10 RE-EXAMINATION

11 BY MR. BROGDON:

12 Q. If somebody would call you and say, I'm
13 supposed to deliver this pizza up on the second
14 floor, I can't hardly even see the stairs to walk
15 up them, I don't feel safe, what would your
16 response be?

17 A. I would say, call the customer and have
18 them bring the -- you know, come down to the bottom
19 of the stairs and either do that or come back to
20 the restaurant and we'll send somebody else.

21 Q. That's a pretty easy fix, isn't it?

22 A. Yeah. That's a pretty easy fix.

23 MR. BROGDON: That's all I have.

24 RE-EXAMINATION

25 BY MR. WIGGER:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donna Douglass,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-10-7133

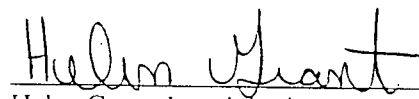
CERTIFICATE OF SERVICE

FILED
2015 MAY 11 PM 3:08
JULIE J. ARDIS FORC
CLERK OF COURT

The undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Defendants, does hereby certify that on the 7th day of May, 2015 service of the Memorandum in Opposition to Plaintiff's Rule 59(e) Motion for Reconsideration in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, addressed to the following:

Jarrell L. Wigger, Esquire
WIGGER LAW FIRM, INC.
8086 Rivers Avenue, Suite A
North Charleston, SC 29406

Counsel for the Plaintiff


Helen Grant, Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DONNA DOUGLASS,
Plaintiff.

v.

BERKSHIRES ON ST. IVES, BERKSHIRE
PROPERTY ADVISORS, LLC, BVF
NORTH COVE LLC and THE BERKSHIRE
GROUP.
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICAL CIRCUIT
CASE NO: 2013-CP-10-7133

MEMORANDUM IN OPPOSITION OF
SUMMARY JUDGMENT

The Plaintiff, by and through her undersigned counsel, hereby submits her response in opposition to Defendants' Motion for Summary Judgment and states the following:

STATEMENT OF FACTS

Prior to January 6, 2011, the Defendant's built and maintained an apartment complex. Defendants leased to residential apartment dwellers and retained control over many areas. The Defendants were responsible for 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. The maintenance supervisor admitted lighting on the stairs was a safety issue (see attached deposition excerpts of Greg Moran, page 27, lines 7-8).

The owner 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 condition, they require no notice if there is a problem. Cook v. Food Lion, Inc., 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). Plaintiff was invited to the premises for a business purpose, and had no choice but to travel through the area of invitation and 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 delivering 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 excerpts of Donna Douglass, page 44, line 1).

That 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, 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 excerpts that he generally knew the life of a light bulb, 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 there was a situation where the lighting would burn out, would wait until either 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 Mr. Moran would state that there were not any overhead lighting or any lighting that would illuminate the area on the landscape on 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 (see attached deposition excerpts of Greg Moran, page 13, lines 14-15). And that only residents or employees could put in a work order (see attached deposition excerpts of Greg Moran, page 10, lines 2-3).

The Defendants' previous service manager has also testified that sometimes a service requests would be written up and sometimes they wouldn't (see attached deposition excerpts of Richard King, page 10, lines 2-4). Mr. King also would advise that if he would walk through

the grounds that if something needed to be fixed, they would just fix it right away (see **attached deposition excerpts of Richard King, page 10, lines 19-24**). Mr. King stated in his deposition excerpts that maintenance work is the owner of the apartment complex's responsibility, and that if the stairs were wood, that they should be constantly nailed down if they were pulling up (see **attached deposition excerpts of Richard King, page 13, lines 1-13**).

Pursuant to the deposition excerpts of the Defendants' previous service manager and current maintenance supervisor, it appears as if the Defendants do not have any systems in place for the safety issues regarding lighting, that there wasn't always a written log of if and when lights were replaced, the stairs had to be constantly nailed down, that the stairs had to be repaired and/or replaced, that the building code evidently wasn't an issue because they didn't know what they were, that they knew the life expectancy or knew how to find out the life expectancy of a light bulb, that there were not any overhead lighting or any lighting that would illuminate the area on the landscape on 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.

The parties have mediated this matter, however, to no avail.

SUMMARY JUDGMENT STANDARD

"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).

"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).

"The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., Inc., 330 S.C.

562, 499 S.E.2d 822, 824-825 (Ct. App. 1998). "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).

The Plaintiffs, by and through the facts of the case, have established there are genuine issues as to the acts of the Defendants. "In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Koester v. Carolina Rental Ctr. Inc., 313 S.C. 490, 443 S.E.2d 392 (1994); Faile v. South Carolina Department of Juvenile Justice, *Supra*.

"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.3d 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. Koester, *Supra*; Tupper, *Supra*. At the summary judgment stage, the Plaintiff need not prove her case, only that there is a genuine issue of material fact regarding the merits of her 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).

Defendant's Motion should be denied due to the fact that South Carolina is now a scintilla of evidence State. 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. "However, given

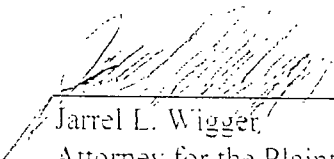
the minimal amount of discovery the parties had conducted at the time summary judgment was granted, we find the Smiths' answers created a mere scintilla of evidence that precluded summary judgment." Froneberger at 406 S.C. at 51, 748 S.E.2d at 632. South Carolina has now universally adopted this standard. 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.

CONCLUSION

It is clear, based on the facts of the case and applicable standards and law that the Plaintiff's injury was caused by the negligence, gross negligence, breach of duty of care, of the premises owned by the Defendants. Additional discovery and deposition excerpts will need to be completed. Based on the facts and law as set out in this memorandum and the fact that the Defendants' motion has no merit, the Plaintiff respectfully requests this Honorable Court to deny the Defendants' Motion for Summary Judgment.

Respectfully Submitted.

WIGGER LAW FIRM, INC.


Jarrel L. Wigger
Attorney for the Plaintiff
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
Telephone: (843) 553-9800
Facsimile: (843) 553-1648

North Charleston, South Carolina
This 8th day of April, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

DONNA DOUGLASS

Plaintiff,

vs.

BERKSHIRES ON ST. IVES,
BERKSHIRE PROPERTY ADVISORS,
LLC, BVF NORTH COVE, LLC, AND
THE BERKSHIRE GROUP

Defendants,

CIVIL ACTION NO.
2013-CP-10-07133

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 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 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 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.

1 You're welcome to read it over and make
2 sure.

3 A You can go on.

4 Q Okay. As a maintenance supervisor, would
5 you agree that part of your job deals with safety?

6 A Correct.

7 Q Would you agree with the safety principle
8 that any risk of serious injury is unreasonable if
9 reasonable accident prevention measures can prevent
10 it?

11 MR. BROGDON: Object to the form.

12 THE WITNESS: Can you rephrase that a
13 little bit?

14 BY MR. WIGGER:

15 Q Sure. Would you agree with the safety
16 principle that any risk of serious injury is
17 unreasonable if you can use reasonable acts and
18 measures to prevent it?

19 MR. BROGDON: Objection.

20 THE WITNESS: Yeah.

21 BY MR. WIGGER:

22 Q Okey-doke. I think those are all the
23 questions I have. Mr. Brogdon may have some more.

24 MR. BROGDON: No, that's it. You're done.

25

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.	)

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

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 A. I went to Trident.

2 Q. And how did you get to Trident?

3 A. My sister and Justin.

4 Q. Okay.

5 A. Tonya Wright.

6 Q. Did any -- that's your sister?

7 A. Uh-huh.

8 Q. Okay. That's who is sitting here
9 today; is that right?

10 A. Yes, sir.

11 Q. Did anyone at Pizza Hut recommend that
12 you go to the hospital?

13 A. They told me that they were going to
14 get workman's comp to call me to go to the doctor.

15 Q. Okay. Besides your ankle injury, did
16 you injure any other part of your body?

17 A. Just my ankle, and I think I scraped my
18 -- got a little scratch on my hand.

19 Q. Okay. Nothing serious on your hand,
20 though?

21 A. No, sir.

22 Q. Okay. Didn't have to get stitches or
23 anything like that?

24 A. No, sir.

25 Q. Okay. When you got back to Pizza

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.	)	

DATE: Friday, April 5, 2013

TIME: 9:36 a.m.

LOCATION: Wigger Law Firm, Inc.
 8066 Rivers Avenue, Suite A
 North Charleston, SC 29406

REPORTED BY: JENNIFER M. HUGGINS,
 Certified Shorthand Reporter

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DONNA DOUGLASS,
Plaintiff.

v.

BERKSHIRES ON ST. IVES, BERKSHIRE
PROPERTY ADVISORS, LLC, BVF
NORTH COVE LLC and THE BERKSHIRE
GROUP,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICAL CIRCUIT
CASE NO: 2013-CP-10-7133

MOTION FO RECONSIDERATION
PURSUANT TO RULE 59(e)

TO: DEFENDANTS, and THEIR ATTORNEY, JAMES E. BROGDON, III

The Plaintiff, Donna Douglass, by and through her undersigned counsel, prays this court to grant relief in the interests of justice and pursuant to Civil Procedure, Rule 59(e), by reconsidering and setting aside its Order Granting Defendant's Motion to Dismiss.

In addition and pursuant to the *South Carolina Rules of Civil Procedure*, the Plaintiff hereby requests that a hearing is held before the Court regarding this motion so that the parties may present oral arguments. This Motion is based on the following:

Plaintiff is filing this Motion for Reconsideration based upon the legal argument below:

LEGAL ARGUMENT

In the motion hearing oral argument, the Defendant presented to the Court that the Plaintiff knew the light in question was out and proceeded up the stairs anyway. With regard to that argument, the Plaintiff would offer the following additional information:

The Plaintiff is a person of diminished capacity and even alluded to such in her deposition given in her workers' compensation claim for the same case. Ms. Douglass relayed the following: She finished school with the special ed program. She did not attend a regular high school, she had to attend a special school in the city. Ms. Douglass only received a paper saying that she went to school for 12 years and that she had a learning disability. Ms. Douglass stated

that she was dyslexic, but then she wasn't sure so she would have to ask her mom. (see attached excerpts of the South Carolina Workers' Compensation Commission Deposition of Donna Douglas dated Thursday, June 28, 2011, page 7, lines 1-25 and page 8, lines 1-8) . Plaintiff having represented Ms. Douglass for many years, it is clear she only has a basic level of functioning. She has worked at Goodwill and similar low level type jobs, but her understanding of what goes on around her is evidenced in her answers in the attached excerpt of the deposition of Donna Douglass dated November 11, 2014, page 46, lines 15-23 and page 47, lines 1-11. That would contrast with the deposition of the corporate maintenance man, who states he knows lighting is a safety issue and that he can't delegate safety issues to third (3rd) parties (see the attached complete deposition of Greg Moran, page 26, lines 7-8).

Someone with Ms. Douglass's abilities would not only be extremely narrow minded about delivering her pizza, since tips are the primary means for her to get paid, it should be a jury question as to whether it would be reasonable for her to transverse the steps. For the Court to rule that as a matter of law, her negligence out weighed the business owners' responsibility flies in the face of South Carolina Jurisprudence.

Also, had there been any means for Ms. Douglass to do anything about the lighting, the office was closed and there was no way for her to do anything other than to take the risk not getting paid or delivering the pizza. (see attached complete deposition of Greg Moran, page 36 lines 15-23).

Additionally, the court focused on the light burning out, but the Plaintiff would offer that the Defendant had several methods available for dealing with this known hazard:

1. They could have designed the steps to have two (2) lights so if one (1) burned out, the other would still be lit;
2. They had a light meter available which they only used to check on lights once a month during the daytime;
3. They could have done a regular nighttime inspection, which was never done.

In light of all these factors, the Plaintiff would respectfully request the court reconsider its ruling.

Furthermore, pursuant to the International Property Maintenance Code:

...the owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with these requirements of this chapter...

...Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19m²) of floor area or equivalent illumination, provided that the space between lights shall not be greater than 30 feet (9144mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings, and treads...

In addition, it states that "The owner of the premises should maintain the structure and exterior property in compliance with these requirement" and it further states that "All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions."

The Plaintiff would also point out that the same court with your Honor Presiding with similar issues, a case centering around a commercial enterprise without adequate lighting, a jury rendered a split 75/25 verdict for the Plaintiff for over \$4,000,000 on December 14, 2014, Robert J. Burke vs. Republic Parking System, Inc. case number 2013-CP-10-1400.

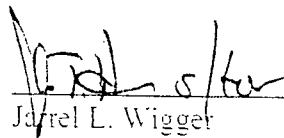
As the Court is aware, the purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits. As one authority has noted, "Once the issue has been properly raised by a Rule 59(e)

motion. it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.

CONCLUSION

Plaintiff respectfully requests this Court reconsider or vacate the Order Granting Defendants' Motion to Dismiss and to allow the Plaintiff to proceed to trial.

WIGGER LAW FIRM, INC.



Jarrel L. Wigger
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406
(843) 553-9800

Attorney for the Plaintiff.

North Charleston, South Carolina
This 7th day of May, 2015.

1 BEFORE THE
2 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
3 WCC FILE NO. 1103149
4
5 DONNA DOUGLASS,) DEPOSITION OF
6 Claimant,) DONNA DOUGLASS
7 -versus-)
8 JEM PIZZA DELIVERY, LLC,)
9 Employer,)
10 -and-)
11 THE PMA INSURANCE GROUP,)
12 Carrier-Defendants.)

13 -----

14

15

16 DATE: Thursday, June 28, 2011
17 TIME: 9:05 a.m.
18 LOCATION: Wigger Law Firm, Inc.
19 3036 Rivers Avenue, Suite A
 North Charleston, South Carolina 29406
20 REPORTED BY: Janice D. Hayward, RMR
21 NCRA Registered Merit Reporter
 CAROLINA REALTIME LLC
22 P.O. Box 80397
 CHARLESTON, SC 29416

23

24

25

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.

1 Q What's your learning disability?

2 A Dyslectic and --

3 Q I'm sorry?

4 A I don't know what all the term mean, I
5 don't know.

6 Q You said dyslexic?

7 A Yeah, but I have to ask my mom too so, I
8 don't know.

9 Q I have a dyslexic child so I understand.
10 Okay. And you think it was
11 something else but you don't remember?

12 A Um-hum.

13 Q Okay. Is that a yes?

14 A Yes, it is.

15 Q Okay. Okay. Do you have any specialized
16 on-the-job training or certification?

17 A No.

18 Q Ever served in the military?

19 A No.

20 Q Okay. Tell me about your medical history.
21 Do you have any chronic medical conditions that you
22 take medication on a regular basis for?

23 A No.

24 Q Such as diabetes, high blood pressure,
25 anything like that?

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.)
)

DATE: Tuesday, November 11, 2014
TIME: 9:57 a.m.
LOCATION: Wigger Law Firm, Inc.
2086 Rivers Avenue
North Charleston, SC 294406
REPORTED BY: JENNIFER M. HUGGINS,
Certified Shorthand Reporter

1 Q. Did they tell you what was wrong with
2 your ankle?

3 A. They told me I sprung it.

4 Q. You sprained it?

5 A. Yes, sir.

6 Q. Okay. Have you ever had a sprained
7 ankle before?

8 A. Well, that's what they called the first
9 one at West Staff, that it was sprained.

10 Q. Okay. And that one you ended up having
11 to have some tendons replaced; is that right?

12 A. Yes, sir.

13 Q. Okay. You didn't have to have that
14 happen in this case, did you?

15 A. I'm not really -- like I said, I'm not
16 good with medical terms. I usually get my parent
17 -- my mom to help me with the medical terms. So
18 I'm not really sure. They just said that -- I went
19 to the doctor, and I just -- my mom just explains
20 to me what it is.

21 MR. WIGGER: And I should say -- and I
22 don't think Donna will have any problem with this,
23 but Donna's got a lot of LD-type issues.

24 MR. BROGDON: Okay.

25 MR. WIGGER: I know she -- and she

1 knows that, too. So that has something to do with
2 her --

3 MR. BROGDON: I understand.

4 MR. WIGGER: -- inability to talk about
5 what some of these terms are.

6 MR. BROGDON: Understood.

7 MR. WIGGER: That's probably why she's
8 so nervous right now, too.

9 MR. BROGDON: I have difficulty with
10 them -- with the terms as well on a regular basis,
11 so you're not any different in that regard.

12 BY MR. BROGDON:

13 Q. Okay. Did you follow-up with the
14 orthopedist?

15 A. No, sir. I had -- kept trying to go to
16 the Pizza Hut doctor. They wouldn't refer me, and
17 then I hired Mr. Wigger.

18 Q. Okay.

19 A. And he got me to go to the doctors.

20 Q. And who -- do you recall what
21 orthopedist you went to see?

22 A. I went to Charleston Bone and Joint
23 doctor, and I want to say they sent me to a -- a
24 Medicare doctor, like an urgent care.

25 Q. Okay.

IN THE COURT OF
COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

: CIVIL ACTION NO.
: 2013-CP-10-07133

GREGORY MOPAN

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

APPEARANCES:

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jbrogdon@gwblawfirm.com
Representing the Defendants

I N D E X

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E X H I B I T S

MOPAN	DESCRIPTION	MARKED
1	Copy of Color Photograph	31
2	Berkshire Property Advisors, LLC, Procedure for Completing the Apartment Interior Inspection Bates Stamp DEF 00005	36
3	Berkshire Property Advisors, LLC, Job Description Bates Stamped DEF 000026	37

(It is hereby stipulated and agreed by and between counsel for the respective parties that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent does not waive reading and signing of this deposition transcript.)

GREGORY MORAN,

after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BROGDON:

Q Mr. Moran, as I introduced myself a minute ago, my name's James Brogdon and I represent several defendants in a lawsuit that was filed by Donna Douglass, who is represented by Mr. Wigger, who is sitting as well, for an accident that happened at a place where I believe you were employed back in January of 2011.

Are you familiar with the accident and the location of it?

A I heard about it, but I was never familiar.

Q I believe it happened on the Berkshires on

1 St. Ives property. Is that somewhere you're
2 currently employed?

3 A Yes.

4 Q Is it still owned by Berkshire?

5 A No.

6 Q Okay. Who owns it now?

7 A The owner is Starwood --

8 Q Okay.

9 A -- Investors, but it's operated by a
10 company I work for.

11 Q Okay. Before we get started, have you
12 ever given a deposition before?

13 A Yeah.

14 Q You have?

15 A (Nods head up and down.)

16 Q Okay. How many times?

17 A Once or twice.

18 Q All right. What was the nature of those
19 instances?

20 A I don't recall, but I just remember doing
21 it.

22 Q All right.. Well, obviously, you
23 understand what's going on here. This young lady is
24 taking down everything that I say, everything that
25 you say. It might get conversational at times, but

1 I'll do my best to let you finish your answer if you
2 let me finish my question just so we can have a clear
3 transcript at the end of the day. Okay?

4 A Sure.

5 Q You're doing a good job so far. If you
6 respond in verbal responses as opposed to a head nod
7 or head shake or even a um-hum or hum-um, once again,
8 just makes her life a little bit easier. If I say,
9 "Is that a yes or no," I'm not getting on you, okay?

10 A (No audible response.)

11 Q Is that a "yes"?

12 A Yes.

13 Q All right. If you need to take a break,
14 let me know. I don't think we'll be here very long
15 though, okay?

16 What is your full name, Mr. Moran?

17 A Gregory Moran.

18 Q And what's your date of birth?

19 A 11/22/49.

20 Q Where are you from?

21 A Originally, New York.

22 Q When did you move down to South Carolina?

23 A About 11 and a half years ago.

24 Q All right. And what is your current
25 employment?

1 A I'm employed by Bell Partners and they
2 operate the old Berkshire property.

3 Q What's the name of the property now?

4 A Palmetto Grove I and Palmetto Grove II.

5 Q And how long have you been employed at
6 that particular location?

7 A Six years.

8 Q Okay. So you were employed at that
9 location in January of 2011?

10 A Yes.

11 Q When did you start working at the location
12 Palmetto Grove I and II?

13 A I believe it was September of 2010.

14 Q Okay. And what would that property have
15 been called at that point in time?

16 A That was Berkshire on St. Ives.

17 Q And that was the name of the property?

18 A I and II.

19 Q Okay. At the time -- in January of 2011,
20 what was your title with Berkshire?

21 A Maintenance supervisor.

22 Q And had you held that position since
23 September 2010?

24 A Yeah. Now it's just called "maintenance
25 manager." Same job.

1 Q As maintenance supervisor, what were your
2 duties and roles in January of 2011?

3 A Basically, to the operation of the
4 facility as far as maintenance goes. Could be turns.
5 Could have been work orders. And I had three guys
6 working for me.

7 Q How many guys do you have working for you
8 now?

9 A Three.

10 Q Three. Okay. And I think you said you
11 generally know about the accident that brings us here
12 today. What do you know about it?

13 A The only thing I know is we -- the
14 property manager told me we received a lawsuit for
15 someone slipping on stairs and they had absolutely no
16 idea when, where, how, or even what building.

17 Q Okay. Do you know what the date or
18 approximate date when you found out about the
19 accident was?

20 A I would never remember that, no.

21 Q Do you know the location of the alleged
22 fall?

23 A 700 building.

24 Q Are there two phases? Is that right?

25 A Yeah.

1 Q And what phase was this?

2 A You can say 700, Phase I.

3 Q Are you familiar with that building?

4 A Yeah.

5 Yes. Sorry.

6 Q Do you have any idea or knowledge about
7 what Miss Douglass is claiming caused her fall?

8 A Absolutely not.

9 Q I'll submit to you that Miss Douglass is
10 alleging that there was a light out in the stairwell
11 and Miss Douglass was there at the building to
12 deliver a pizza. So I want to talk to you a little
13 bit about the procedures that you all had in place at
14 the time in January of 2011 in terms of fixing light
15 bulbs and general maintenance, okay?

16 A Sure.

17 Q I assume that there is some procedure for
18 problems or maintenance issues being reported and
19 fixed; is that right?

20 A Correct.

21 Q And what is that procedure? Or what was
22 that -- and when I say "what is," I want to talk
23 about the procedure at the time of the accident,
24 okay?

25 A Yeah. Yeah. It would be -- we'd react

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 Q Generally, was there a time frame that
2 your employer wanted you to get certain tasks
3 completed by?

4 A All work orders had to be done within 48
5 hours.

6 Q Were there enough work orders to where
7 that became an issue with your staff to whether it
8 would take longer to do certain things or --

9 A No.

10 Q How about --

11 A If there was parts to be ordered.

12 Q Fair enough. If there was a light -- if
13 you hopped on your system in the morning and saw
14 that, hey, someone reported a light bulb being out,
15 what would be the procedure for going to fix that?

16 A It would be the same. It would have been
17 a work order.

18 Q When you saw the work order, would you
19 just delegate that task to someone or would you just
20 go get a light bulb and fix it?

21 A Somebody's always assigned to work orders.
22 Sometimes it's two people; sometimes it's one.
23 Depends on the load.

24 Q If there was a report or a work order for
25 a light being out, is that something that would ever

1 take more than 48 hours to fix?

2 A No.

3 Q I assume y'all keep light bulbs at the
4 premises; is that right?

5 A Yes.

6 Q Is there anything else you need to fix a
7 light being out?

8 A Could need a light -- a new light. We
9 have them. Sometimes it's the facing on it, the
10 plastic facing.

11 Q Do you know what kind of light -- at the
12 time of the accident what kind of light was in the
13 stairwell in the 700 building of Phase I?

14 A They're all fluorescent lights.

15 Q Sitting here today, do you have any
16 knowledge about how long fluorescent bulbs last?

17 A They last longer than regular bulbs.
18 That's why they use them.

19 Q But you can't give a certain amount of
20 days that every bulb would last?

21 A (Shakes head from side to side.)

22 Q No?

23 A Whenever it was built, that was the
24 technology -- the best technology to use.

25 Q And depending on the usage and the

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 A No.

2 Q Before January 6th of 2011, did you ever
3 receive any reports of problems with the lighting in
4 the stairwell of building 7 -- Phase I, 700 building?

5 A No.

6 Q Around January 6th of 2011 or right before
7 that, in the days before it, did you ever see any
8 work orders to replace any lights being out in the
9 700 building of Phase I?

10 A I would never be able to recall that.

11 Q That's records that would exist, right?

12 A I wouldn't have them. Berkshire took all
13 their stuff when they...

14 Q Is it fair to say that, you know -- if
15 they did have the work orders for around that period
16 of time and there were no work orders in those
17 documents that relate to a light being out, is it
18 fair to state that a light being out was never
19 reported?

20 A Oh, yeah.

21 Q After January 6th, 2011, did you ever go
22 to the 700 building and check the lighting in the
23 stairwell after hearing the report of the fall?

24 A I haven't -- we never knew which building
25 it was. We knew there was a lawsuit.

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 Q Do you know what caused the light to be
2 out on January 6th, 2011?

3 A Absolutely not.

4 Q Are there handrails leading up the
5 stairwells of all the buildings?

6 A Yes.

7 Q So I assume there was handrails leading up
8 to the 700 building; is that fair?

9 A Um-hum.

10 Q Yes?

11 A Yes.

12 Q If a visitor or a resident noticed a
13 problem which they thought presented them some
14 danger, what would you expect them to do?

15 A Report it to the office.

16 Q If a visitor or a resident came to a
17 stairwell and noticed that a light was out and the
18 stairwell was dark and saw that to be a dangerous
19 situation, would you expect them to proceed up or
20 down the stairwell regardless of that fact without
21 reporting it?

22 A I would say so. There was still plenty of
23 light.

24 Q But if they felt that it was a dangerous
25 condition or a dangerous situation, would you still

1 expect them to venture out and to go into that
2 dangerous condition without reporting it?

3 A I'm sure they would. They got to go to
4 their apartment

5 Q In your years as a maintenance supervisor,
6 is there anything that could be reasonably done to
7 prevent any period of time where there'd be a light
8 outage?

9 A The only prevention would to be check it
10 every single morning, 24 buildings.

11 Q But even then it provides the potential
12 for a light to go out right after you check it,
13 right?

14 A Sure. It happens in my own home.

15 Q That's the nature of light bulbs, isn't
16 it?

17 A Yeah. They burn hot. So...

18 Q Have you ever spoken to anyone, whether it
19 was one of your other maintenance employees or a
20 resident, that told you that they were aware that the
21 light was out in the stairwell in the 700 building at
22 Phase I prior to Miss Douglass's fall on January 6th,
23 2011?

24 A Not at all, to my knowledge.

25 Q At that point in time, do you know whether

1 or not the building -- 700 building was fully
2 occupied?

3 A I wouldn't know.

4 Q Generally in a building, how many
5 apartments are there?

6 A There's 18 for the whole building. Inside
7 there -- there's an outside part of the building and
8 an inside. In the inside, it would be 6 less. Then
9 it would be 12.

10 Q So 700 building would have had 12
11 apartments --

12 A Four on each floor.

13 Q Okay.

14 A On the inside. I don't know whether that
15 was outside or inside.

16 Q Mr. Moran, I believe that's all I have at
17 this time. I will pass it over to Mr. Wigger as I
18 review my notes.

19
20 EXAMINATION

21 BY MR. WIGGER:

22 Q Good morning, Mr. Moran. My name's Jarry
23 Wigger. I represent Miss Douglass. You said that
24 Berkshire took all the records with them when they
25 changed out the management; is that right?

1 A (Nods head up and down.)

2 Q Do you know when that was?

3 A Halloween this year past. '14.

4 Q Okay. Do you know if y'all made any
5 copies of those records prior to the time that they
6 took them?

7 A No, we didn't.

8 Q Okay. With the maintenance department,
9 you said nobody was working at nighttime. Is that
10 the way you guys worked it?

11 A Yeah. We just do a day shift.

12 Q Okay. How many maintenance folks are
13 there?

14 A Besides me -- there's three plus me.
15 Three techs.

16 Q Do you know where the -- first of all, you
17 guys had video surveillance at the apartment complex,
18 right?

19 A Not at the apartments.

20 Q No?

21 A Just around the club house area.

22 Q Okay.

23 A The amenity center.

24 Q The area where Miss Douglass fell, that
25 wouldn't have been subject to a video or.

1 surveillance?

2 A No.

3 Q Okay. I want to ask you a little bit
4 about your background. What all did you -- when you
5 were applying for a maintenance job, what all did you
6 put as your background and qualifications?

7 A I was operations manager for a water
8 company up North for 33 years, so I always was in
9 operations of some kind. Mechanical kind of things.

10 Q Okay. Did you manage buildings or did you
11 just manage processes?

12 A I had buildings. Booster stations.
13 Things like that.

14 Q Okay. Do you have any certifications in
15 maintenance?

16 A No.

17 Q Any certifications in --

18 A Just some electrical background.

19 Q Okay. Certifications in property
20 management?

21 A No.

22 Q Have you ever taken any safety courses?

23 A When I worked for a water company, I took
24 plenty of 'em. We have a thing called -- when I
25 worked for them, it was called Berkshire University

1 and you go on there and do safety classes on the
2 computer.

3 Q Any of those classes talk about building
4 codes?

5 A They talk about building maintenance.
6 There's all -- an array of subjects.

7 Q And was codes part of that?

8 A I can't recall.

9 Q What's your familiarity with the building
10 codes?

11 A Generally, I only know something about a
12 code if I'm going to go do something and change
13 something to make sure we're in compliance.

14 Q When you came in as maintenance
15 supervisor, did you make any structural changes to
16 anything on the property?

17 A No.

18 Q Did you ever make any alterations in any
19 stairways?

20 A No.

21 Q Did you ever measure any stairways for a
22 rise and run to make sure they complied with the
23 building code?

24 A No.

25 Q Did you ever check the handrails to make

1 sure they were in compliance with the building code?

2 A No.

3 Q Do you know what the handrail distance is
4 from riser to handrail under the building code that's
5 in effect or that was in effect in 2011?

6 A I don't know. My guess would be 32
7 inches, but...

8 Q But that'd just be based on a guess versus
9 knowing what the code says?

10 A Right.

11 Q Okay. When you're running an apartment
12 complex, is it fair to say that a visitor has no
13 ability to change anything when they come onto that
14 property?

15 A That's not true.

16 Q Okay. What type things can they alter if
17 the --

18 A For American Disability Act, they can
19 request changes.

20 Q Okay. They can request changes to make
21 things handicapped accessible?

22 A Right..

23 Q Have you ever had anybody request any
24 changes to make any of the buildings handicapped
25 accessible?

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 A That can happen a lot, yeah.

2 Q You know, like cutting the grass, that's
3 kind of an aesthetic thing, right?

4 A Um-hum.

5 Q But it's not necessarily a safety thing;
6 is that fair to say?

7 A That could be, except for the snakes and
8 things you can't see.

9 Q Yeah. And is it fair to say that as the
10 maintenance supervisor you can't delegate a safety
11 issue to one of the residents?

12 A If they're doing something unsafe, we feel
13 it's unsafe, we would ask them to correct it.

14 Q Right.

15 A If it's something they did.

16 Q But if it's something within your job
17 description and it's safety related, you can't ask
18 the residents to be responsible for that; is that
19 fair to say?

20 A Not unless they caused the situation.

21 Q Right. But what I'm getting at is you
22 can't delegate safety issues to residents?

23 MR. BROGDON: Object to form.

24 THE WITNESS: I wouldn't say "delegate."
25 You can tell 'em.

1 BY MR. WIGGER:

2 Q Right. But if it's something within your
3 scope of job description, something within your
4 duties, you can't delegate that to one of the
5 apartment complex residents, can you?

6 MR. BROGDON: Object to form.

7 THE WITNESS: No. That's not a clear-cut
8 answer. I can't give you a clear-cut answer to that.

9 BY MR. WIGGER:

10 Q Okay. If there is a open wiring issue,
11 would you agree that's a safety issue?

12 A Definitely.

13 Q Definitely violate the building code?

14 A Yes.

15 Q And you can't delegate that to a resident
16 to fix, can you?

17 A No, but I can ask them to remove it.

18 Q If it's, say, a wiring issue within the
19 walls, you can ask the resident to remove that?

20 A Not within a wall. I doubt if they'd get
21 within a wall.

22 Q Let's talk about things within your area,
23 which would be things in the wall. Would you agree
24 electrical issues within the wall are your issue?

25 A Oh, yes.

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 either reported or seen before you replaced it. Is
2 that fair to say?

3 A Correct.

4 Q Okay. Yeah. And you said lighting was a
5 safety issue, right?

6 A (Nods head up and down.)

7 Q That's a "yes"?

8 A Yes.

9 Q So you were in a situation where you knew
10 that you were going to have lighting issues; but you
11 didn't implement any system to avoid that safety
12 issue, did you?

13 MR. BROGDON: Object to the form.

14 THE WITNESS: I don't know if -- I don't
15 know that's a lighting issue. You're asking me
16 before it burns out --

17 MR. WIGGER: Right.

18 THE WITNESS: -- that I'm aware that it's
19 going to burn out and I should anticipate replacing
20 it?

21 MR. WIGGER: Right.

22 THE WITNESS: There's more than enough
23 lighting that it can afford to have a bulb out if I
24 can't catch it in time.

25 BY MR. WIGGER:

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 Q Okay.

2 A Let's see. There's eight more that look
3 like it in eight buildings.

4 Q Okay. But has anybody ever pointed that
5 one out to you and said, Here's where Miss Douglass's
6 situation occurred?

7 A Absolutely not. I wouldn't even know if
8 that's the 700 building or not.

9 Q Okay. If that was the 700 building, where
10 would the nearest light be?

11 A There's one (indication), because the wall
12 comes out like this a little bit (indicating). So
13 there's one on every floor like that.

14 Q Okay.

15 A And there's one in the middle.

16 Q Now, these walls, are they behind where
17 the stairway physically comes down?

18 A It's sort of in the middle.

19 Q Okay.

20 A Right in the middle of the wall
21 (indicating).

22 Q Okay. So if we were out there on the
23 scene, the lights would be kinda halfway maybe up the
24 stairs on the front side and halfway up the stairs on
25 the back side?

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,

1 we can't necessarily tell if light bulbs were changed
2 out just from looking at that?

3 A That's fair to say.

4 Q All right. And earlier you said a
5 resident or an employee could submit a work order.
6 Is it fair to say a visitor can't submit a work
7 order?

8 A No. She can tell the person they're
9 visiting, or he.

10 Q But a visitor doesn't have any authority
11 to submit a work order to anybody, right?

12 A No. That doesn't stop them from -- they
13 could stop at the office and just say, I was at your
14 building and there's a problem there.

15 Q What are the office hours?

16 A They're seasonal, so I wouldn't be able to
17 tell you exactly; but in general, it was open at 9
18 and closed at 6.

19 Q 9 a.m., 6 p.?

20 A 6 p.m., yes. That's just office people.

21 Q Yeah.

22 (Moran Exhibit Number 2 was marked for
23 identification.)

24 BY MR. WIGGER:

25 Q Mr. Moran, I show you what's been marked

1 as Exhibit 1 to your deposition.

2 MR. BROGDON: What's the Bates numbers on
3 that?

4 MR. WIGGER: It's 05, I think, and 06.

5 BY MR. WIGGER:

6 Q Does that appear to be out of y'all's
7 maintenance manual back during the 2011 time frame?

8 A It looks like Berkshire's format.

9 Q Yeah.

10 MR. WIGGER: And we'll get this marked.

11 (Moran Exhibit Number 3 was marked for
12 identification.)

13 BY MR. WIGGER:

14 Q Show you what's been marked as Exhibit 3
15 to your deposition. Does that appear to be a copy of
16 your job description for 2011?

17 A I don't know if it's exactly what I looked
18 at, but it looks like the same format.

19 Q We had gotten some discovery from
20 Mr. Brogdon as part of this case and that's what he
21 sent us, so I just want to make sure that there's not
22 some other document you say would be more
23 accurately --

24 A No.

25 Q -- describing your job description.

1 You're welcome to read it over and make
2 sure.

3 A You can go on.

4 Q Okay. As a maintenance supervisor, would
5 you agree that part of your job deals with safety?

6 A Correct.

7 Q Would you agree with the safety principle
8 that any risk of serious injury is unreasonable if
9 reasonable accident prevention measures can prevent
10 it?

11 MR. BROGDON: Object to the form.

12 THE WITNESS: Can you rephrase that a
13 little bit?

14 BY MR. WIGGER:

15 Q Sure. Would you agree with the safety
16 principle that any risk of serious injury is
17 unreasonable if you can use reasonable acts and
18 measures to prevent it?

19 MR. BROGDON: Objection.

20 THE WITNESS: Yeah.

21 BY MR. WIGGER:

22 Q Okay-doke. I think those are all the
23 questions I have. Mr. Brogdon may have some more.

24 MR. BROGDON: No, that's it. You're done.

25

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- - -

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(Witness excused.)

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- - -

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(Deposition was concluded at 11:17 a.m.)

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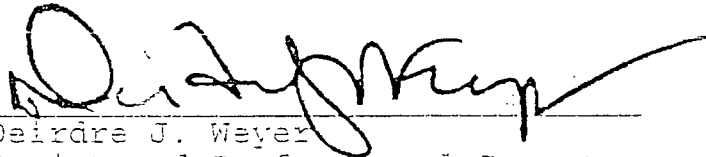
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CERTIFICATE OF REPORTER

I, Deirdre J. Weyer, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 6th day of April 2015, at Moncks Corner, Berkeley County, South Carolina.


Deirdre J. Weyer
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
May 15, 2023

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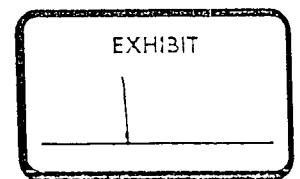
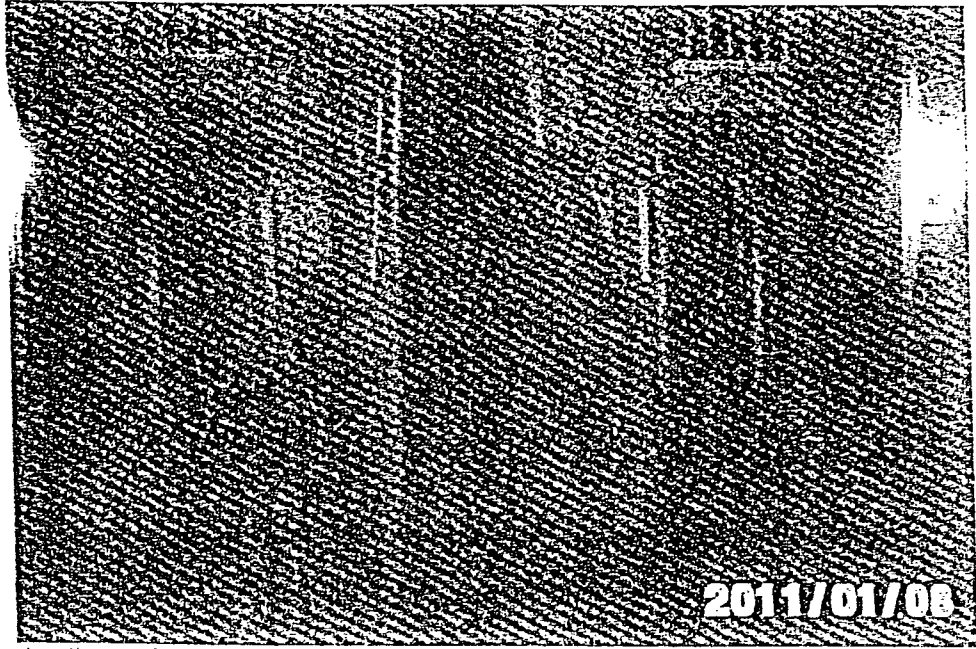
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Procedure for Completing the Apartment Interior Inspection:

- ◆ An Apartment Interior Inspection form should be completed for each apartment noting the general condition for each area inspected.
- ◆ If a safety concern is found when inspecting an apartment, the issue should be written in the "Toolbox Notes" section of the Apartment Interior Inspection form.
- ◆ The Property Manager or Assistant Property Manager will complete the Resident Inspection Notification Letter with areas that require a resident's attention and leave the letter in the resident's apartment.
- ◆ The box "Left Letter" in the action column of the Apartment Interior Inspection form should be checked for each area that noted a safety concern that were documented on the Resident Inspection Notification Letter.
- ◆ The Apartment Interior Inspection form should be filed in the resident's file.
- ◆ Property Manager's must not notify the District Manager once inspections have been completed. If inspections occur on a monthly basis, the District Manager should be notified monthly. If the inspections occur twice a year, the District Manager should be notified after all units have been inspected each time.
- ◆ District Manager's should keep a log of when inspections have been completed for their properties.

SAFETY AND PREVENTATIVE MAINTENANCE INSPECTIONS

The longer a hazardous situation is left uncorrected, the greater the percentage of liability that resides with management should an injury occur. Why? In the eyes of the law: 1) if you are aware and do nothing, you are negligent and 2) if you are not aware of a long-time condition you are guilty of failure to maintain the property in a safe condition.

Conducting safety inspections will aid in the reduction of accidents and unsafe work practices, and safeguard against or eliminate them before they can cause personal injury. The inspection will identify existing and potential hazards that require attention. When identifying the hazards, remember to dig beneath the surface to determine the cause of the unsafe condition and to implement a permanent solution rather than a "quick fix."

A preventive maintenance program is not "extra" work; it is part of ongoing maintenance of the property. An effective program to save considerable time and money by prolonging the useful life of equipment and fixtures.

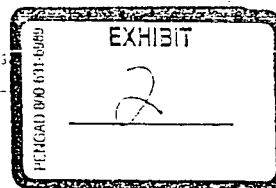
Preventive maintenance is a necessary function to prevent damage or deterioration of equipment and prolong the economic life of equipment or buildings or to increase the efficiency of equipment.

- ◆ In most cases, the expense associated with preventive maintenance is large. Indeed, whereas, if the preventive maintenance is not performed, premature replacement will be a substantially greater expense. Preventive maintenance actually saves you money.
- ◆ Example, three drops of oil in a recirculating pump is not very expensive compared to the replacement cost of at least \$150.00.
- ◆ Preventive maintenance allows you to schedule your maintenance activity rather than reacting to urgent problems which require escalating priorities. In essence, it allows you to be proactive on maintenance rather than reactive.
- ◆ Preventive maintenance prolongs the life and efficiency of your equipment.
- ◆ Residents are less inconvenienced. For example, when maintenance goes to an apartment to change a filter, they could also pre-check the air conditioning, which could minimize the chance of future problems. While they are in the apartment, they might find out if there are other items that need repair. The resident is assured that staff really cares about their concerns and scheduling of work can be more efficient.

It is the policy of Berkshire Property Advisors to conduct a comprehensive inspection of every apartment at every community at least twice a year.

1/15/2011

Berkshire Property Advisors



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DEF 000005

A Property Safety and Preventive Maintenance form will be completed twice a year. The Property Manager and the Maintenance Supervisor will complete the form.

As part of the annual budget process, the Property Manager and District Manager will review the inspection dates for the upcoming year.

Procedure for Completing the Property Safety and Preventive Maintenance Inspection.

- ◆ When completing the Property Safety and Preventive Maintenance Inspection form, notes should be written for items that will require a service request to be issued.
- ◆ Once the inspection is complete, service request must be created in One Site Facilities and completed by the maintenance team.
- ◆ The Property Safety and Preventive Maintenance Inspection form will need to be typed or scanned and emailed to the District Manager within 30 days of completion.
- ◆ The District Managers will need to keep a log of when inspections have been completed for their properties.
- ◆ A designated person in each region will be responsible for uploading the Property Safety and Preventive Maintenance Inspection forms to the DMS.

FORMS

- ◆ Apartment Interior Inspection
- ◆ Safety and Preventive Maintenance Inspection
- ◆ Resident Inspection Notification Letter



BERKSHIRE PROPERTY ADVISORS, LLC

JOB DESCRIPTION

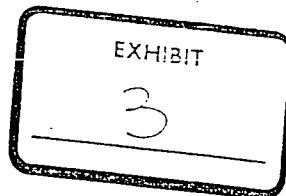
JOB TITLE: Maintenance Supervisor
DEPARTMENT: Property
LOCATION: Specified property
REPORTS TO: Property Manager
FLSA STATUS: non-exempt
DATE MODIFIED: January 18, 2011

BASIC PURPOSE:

Under the general direction of the Property Manager, the Maintenance Supervisor will own and drive preservation of the property's physical attributes for Berkshire Property Advisors.

ESSENTIAL FUNCTIONS: (These are the main duties/make of the position and the important in order to be successful)

- Be responsible for performance of the service team.
- Communicate openly and clearly.
- Positive role model.
- Review and monitor all time by means of time cards, supplemental logs, punch out sheets, service requests, and over-time logs.
- Provide complete support to the property manager and Berkshire Property Advisors in upholding community and corporation standards, policies, and procedures.
- Keep up-to-date and accurate logs and maintain vacancy board and scheduling of preventive maintenance, appliances, smoke detectors, filter changes, HVAC history logs, supplemental sheets, etc.
- Ensure service team members attend required training and assist in on-going training on site.
- Self seek and participate in on-going training education.
- Schedule, conduct, and document regular meetings including safety meetings with service team members as a group to inform them of policy and procedure changes/updates that affect them. Ensure that safety measures are enforced.
- Evaluate service team members on a regular basis for positive and negative behavior. Perform team member discussions, warning notices, and performance appraisals with counseling and reaching goals, using the appropriate forms on documentation.
- Brief new service team members on procedures, goals, and the community.
- Instruct team members on maintenance etiquette.
- Check all service team members' tools regularly for ownership and safe working condition, ensure uniform appearance is in accordance with EPA dress code policy, and provide documentation to the property manager.
- Schedule and manage appropriate contracts, i.e., painting, cleaning company, trash removal, etc.
- Schedule daily activities efficiently, monitoring for quality or quantity.
- Assist in the preparation of long range planning, and make budget recommendations.
- Ensure punch out work is completed in accordance with BPA policies, standards, and punch out sheets.



DEF 000026

- Maintain shop, company equipment, ample supplies, inventory control, and ensure key security.
- Read and interpret prints and specifications.
- Watch for unauthorized vehicles or suspicious persons on the property and report to property authority.
- Maintain fire extinguishers, sprinklers, Range Queens, fire stops and standpipe systems.
- Perform hands-on maintenance as needed, and to further team abilities and knowledge.
- Perform daily morning checks of the overall community appearance, to include a neat and clean appearance, cleaned and painted common areas, and clean/and clear windows and balconies.
- Perform service technician responsibilities/tasks to include on-call coverage as necessary.
- Prepared to respond and act in an emergency situation, following corporate community emergency procedures.
- Perform various other duties as assigned by the property manager.
- On call hours are required.

The Company may evolve this job description from time to time as business needs require. It is not intended to be an exhaustive listing of all the functions of the job, nor is it to limit the Company's right to assign other functions to an employee in this position. This job description does not constitute a written or implied contract of employment.

JOB QUALIFICATION REQUIREMENTS:

Knowledge/Experience:

- Ability to effectively supervise and motivate a team of (5) or more members.
- Good communication skills: interpersonal, written and required documentation.
- A thorough knowledge of each job description, as it pertains to self and service team members.
- A thorough knowledge of interviewing techniques.
- Ability to understand, demonstrate, and ensure team compliance of all necessary national and local building codes, safety codes, labor laws, to include but not limited to safe work practices, Fair Housing, Sexual Harassment prevention, ADA, etc.
- Thorough knowledge, understanding, and compliance with Berkshire Property Advisors standards, policies, procedures, and guidelines to include, but not limited to safety, Fair Housing, OSHA, personnel appearance, maintenance etiquette, and tool requirements.
- Ability to maintain high productivity for effective cost control.
- Knowledge of contract requirements.
- Ability to read and interpret prints and specifications.
- Knowledgeable in boilers and chillers and/or individual HVAC System, as applicable.
- Ability to review service related reports generated through OneSite.
- Thorough knowledge, and understanding of preventive maintenance.

Technical/ Educational Requirements:

- Able to use computers and Berkshire related applications to complete required work according to Berkshire policies and procedures, including Microsoft Office products, GPS, OneSite, Performance Manager and others as required.

Physical Requirements: (important of standing, walking, sitting, typing, lifting, etc.)

- Constant need to be on feet.

Revised 12/1/2011

DEF 000027

- Have constant need to perform the following physical activities:

Bend/Stoop/Squat/Kneel	Perform routine maintenance/repairs, pick up tools and needed equipment.
Climb Stairs	Service requests, make-ready needs for 2 nd and 3 rd floor apartments.
Push or Pull	Move equipment, appliances, open and close doors, etc.
Reach Above Shoulder	Perform routine maintenance/repairs, stock and remove equipment, parts, etc.
Climb Ladders	Perform routine maintenance/repairs.
Grasp/Grip/Turning	Handle tools and equipment, perform routine maintenance/repairs.
Finger Dexterity	Handle tools and equipment, perform routine maintenance/repairs.

- Constant need to perform the following physical activities:

Writing	Inventory, maintenance, requisition requests, required maintenance reports.
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- Lifting/carrying (supplies, replacement parts, ladders, etc.):

Over 150 lbs.	Rare need
75 - 150 lbs.	Occasional need
25 - 75 lbs.	Frequent need
1 - 25 lbs.	Constant need

NOTE: Lifting and carrying of weights exceeding 50 lbs. is often accomplished with assistance from one or more persons. Examples of heaviest items lifted include washer/dryers, refrigerators, A/C units, abandoned sofas, etc.

Vision Requirements: (Visual needs for the position – color, small details, inspections, etc.)

- Constant need to document maintenance and complete forms, review manuals and operating instructions, read cautionary labels, respond to written instruction from staff and residents.
- Constant need to see small detail when performing maintenance duties.
- Frequent need to see things clearly, beyond arm's reach (oversee assistants, observe problems throughout the property).

Hearing Requirements: (Hearing needs for the position – telephone, meetings, etc.)

- Constant need to communicate with assistants, resident staff, vendors, and residents. Must use listening skills to diagnose needed repairs, etc.

Speaking Requirements: (Clarity, customer interaction, presentations, etc.)

- Constant need to verbally communicate with assistants, resident staff, vendors, and residents.

Driving Requirements: (Driving needs for the position – from property to property, travel, etc.)

Revised 12/2011

DEF 000025

- Frequent need to utilize personal transportation to pick up replacement parts and supplies from vendors. Rotation "on-call" status may occasionally require expedient travel to assigned property at moment's notice. Pick up and deliveries to the corporate office.
- Must have valid driver's license and automobile insurance coverage.

Reasoning Development: (Low, Medium, High - for ability to apply logical thinking to defined problem solving)

- HIGH. Must be able to apply principles of logical thinking to define problems, collect pertinent data, establish facts, draw valid conclusions, and initiate appropriate course of action. Must effectively convey ideas, images, and goals to a diverse group of personalities.

WORKING ENVIRONMENT: (indoors, Outdoors, special things to know about job).

- Indoors. Frequently outdoors, all conditions, often for extended periods.
- Occasional exposure to paint fumes, solvents, adhesives, etc. Example: Apartments during after make-ready.
- Frequent need to work in awkward and confining positions.

I have read this job description, understand it, and am able to perform the essential functions and meet the job requirements of the position. In addition, I have had the opportunity to discuss the job description with my supervisor.

Employee Name:
(Print Name)

Date:

Employee Signature:

Date:

RECEIVED

JAN 19 2016

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

Case No.: 2013-CP-10-7133
Appellate Case No.: 2015-01328

Donna Douglass, ...Appellant,

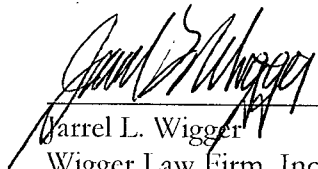
v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Motion to File Supplemental Index and Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 12, 2016


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