

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No.: 2014-CP-39-00613

Charles Thomas Hobbs and Mary
Hobbs,

Appellants,

v.

Fairway Oaks Homeowners
Association,

Respondent.

RECORD ON APPEAL

ATTORNEY FOR APPELLANT:

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP3900613

Charles Thomas Hobbs vs. Fairway Oaks Homeowners Association

CHECK ONE:

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

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

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

Order Granting Summary Judgment from Judge Miller

Court Reporter:

PRESIDING JUDGE -

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

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

John Martin Grantland PO Box 6648 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ *Harold P. Welborn Jr*

Harold P Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs.

Fairway Oaks Homeowners Association,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-39-00613

**ORDER GRANTING SUMMARY
JUDGMENT**

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

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

FINDING OF FACTS

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

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

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

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

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

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

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271 (Ct. App. 2002). Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

ANALYSIS

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

2


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

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

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

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

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

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

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

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

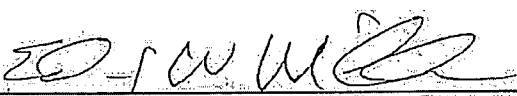
CONCLUSION

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

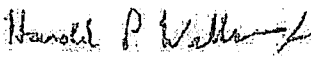
It is **ORDERED, ADJUGED, and DECREED** that the Defendant's Motion for Summary Judgment is hereby **GRANTED. IT IS SO ORDERED.**

Pickens, South Carolina

Date: 8/15/15


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

Certified Copy



Clerk of Court
Pickens County, SC

Date: Sept 2015

MB

FORM 4

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

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

Charles Thomas Hobbs
and Mary Hobbs

Fairway Oaks
Homeowners Association

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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


Circuit Court Judge

2130
Judge Code

11/17/2015
Date

For Clerk of Court Office Use Only

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

**John M. Grantland, Murphy & Grantland, P.O. Box 6648,
Columbia, SC 29260**

**Elliot B. Daniels, Murphy & Grantland, P.O. Box 6648,
Columbia, SC 29620**

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P. Welborn, Jr.

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

Court Reporter

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

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

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

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

COUNTY OF PICKENS 2014 MAY 19 P 1:39 C/A No.: 2014-CP-39- 613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiffs,

vs.

Fairway Oaks Homeowners Association,

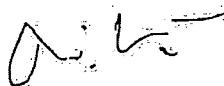
Defendant.

SUMMONS
(Jury Trial Demanded)

TO: DEFENDANT HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office, Post Office Box 1207, (1810 East Main Street), Easley, South Carolina, 29641, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,



Raymond T. Wooten (S.C. Bar # 81483)
SMITH, JORDAN & LAVERY, P.A.
1810 Main Street
Post Office Box 1207
Easley, South Carolina 29640
Phone: (864) 855-1661
Fax: (864) 855-1669
wooten@smithjordan.com
Attorney for Plaintiffs

Easley, South Carolina
May 15, 2014

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY

SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

2014 MAY 19 P C/A No. 2014-CP-39- 613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiffs,

vs.

Fairway Oaks Homeowners Association,

Defendant.

COMPLAINT
(Jury Trial Demanded)

Plaintiffs, complaining of the Defendant herein, would respectfully show unto this Honorable Court that:

1. Plaintiffs are citizens and residents of Pickens County, South Carolina.
2. Plaintiffs are husband and wife.
3. Defendant is a non-profit corporation organized and existing under the laws of the State of South Carolina, and conducting business in Pickens County, South Carolina. All references to this Defendant include the acts and omissions of its agents, servants and duly elected officials.
4. Jurisdiction and Venue are proper in this Court.
5. At all times relevant hereto, Defendant owned, controlled and maintained the common areas of Fairway Oaks Townhouses ("Development") as shown on a plat prepared by Robert E. Ellis, Jr., dated July 18, 1984 and recorded in Plat Book 26 at page 634 in the Pickens County Register of Deeds.
6. At all times relevant hereto, Plaintiffs owned property located in, and resided in the

Development.

7. On or about August 21, 2012, Plaintiff Charles Thomas Hobbs ("Tommy") was standing in the common area of the Development when he was struck in the head, neck and upper body by a tree branch falling from a tree located in the common area.
8. Prior to August 21, 2012, Defendant received a request that a damaged limb be removed.
9. Pursuant to Article VI, Section 12 of the Declaration of Covenants and Restrictions for Fairway Oaks Townhouses, Easley, South Carolina and Provisions for Fairway Oaks Homeowners' Association, Defendant was obligated to maintain the common areas of the Development.
10. Defendant undertook to repair/remedy the situation by having the limb removed.
11. The Association hired Lee Lambright ("Lambright") to cut the tree limb.
12. Lambright did in fact cut said tree limb which then struck Tommy as described above.
13. At all times pertinent hereto Lambright was acting on behalf of Defendant.
14. Lambright was either employed by Defendant or acting as its agent, or was performing a non-delegable duty of Defendant.
15. Upon information and belief, tree cutting is an inherently dangerous activity.
16. At all times described herein, Defendant was responsible and liable for the actions of Lambright.
17. There were no signs or other warnings that it was dangerous to be in the common area of the Development.
18. There were no fences, ropes or other barricades to prevent people from coming near the area where the tree cutting was being performed.

19. Defendant, and its agents and/or those for whom it is liable for their actions, had a duty to take precautions to keep people safe during the tree cutting, to conduct the tree cutting in such a way that people would not be put in danger from falling limbs; to warn people of the danger posed by said tree cutting and to keep people away from the area where tree cutting was occurring.

20. As a result of being struck by the tree limb, Tommy suffered injuries, all of which have and will in the future cause him to undergo much physical pain and suffering, both presently and in the future; to have to spend money for medical services, both presently and in the future; to incur lost wages and other economic damage, both presently and in the future; and to suffer mental anguish and loss of enjoyment of life, both presently and in the future.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

21. Plaintiffs reiterate and reallege the prior allegations of the Complaint as if repeated herein verbatim.

22. Defendant, by and through the acts and omissions of Lambright, for which Defendant is liable, was negligent, reckless, willful, wanton, careless and grossly negligent in the following and other particulars, to-wit:

- a) In failing to keep Tommy and other persons from coming near the area where tree cutting was occurring;
- b) In failing to warn Tommy and other persons of the hazard of the tree cutting;
- c) In failing to take proper precautionary steps to keep persons like Tommy from encountering such hazard;
- d) In failing to require people in the area of the tree cutting to wear proper safety gear;

- e) In otherwise failing to use the degree of care and caution that would have been reasonable and prudent under the circumstances then and there existing; and
- f) Such other and further ways as discovery and trial will prove.

All of which were the direct and proximate cause of the injuries and damages sustained by Tommy, and were in contravention of the statutory and common laws of the State of South Carolina.

23. As a direct and proximate result of the willful, wanton, and reckless negligence of the Defendant, Tommy suffered great physical harm and injury from being struck by the tree limb, all of which has caused and will continue to cause him to undergo much physical pain and suffering and mental anguish and distress; has caused and will continue to cause him to have to spend money for medical services; and has caused and will continue to cause him to incur lost wages and other economic damages. Tommy has suffered permanent injury, impairment and disability, has suffered permanent loss of enjoyment of life, and has been otherwise damaged.

24. Tommy is entitled to judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

25. Plaintiffs reiterate and reallege the prior allegations of the Complaint as if repeated herein verbatim.

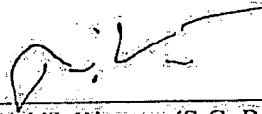
26. As a direct and proximate result of Tommy's injuries as described hereinabove, Plaintiff Mary Hobbs ("Mary") has lost and been deprived of the services of her husband, his society,

companionship, and consortium, as well as the comfort and solace usually provided by a husband in good health and of unimpaired vigor.

27. Plaintiffs are informed and believe that they are entitled to judgment against Defendant for such an amount of actual damages as the trier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiffs pray for judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,



Raymond T. Wooten (S.C. Bar # 81483)
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Post Office Box 1207
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Attorney for Plaintiffs

Easley, South Carolina
May 15, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2014-CP-39-00613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiffs,

vs.

ANSWER

Fairway Oaks Homeowners Association,

Defendant,

**TO: RAYMOND T. WOOTEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

The Defendant answering the Plaintiffs' Complaint would herein respectfully show unto
the Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendant denies each and every allegation of the Plaintiffs' Complaint not
herein specifically admitted.
2. Paragraphs 1 through 4 are admitted.
3. Paragraphs 5 and 6 are admitted.
4. As for Paragraph 7, the Defendant admits that on or about August 21, 2012, the
Plaintiff was involved in an accident in the common area of the development. Otherwise,
Paragraph 7 is denied.

5. Paragraphs 8 through 20 are denied.

FOR A FIRST DEFENSE AS TO FIRST CAUSE OF ACTION
(Negligent/Gross Negligence)

6. Paragraphs 21 through 24 are denied.

FOR A FIRST DEFENSE AS TO SECOND CAUSE OF ACTION
(Loss of Consortium)

7. Paragraphs 25 through 27 are denied.

FOR A SECOND DEFENSE

8. The Defendant would show upon information and belief, that the Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Defendant would move that the Plaintiffs' Complaint be dismissed on the basis of failure to state a cause of action.

FOR A THIRD DEFENSE

9. The Defendant would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from the Defendant.

FOR A FOURTH DEFENSE

10. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A FIFTH DEFENSE

11. Such injury or loss as the Plaintiffs sustained, if any, as alleged in the Complaint, was proximately caused and occasioned by the sole negligence, gross negligence, willfulness and wantonness of a third party, in failing to exercise due care and reasonable care for their own safety, which was the direct and proximate cause of injuries or losses suffered by the Plaintiff, if any, and without which the same would not have occurred. Therefore, the Defendant pleads the

sole negligence, willfulness, wantonness, carelessness, recklessness, and gross negligence of a third party as a complete bar to this action against him.

FOR A SIXTH DEFENSE

12. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to their own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiffs being more particularly set forth as follows:

- a. in failing to keep a proper lookout;
- b. in failing to watch where he was going;
- c. in failing to act as a reasonable and prudent person would have acted under the same or similar circumstance; and
- d. in other ways and particulars that may be shown through discovery and at trial

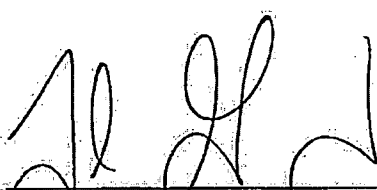
all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the

negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A SEVENTH DEFENSE

13. The Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates the Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

[Signature on next page]



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Attorneys for Defendant

Columbia, South Carolina
May 20, 2014

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Charles Thomas Hobbs and Mary Hobbs

☐ Plaintiffs

v.

Fairway Oaks Townhouse Association,

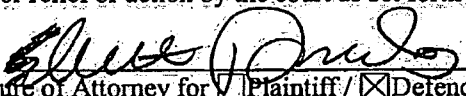
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-39-00613

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Raymond T. Wooten, Esquire Address: 1810 East Main Street Easley, SC 29644 phone: 864-855-1661 fax: 864-855-1685 e-mail: wooten@smithjordan.com other:	Defendant's Attorney: Elliott B. Daniels, Esquire Address: 4406-B Forest Drive Columbia, SC 29206 phone: 803-782-4100 fax: 803-782-4140 e-mail: edaniels@murphygrantland.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: 12-29-14	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to: Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2014-CP-39-00613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs:

Fairway Oaks Homeowners Association,

Defendant.

MOTION FOR SUMMARY JUDGMENT

TO: RAYMOND T. WOOTEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant, Fairway Oaks Homeowners Association, will move before the presiding judge of the Pickens County Court of Common Pleas at the Pickens County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Defendant, Fairway Oaks Homeowners Association, on grounds that there is no genuine issue as to any material fact.

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.



John M. Grantland, Esquire

Elliott B. Daniels, Esquire

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(803) 782-4100

Attorneys for Defendant

Columbia, South Carolina
December 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2014-CP-39-00613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs.

Fairway Oaks Homeowners Association,

Defendant;

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

**TO: RAYMOND T. WOOTEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

Defendant Fairway Oaks Homeowners Association submits this Memorandum of Law in support of its Motion for Summary Judgment. For the reasons set forth herein and in the Motion previously filed and served, Defendant asserts that there is no genuine issue as to any material fact, and that Defendant is entitled to judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

SUMMARY

Plaintiff himself hired an independent contractor to remove a tree limb on HOA common area grounds. Plaintiff was injured while standing under a tree as the independent contractor removed the limb with a chainsaw and the limb fell on Plaintiff's head. Plaintiff is suing the Defendant HOA – of which Plaintiff was the President – for the negligence of the independent contractor that Plaintiff hired. Defendant is not liable for the negligence of the independent contractor that Plaintiff hired, and no exception to the general independent contractor rule applies. Accordingly, Defendant is entitled to judgment as a matter of law.

FACTUAL BACKGROUND

On August 21, 2012, Plaintiff was injured on Fairway Oaks Townhouse (hereinafter "Fairway Oaks") common area grounds in Easley, S.C. when a tree limb being removed by

independent contractor fell and struck Plaintiff on the head. In a light most favorable to Plaintiff, the undisputed facts are as follows:

Plaintiff is a longtime resident of Fairway Oaks, and in the five years before Plaintiff's injury, Plaintiff served as President of Fairway Oaks Homeowners Association (hereinafter "HOA" or "Defendant"). (Hobbs Depo. 15:18, attached hereto as Exhibit A). As President of the HOA, Plaintiff arranged for the maintenance and repairs of Fairway Oaks' common areas.

On August 18, 2012 resident Benny Roper called Plaintiff to request the removal of a tree limb hanging over his unit. (Hobbs Depo. 28:24-29:9). Plaintiff advised Roper that he would hire a professional tree service based out of Liberty, S.C. on behalf of the HOA to remove the limb. (Roper Depo. 24:13-25:5, attached hereto as Exhibit B).

Instead, during a golf outing, Plaintiff asked a personal friend, Lee Lambright, to remove the limb. (Hobbs Depo. 11-21). Although Plaintiff hired Lambright for odd jobs at Fairway Oaks over the years, Lambright explained: "I am not a contractor. I am just a neighborhood friend, and I do a lot of little projects for people." (Lambright Depo. 11:25-12:6, attached hereto as Exhibit C). Lambright had no training in limb removal, and he had never been hired before to remove tree limbs. (Lambright Depo. 12:8-16:6). Lambright agreed to remove the limb if Plaintiff would help, to which Plaintiff responded, "Okay, I'll help you." (Hobbs Depo. 29:11-21). Plaintiff admitted he hired Lambright because Lambright was much less expensive than a professional tree service. (Hobbs Depo. 19:14-17, 55:15-20).

On August 21, 2012, Plaintiff and Lambright met at Fairway Oaks, Plaintiff helped remove the ladder from Lambright's truck, and he directed Lambright where to proceed with his work. (Lambright Depo. 25:6-26:22). Plaintiff help Lambright set the ladder against the tree and held the bottom of the ladder as Lambright climbed up and began to remove branches with a chainsaw. (Lambright Depo. 26:18-22). Plaintiff remained under or near the tree as Lambright removed branches with a chainsaw. (Roper Depo. 41:22-25). Plaintiff admitted it was his own choice to be

present, and that it was his own choice to stand where he was standing. (Hobbs Depo. 50:10-18). Witnesses have indicated there were safer areas for Plaintiff to stand. (Roper Depo. 43:3).

A large limb fell and struck Plaintiff on the head as Lambright removed branches with a chainsaw without the assistance of a bucket or a rope. (Lappin Depo. 37:20-38:24, attached hereto as Exhibit D, Roper Depo. 38:1-22). Lambright explained the branch "did a somersault" and struck Plaintiff on the head. (Lambright Depo. 34:3-14).

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

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271 (Ct. App. 2002). Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

Written discovery and depositions of all fact witnesses are complete. There is no genuine issue of material fact in dispute. Considering the facts in a light most favorable to the Plaintiff, Defendant is not liable for the independent contractor Lee Lambright's negligence, and Defendant is entitled to summary judgment as a matter of law.

ARGUMENT

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

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

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

Here, it is undisputed that Lambright acted as an independent contractor, and it is undisputed that Lambright was negligent. Indeed, Plaintiff himself — who hired Lambright — admitted Lambright was acting as an independent contractor, and Lambright admitted to several mistakes were made in his work. *Cherry v. Myers Timber Co.*, 404 S.C. 596, 601, 745 S.E.2d 405, 407 (Ct. App. 2013) (Lambright Depo. 22:6-8; Hobbs Depo. 27:18-19). Nonetheless, the general rule applies: Defendant is not liable for the negligence of Lambright because Lambright was an independent contractor.

There is also evidence of Plaintiff's own negligence. It was Plaintiff — not the HOA — who hired Lambright and elected not only to help Lambright, but to stand under the branch as it was being cut by a chainsaw. Lambright testified "Of course," Plaintiff shares responsibility for the accident, explaining it was Plaintiff's choice to help, that Plaintiff knew the limb was coming down, and that the accident would have been avoided if Plaintiff stood in a safer place. (Lambright Depo. 39:4-40:3; 42:5-43:8). Lappin similarly testified the accident would have been avoided if Plaintiff waited until after the limbs fell to walk under the tree. (Lappin Depo. 52:12-16). Roper was clear in his testimony that Plaintiff—and not the HOA—bears responsibility for this accident.

Q. [W]ould it be your testimony that ... responsibility for this accident rests with Mr. Lambright and with Mr. Hobbs?

A: Yes, sir.

Q: And it does not rest with the HOA?

A: No, sir.

(Roper Depo. 14:25, 47:20-25).

On the other hand, there is no testimony indicating the Defendant HOA was negligent in causing Plaintiff's injury. Roper was asked: "Do you think the HOA did anything wrong to cause Mr. Hobbs' injury," to which he answered "No, sir." (Roper Depo. 47:16-18). Lappin was also clear: "I don't think this is the HOA's fault," and when asked: "Do you believe the HOA did anything wrong to cause this accident," he answered, "No." (Lappin Depo. 44:17, 46:2-4). Only Lambright testified that the Plaintiff should have hired a professional on behalf of the HOA -- a decision Plaintiff admits was solely his own. (Lambright Depo. 44:3-45:2; Hobbs Depo. 55:15-17). In other words, the only mistake the HOA could have made, according to witness testimony, was a mistake made by Plaintiff himself: hiring a non-professional instead of a professional tree service.

Plaintiff also could not identify anything specific Defendant did to cause this accident. In his Complaint, Plaintiff alleged Defendant "failed to keep Tommy and other persons from coming near the area where the tree cutting was occurring," yet in his deposition Plaintiff testified Defendant did *not* require Plaintiff to go to the limb removal site or stand where Plaintiff did; both were admittedly Plaintiff's own choice. (Hobbs Depo. 54:5-11). Plaintiff also alleged Defendant "failed to warn Tommy or other persons of a hazard of tree cutting," yet in his deposition Plaintiff admitted he "was aware," that he was warned, and that the accident occurred because Plaintiff thought he was standing at a safe distance. (Hobbs Depo. 54:14-55:10). Beyond this, Plaintiff was asked whether he could identify anything the HOA did to cause this accident:

Q. Is there anything that you can think of that the Homeowners Association, who you're suing, is there anything that you can think of that they should have done differently to have kept this accident from happening?

A. Well, there's nothing -- I couldn't go any farther.

Q. Yes, sir.

A. I would say no, other than we had to get the tree cut because it was going to fall on his house if we didn't, that would be the only thing right now that I could say...

(Hobbs Depo. 57:4-14).

Rather, all evidence points to the negligence two parties: Plaintiff and independent contractor Lee Lambright. However, Defendant is not liable for Plaintiff's own negligence, and the general

independent contractor rule is clear and it applies here: "an employer is not liable for the torts of an independent contractor." *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013) (*emphasis added*). Because Lambright is an independent contractor, Defendant is not liable for Lambright's negligence, and Defendant is entitled to judgment as a matter of law.

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

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

Upon belief, Plaintiff seeks an exception that is applicable only in the landlord-tenant context: "a landlord who undertakes repair of his property by use of a contractor has a nondelegable duty to see that the repairs done properly, and remains vicariously liable for injuries caused by improper repairs." *Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 43, 533 S.E.2d 312, 318 (2000), citing *Conner v. Farmers and Merchants Bank*, 243 S.C. 132, 139–40, 132 S.E.2d 385, 388–89 (1963); *Durkin v. Hansen*, 313 S.C. 343, 437 S.E.2d 550 (Ct.App.1993). The landlord-tenant exception applies when two conditions are present: (1) there is a relationship of landlord and tenant, and (2) the landlord undertakes repairs. See *Durkin v. Hansen*, 313 S.C. at 346.

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

Even assuming, *arguendo*, that this claim were brought in the landlord-tenant context, and the exception did apply, the exception would leave the Plaintiff himself liable for the independent contractor's negligence. The exception provides "the *delegating person* remains liable for that

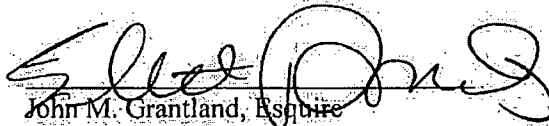
breach." *Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. at 42. Plaintiff admits it the Plaintiff alone who delegated the limb removal work to Lambright. (Hobbs Depo. 55:15-17).

Nevertheless, the exception Plaintiff seeks is applied exclusively in the landlord-tenant context and has never been applied against an HOA. However, the landlord-tenant exception does not apply here: Defendant is not a landlord, and Plaintiff is not a tenant. There is no exception that removes this case from the general independent contractor rule, and Defendant is entitled to judgment as a matter of law.

CONCLUSION

Defendant is not liable for the negligence of an independent contractor that Plaintiff hired, and the landlord-tenant exception to this rule does not apply because the Defendant is not a landlord, and Plaintiff is not a tenant. Accordingly, Defendant is entitled to judgment as a matter of law, and respectfully requests the court grant its Motion for Summary Judgment.

MURPHY & GRANTLAND, P.A.



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Attorneys for Defendant Fairway Oaks Homeowner's Association

Columbia, South Carolina
August 5, 2015

EXHIBIT A

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

CHARLES THOMAS HOBBS and
MARY HOBBS

Plaintiffs,

vs.

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION

Defendant.

Case Number:
2014-CP-39-00613

Deposition of
CHARLES THOMAS HOBBS

A witness called by Counsel on behalf of the Defendant, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, taken before Sandy E. Martin, Professional Court Reporter and Notary Public in and for the State of South Carolina, on Thursday, November 14, 2014, at Smith, Jordan & Lavery, P.A., 1810 East Main Street, Easley, South Carolina, commencing at the hour of 10:03 a.m.

APPEARANCES:

REPRESENTING THE PLAINTIFF:

Raymond T. Wooten, Esquire
Smith, Jordan & Lavery, P.A.
1810 E. Main Street
Easley, SC 29640
Wooten@smithjordan.com
864-855-1661

REPRESENTING THE DEFENDANT:

John M. Grantland, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, SC 29206
Jgrantland@murphygrantland.com
803-454-1237

ALSO PRESENT:

Mary Hobbs

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EXHIBITS

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LEGEND OF THE TRANSCRIPT

dashes [--] intentional or purposeful interruption
Ellipsis [...] Unfinished thought;
(Words transcribed as spoken)

S T A T E M E N T S

It was agreed by and between counsel for the respective parties that the reading and signing of the deposition transcript is waived.

WHEREUPON:

CHARLES THOMAS HOBBS,

being duly sworn, on oath, was questioned
and testified as follows:

MR. GRANTLAND: Mr. Hobbs, good morning.

THE WITNESS: Good morning.

MR. GRANTLAND: My name is John Grantland. I'm a lawyer from Columbia and I was hired to represent Fairway Oaks Homeowners Association in a lawsuit that you brought with your attorney, and I've asked you to be here today in your lawyer's office to take your deposition.

And what a deposition is, is really a conversation or an interview mainly for me to talk to you, find out some information about you, but mainly find out about the circumstances of the accident and the injuries you may have had as a result of the accident. I know a good bit already from your lawyer and I'll do my best not to waste

1 have any other doctors you saw on a regular basis
2 before this accident?

3 A: Regular basis?

4 Q: Like did you have a cardiologist?

5 A: Yes.

6 Q: Who is your cardiologist?

7 A: Dr. Trey Ridgeway.

8 Q: Okay.

9 A: He did my bypass surgery on 2001.

10 Q: Is he in Greenville?

11 A: Yes, he's in Greenville. Not radiologist. What's
12 the word?

13 Q: I can find him.

14 A: Cardiologists.

15 Q: Cardiologists. Okay.

16 A: I can't say it.

17 Q: That's okay.

18 A: I'm sorry.

19 THE WITNESS: I keep looking at you for names.

20 Q: [Mr. Grantland] No, that's okay.

21 How was your health before August 2012?

22 A: Perfect. I played golf. I moved to the golf
23 course, retired at 55.

24 Q: And you played golf pretty regularly before this
25 accident?

1 Q: But whatever he did, whatever the doctor did for you
2 with a pill --

3 A: He gave me a pill and it went away. I haven't had
4 it since.

5 Q: Even after this accident, you haven't had that
6 burning feet problem since?

7 A: No, I haven't had burning nothing.

8 Q: Okay. Good.

9 A: Toes or nothing, legs or nothing.

10 Q: Good. All right. Now, when did you move to Fairway
11 Oaks?

12 A: In 2002.

13 Q: I guess when you moved to Fairway Oaks, did you
14 immediately join the homeowners association?

15 A: You're automatically a homeowner. There's 18 units.

16 Q: And have you held positions with the homeowners
17 association?

18 A: President from 2007. I resigned after I couldn't do
19 my duties from this accident, after this accident.

20 Q: Approximately, when did you resign, if the accident
21 was in August 2012?

22 A: That's when I -- not long after. We had a paint job
23 going on and I wanted to finish it. I didn't do
24 anything but walk around to make sure they showed
25 up, that's all. I didn't do anything else.

1 A: About every day.

2 Q: Were you on any prescriptions at the time of this
3 accident?

4 A: No.

5 Q: No?

6 A: No.

7 Q: Did you have any issues with your legs or your feet
8 burning before this accident? Like did you have any
9 neuropathy problems before this accident?

10 A: Before the accident?

11 Q: Yes, sir.

12 A: I had some where I had some burning. I went to a
13 local and I took a pill and it healed it up.

14 Q: Who did you see?

15 A: I'm sorry, but I'm having trouble remembering.

16 Q: That's okay. You saw a local doctor for burning?

17 A: Yes, just burning feet.

18 Q: Burning feet?

19 A: Yeah.

20 Q: And he gave you a pill and that helped?

21 A: Yeah, that's gone. I can't think of the name. I'm
22 sorry.

23 Q: That's okay. Would it be Chandler, does that name
24 ring a bell?

25 A: That's the heart doctor.

1 Q: You said you were president from 2007 --

2 A: '07 until about --

3 Q: -- August, September 2012?

4 A: Something like that. Yeah, seven years exactly. I
5 looked on the minutes of the notes that we took and
6 it was July 7th.

7 Q: And before 2007, did you hold any other positions
8 with the homeowners association?

9 A: No.

10 Q: This isn't meant to be a stupid question, but what
11 was your job responsibility as the president of the
12 homeowners association?

13 A: It's going to be a stupid answer.

14 Q: That's okay.

15 A: This is 18 units. They're all about 65 to 90. The
16 guy that had it was unhealthy, he couldn't keep it.
17 So I was the youngest, so I got volunteered at one
18 meeting -- would I take it. And I had took a lot of
19 positions at 3M and they kind of volunteered me. We
20 only meet once a year and they volunteered me, kind
21 of.

22 Q: Were you at the meeting?

23 A: Yes. I didn't vote, but I was at the meeting.

24 Q: I was thinking that the best way to get elected to
25 something is to not show up.

Q. How about roofers, did you ever have to pick roofers?

A. I picked a roofer -- picked the painters.

Q. And the same type of situation, you get three quotes?

A. Three quotes. Those were driven by price, because I didn't know those people.

Q. You didn't know the roofers?

A. I didn't never treat a roofer, no. I had a guy that had told me he had used him before. I got a guy that lives two doors from me is a realtor in Easley and he has contacts with plumbers, roofers, painters. He gave me a list and I just picked one and I started calling.

Q. The same with plumbers, did you ever hire plumbers, as well?

A. I never hired a plumber. And the plumbers was the same situation, the guy had gave me a listing of plumbers to call, because I never had any -- I mean

Q. No, but I mean, was that --

A. I never had \$30,000 worth of painting done before.

Q. Yes, sir, but was that your job? Like if someone needed plumbing, if someone had a leak, you'd get a --

putting carpet down, that's the only thing, or tile. It's the only two things he ever told me he didn't like to do. He would do them for me, but he wouldn't like to do them, and they were the only two things that he didn't really like to do. He'd do other things, but he didn't -- because of me, he would do them.

Q. He wasn't incorporated, was he?

A. Well, I don't know that. I don't know his bonding or anything.

Q. But you all would just write him checks to Lee Lambright?

A. Right, based on me judging that he could do it.

Q. Was he ever an employee of the HOA?

A. No, none of us were. We never got paid a dime.

Q. He'd be, I guess, independent?

A. He would, but we wasn't.

Q. He'd be like an independent contractor?

A. Right. He'd normally charge \$25 an hour, but as I told you, he may charge -- friend to you, nothing, 10, \$15. I never had a job where he went over 15, \$20 for me.

Q. Now, before this accident, Mr. Hobbs, had you ever had any experience cutting tree limbs?

A. No. I am not a mechanical person. I couldn't even

A. They'd call me.

Q. Right.

A. And I'm no mechanic, and my wife can speak for that. And I would usually call Lee, tell him to come look at it and see if he could do it. He'd be honest to me if he couldn't do it. He'd say, "You need to get somebody," and we'd get somebody. He may recommend somebody, but he would tell me honestly that he couldn't do it.

Q. In the 12 years you were president, what was the biggest job you had to hire somebody to do?

A. Painting and roofing.

Q. Painting and roofing. Okay.

A. Twice. I got to do it about four months after I moved in, but I helped. I was on the committee, but I wasn't president.

Q. But while you were president?

A. It was my second time to do them, both of them, but the roof I didn't do twice, only painting.

Q. Now, back to Mr. Lambright. So he had done, as a handyman, besides picking up limbs for the guy who overcharged you, what other little things did he do for you?

A. Put washers in and stuff. Fixed anything that needed it. I mean, he once told me he didn't like

crank a chainsaw. I don't even know how to crank one.

Q. And I assume before this accident you've never had any issues with anything Mr. Lambright had done at Fairway Hills?

A. Oh, Lord, no. Good Christian man, goes to Rock Springs. He's there when they open the door.

Q. That's a big, big church.

A. That's the building. He's there when they open the door. Both the preacher and his son are members of Smithfield. No.

Q. Are you a member of Rock Springs?

A. No.

Q. What church are you all members of?

A. Trinity Point. I'm the treasurer at Trinity Point.

Q. Is that a Baptist church?

A. Yes.

Q. I grew up Baptist. I moved to Columbia and married a Methodist, but that's another story.

A. I was a Methodist.

Q. Let me take you now to the date of the accident.

How is it that you got Mr. Lambright out there that day?

A. I got a phone call on Friday night. We had a gentleman who moved in the end unit, I'd say, a

1 month before. He called me on Friday night.
 2 Q. Who is that?
 3 A. Benny Roper. And he said, "Mr. Hobbs, I know you
 4 don't know me real well and you probably don't even
 5 know me. I've got a tree limb broke back here. I'm
 6 afraid it's going to fall on my house. Would you
 7 come down and look at it?" And it wasn't quite
 8 dark, so I walked down to the back and it had broken
 9 and it was hanging.
 10 Q. Right.
 11 A. So I play golf with Lee on Saturday. I said, well
 12 I'll just save this \$700 that this guy is going to
 13 charge me, or eight, no more than that if, that
 14 ain't but one or two cuts. So when I played golf
 15 with Lee, he says, -- I've been told this and I
 16 don't remember it, "But you've got to help me load
 17 my ladder. I can't load it by myself."
 18 Q. Right.
 19 A. And I said, "Okay, I'll help you." I don't remember
 20 him asking me or any of that. I don't remember
 21 anything with that part, okay.
 22 Q. Where did you all play golf?
 23 A. Smithfield.
 24 Q. Smithfield. Okay. I'm sorry.
 25 A. I live across the street from it.

1 Q. I'm not a golfer, so I'm sorry.
 2 A. All right. So I don't remember helping him or
 3 anything. I remember the call. And I told the guy
 4 that we'd come look at it.
 5 Q. So you played golf with him on Saturday?
 6 A. Sunday -- he's a Christian man. We don't work on
 7 Sunday. It poured down rain on Monday. I mean,
 8 monsooned. So we didn't do it Monday, obviously.
 9 So Tuesday it didn't rain. So rain didn't bother
 10 him being up there because we knew it wasn't going
 11 to take ten minutes to cut this tree limb down.
 12 Q. So he came out on Tuesday?
 13 A. Yes.
 14 Q. I guess he came out Tuesday morning?
 15 A. Yes, about nine or ten o'clock.
 16 Q. Tell me what you remember. Had he been to look at
 17 the tree before?
 18 A. On Saturday with me, that's all I remember about the
 19 tree.
 20 Q. And that's when y'all had the conversation about,
 21 "You're going to have to help me with the ladder,"
 22 or something like that?
 23 A. Yes, and that's all he mentioned about the tree, was
 24 the ladder.
 25 Q. So he comes out on Tuesday. Does he bring his

1 ladder and saw or is that --
 2 A. I don't know. I don't know.
 3 Q. Does the MOA have a ladder?
 4 A. No. I can honestly say no. We don't have a ladder.
 5 Q. Do y'all have any --
 6 A. We don't have any tools.
 7 Q. I was going to ask do you all provide Mr. Lambright
 8 with any tools?
 9 A. He has his own.
 10 Q. He has his own tools.
 11 A. Or he goes and borrows.
 12 Q. So the day of, do you remember anything leading up
 13 to the accident?
 14 A. No, I don't even remember getting out of bed.
 15 Q. Really?
 16 A. The whole day.
 17 Q. The whole day is just kind of --
 18 A. Nothing. When you put 48 staples in your head, you
 19 don't remember a whole lot.
 20 Q. Yes, sir. I'm not trying to doubt you.
 21 A. You don't doubt me, no, I know.
 22 Q. I just need to make sure it's clear to me. So if I
 23 ask you anything about the circumstances before the
 24 accident or the accident itself, you have no memory
 25 of it?

1 A. This is embarrassing to say, but --
 2 Q. It's not embarrassing.
 3 A. I didn't know her name for two months, and one night
 4 I laid in bed and cried.
 5 Q. This is in the hospital?
 6 A. Just give me a minute.
 7 Q. Yes, sir. We can take a break if you want.
 8 [Off the record]
 9 A. I called her baby for 49 years. And I couldn't
 10 remember Mary. And finally I got embarrassed and
 11 called her, sat on the side of the bed and told her
 12 that I couldn't remember her name.
 13 Q. Yes, sir.
 14 A. And that was, like I said, probably two months after
 15 I got out the hospital and got home, and I was still
 16 in the bed 24 hours a day, seven days a week. She
 17 brought my food to me.
 18 Q. Yes, sir. And again, just to make sure I'm clear,
 19 you have no memory of that day?
 20 A. Nothing. I don't remember getting up, nothing.
 21 Q. You don't remember Mr. Lambright coming?
 22 A. No. I don't remember going to his house, I don't
 23 remember taking the kid to school, I don't remember
 24 putting my clothes on, I don't remember going to get
 25 no ladder, I don't remember helping him set up, I

9

1 A. No.

2 Q. I assume you never treated for drug or alcohol

3 abuse?

4 A. No.

5 Q. And this is a civil lawsuit that you filed against

6 the homeowners association.

7 Have you ever been involved in any other

8 lawsuits?

9 A. No, never in my life.

10 Q. Before August 2012, have you ever been hospitalized?

11 A. Yes.

12 Q. Can you just generally tell me what you --

13 A. I had a spleen removed when I was 20. I got hit.

14 Q. I don't need to know anything about that.

15 How about in the last ten years before this

16 accident?

17 A. Left knee replaced.

18 Q. Did they actually hospitalize you for that?

19 A. Yes. Yeah, I stayed about five days.

20 Q. In Greenville?

21 A. No, in Mount Pleasant.

22 MS. HOBBS: No.

23 MR. GRANTLAND: I don't mean to be rude to you,

24 Mary.

25 Q. [Mr. Grantland] But you were hospitalized for a

10

1 left knee?

2 A. Yeah, I had a knee replacement.

3 Q. Who did your surgery?

4 A. Dr. David Poletti.

5 Q. I know Steven Poletti. Is it Steven Poletti?

6 A. Steven Poletti, I believe is his name, yes.

7 Q. Yes, I think that's his name.

8 A. I'm sorry.

9 Q. With Southeastern Spine. When my dad had his knee

10 replaced, it was just because it was just worn out.

11 A. Bone on bone.

12 Q. Yes, worn out. So you didn't have any injury or

13 anything?

14 A. No.

15 Q. Yours was just bone on bone?

16 A. Right.

17 Q. That would have been, approximately, when?

18 A. About four years ago, five years ago. I'm not

19 exactly sure.

20 Q. Any other hospitalizations, say, in the last ten

21 years before the accident?

22 A. You'd better sharpen your pencil. I've had a knee

23 replacement. All of mine were -- I've had a lung

24 collapse, knee replacement, spleen removed. I had

25 sleep apnea done.

11

1 THE WITNESS: I know you can't tell me.

2 A. But I've had some more.

3 Q. That's all right. Do you have a primary care doctor

4 here in Easley?

5 A. Dr. Richard Koch.

6 Q. Richard Koch?

7 A. He spells it K-o-c-h.

8 Q. But it's pronounced Cook?

9 A. Uh-huh.

10 Q. He is in Powdersville?

11 A. Powdersville Family Practice.

12 Q. And how long has he been your primary care doctor?

13 A. Since January. My original doctor, Junker, retired

14 at the end of December. We'd been with him 30

15 years.

16 Q. Is he in the same practice?

17 A. Yes. There's only two there now.

18 Q. So if I wanted to see your family doctor records for

19 the last ten years, I just would look at

20 Powdersville Family Practice?

21 A. Yes.

22 Q. Before this accident, had you ever treated with a

23 neurologist?

24 A. No.

25 Q. The orthopaedist you saw before this accident was

12

1 Poletti?

2 A. Knee.

3 Q. Poletti for your knee?

4 A. Well, Poletti now didn't do my knee.

5 Q. Who did your knee?

6 A. My knee was done by Dr. Ridgeway.

7 Q. Ridgeway?

8 A. Poletti did my neck.

9 Q. That was after the accident?

10 A. Yeah, after it.

11 Q. And Ridgeway is down in Charleston?

12 A. No.

13 Q. No?

14 A. He's in Greenville Radial -- or Piedmont

15 Orthopaedics. Excuse me.

16 Q. Piedmont Orthopaedics. I know them. Poletti did

17 your neck?

18 A. He did my neck.

19 Q. That's after the accident?

20 A. Yes. I'm sorry.

21 Q. And I'll talk about that.

22 A. I'm sorry.

23 Q. That's okay.

24 A. I got my days and times mixed up.

25 Q. Other than Powdersville Family Practice, did you

1. have any other doctors you saw on a regular basis
2. before this accident?
3. A. Regular basis?
4. Q. Like did you have a cardiologist?
5. A. Yes.
6. Q. Who is your cardiologist?
7. A. Dr. Trey Ridgeway.
8. Q. Okay.
9. A. He did my bypass surgery on 2001.
10. Q. Is he in Greenville?
11. A. Yes, he's in Greenville. Not radiologist. What's
12. the word?
13. Q. I can find him.
14. A. Cardiologists.
15. Q. Cardiologists. Okay.
16. A. I can't say it.
17. Q. That's okay.
18. A. I'm sorry.
19. THE WITNESS: I keep looking at you for names.
20. Q. [Mr. Grantland] No, that's okay.
21. How was your health before August 2012?
22. A. Perfect. I played golf. I moved to the golf
23. course, retired at 55.
24. Q. And you played golf pretty regularly before this
25. accident?

1. Q. But whatever he did, whatever the doctor did for you
2. with a pill --
3. A. He gave me a pill and it went away. I haven't had
4. it since.
5. Q. Even after this accident, you haven't had that
6. burning feet problem since?
7. A. No, I haven't had burning nothing.
8. Q. Okay. Good.
9. A. Toes or nothing, legs or nothing.
10. Q. Good. All right. Now, when did you move to Fairway
11. Oaks?
12. A. In 2002.
13. Q. I guess when you moved to Fairway Oaks, did you
14. immediately join the homeowners association?
15. A. You're automatically a homeowner. There's 18 units.
16. Q. And have you held positions with the homeowners
17. association?
18. A. President from 2007. I resigned after I couldn't do
19. my duties from this accident, after this accident.
20. Q. Approximately, when did you resign, if the accident
21. was in August 2012?
22. A. That's when I -- not long after. We had a paint job
23. going on and I wanted to finish it. I didn't do
24. anything but walk around to make sure they showed
25. up, that's all. I didn't do anything else.

1. A. About every day.
2. Q. Were you on any prescriptions at the time of this
3. accident?
4. A. No.
5. Q. No?
6. A. No.
7. Q. Did you have any issues with your legs or your feet
8. burning before this accident? Like did you have any
9. neuropathy problems before this accident?
10. A. Before the accident?
11. Q. Yes, sir.
12. A. I had some where I had some burning. I went to a
13. local and I took a pill and it healed it up.
14. Q. Who did you see?
15. A. I'm sorry, but I'm having trouble remembering.
16. Q. That's okay. You saw a local doctor for burning?
17. A. Yes, just burning feet.
18. Q. Burning feet?
19. A. Yeah.
20. Q. And he gave you a pill and that helped?
21. A. Yeah, that's gone. I can't think of the name. I'm
22. sorry.
23. Q. That's okay. Would it be Chandler, does that name
24. ring a bell?
25. A. That's the heart doctor.

1. Q. You said you were president from 2007 --
2. A. '07 until about --
3. Q. -- August, September 2012?
4. A. Something like that. Yeah, seven years exactly. I
5. looked on the minutes of the notes that we took and
6. it was July 7th.
7. Q. And before 2007, did you hold any other positions
8. with the homeowners association?
9. A. No.
10. Q. This isn't meant to be a stupid question, but what
11. was your job responsibility as the president of the
12. homeowners association?
13. A. It's going to be a stupid answer.
14. Q. That's okay.
15. A. This is 18 units. They're all about 65 to 90. The
16. guy that had it was unhealthy, he couldn't keep it.
17. So I was the youngest, so I got volunteered at one
18. meeting -- would I take it. And I had took a lot of
19. positions at 3M and they kind of volunteered me. We
20. only meet once a year and they volunteered me, kind
21. of.
22. Q. Were you at the meeting?
23. A. Yes. I didn't vote, but I was at the meeting.
24. Q. I was thinking that the best way to get elected to
25. something is to not show up.

17

1 A. Is don't show up, right?

2 Q. I've been elected by not showing up, so I can

3 appreciate that.

4 Now, as president, was one of your duties

5 hiring contractors to do work around the HOA?

6 A. It was to go through me. I had to approve them. It

7 could be recommended by secretary, treasurer, or

8 anybody, but I had to approve them.

9 Q. How about supervising contractors, did that go

10 through you, as well?

11 A. When you say supervising contractors, go to them if

12 I wanted something?

13 Q. Yes, sir.

14 A. Yeah. If they missed a spot painting, I'd tell

15 them. If they missed a shingle, I'd tell them,

16 stuff like that, but I had a handyman that did a lot

17 of our handy stuff.

18 Q. Who was your handyman? Was that Lee Lambricht?

19 A. Lee Lambricht.

20 Q. Let me ask you about Lee. How long have you known

21 Mr. Lambricht?

22 A. Thirty years.

23 Q. Did you all work together at 3M?

24 A. No, I met him at the golf course. I play golf with

25 him.

18

1 Q. I guess y'all are friends?

2 A. Good Christian friends.

3 Q. I assume you have his contact information. If we

4 need to find him or talk to him, we could do that?

5 A. Uh-huh. Raymond.

6 Q. Raymond has it?

7 A. I think Raymond has it.

8 THE WITNESS: Don't you, Raymond?

9 MR. WOOTEN: I think I probably do. I can get

10 that for you, if you need that.

11 MR. GRANTLAND: Okay.

12 A. Yeah, if he don't, I can get it.

13 Q. So he's been a friend for, approximately, 30 years?

14 A. Uh-huh.

15 Q. Do you know what his background is in, what work did

16 he do before he was --

17 A. He's from the Amish Country, so he's from up in --

18 Q. He's from Pennsylvania?

19 A. Yeah.

20 Q. Now, does he have any licenses?

21 A. That, I don't know. You mean, contract licenses?

22 Q. Yes, sir, like a licensed plumber?

23 A. Bonded and everything like that?

24 Q. Yes, sir.

25 A. He may be bonded.

19

1 Q. But, you know, like a licensed roofer or a licensed

2 contractor?

3 A. No, I don't know that.

4 Q. How long has Mr. Lambricht been the handyman for the

5 --

6 A. Twelve years.

7 Q. Twelve years?

8 A. The guy that they had was ripping them off.

9 Q. Who was that?

10 A. I don't know. He was charging them 125 and Lee

11 charges 25. So as soon as I got president, I let

12 him go because he was ripping them.

13 Q. He was charging them 125 an hour?

14 A. For the job. And a job would be \$25. You know, Lee

15 would charge 25 and he would charge 125. I didn't

16 get rid of him for the friend, I got rid of him for

17 the economics of the homeowners association.

18 Q. Right.

19 A. I could care less who they had.

20 Q. Did Lee charge 25 a job or 25 an hour, or do you

21 know?

22 A. Sometimes he didn't even charge me.

23 Q. Did he live out there?

24 A. No, he lives at Smithfield, but he didn't live at

25 homeowners.

20

1 Q. Is Smithfield here in Easley?

2 A. Yes, it's part of the group. Barnes and Dart built

3 it. Dart just died yesterday. Alvin Dark passed

4 away yesterday. It's in the morning paper.

5 MR. WOOTEN: He was the one that was the

6 baseball player, isn't he?

7 MR. GRANTLAND: Yes.

8 A. Baseball manager and player. They started it. He

9 lived on the first hole on the first green.

10 Q. That's here in Easley?

11 A. Greenville. Easley, yeah. Nice man. A really nice

12 man. They started the club.

13 Q. So you think Mr. Lambricht might be bonded?

14 A. I think. I've never heard him talk about -- but,

15 you know, we don't talk that. We talk golf or, you

16 know, stuff like that. I mean, I don't talk

17 business with him or where he works or what he does.

18 He does odd jobs; that's why if I need a plumber

19 fix, he fixes it.

20 Q. And so he started, approximately 12 years ago?

21 A. A month or two afterwards. You can say 12. It was

22 right after I started.

23 Q. I guess as president you hired him to do certain

24 jobs around the HOA?

25 A. Any of the other 17 people would call me, and that's

what happened in this case. And if you ask, I'll tell you that's what happened in this case, I got a call.

- Q. And I'll get to that. Before this accident, what kind of jobs did Mr. Lambright do?
- A. Everything in the book. You name it, he can do it.
- Q. And I guess you call him out there, he'd do it, you'd help him or supervise him?
- A. I wouldn't do nothing. I wouldn't even watch him. I'd say put this in and I'd leave, or fix this water heater and I'd leave, or fix this roof.
- Q. When he was done, would you check in on him?
- A. He would give the invoice to the treasurer. She would not pay him until I signed it. She'd bring it to me. She's 89 years old. She'd bring it to me, she'd sign it. Now, if it was over \$1,000, I had to approve it before he did the job. Like he wouldn't do that whole paint job or a whole roof job because he's not a roofer or painter.
- Q. He would just do small jobs?
- A. He's a handyman, I called him.
- Q. Before the accident, Mr. Hobbs, had Mr. Lambright ever cut any tree limbs for you?
- A. Maybe just some small ones that were hanging down and hit you in the head when the lawnmower guy --

- A. See, we have tree limbs that hang over the buildings as they grow and the people will start calling me saying they're going to fall on my roof and knock a hole in it. You know, 89-year-olds don't take much patience.
- Q. No.
- A. And they call on anything.
- Q. Who was the contractor in the bucket truck that cut limbs three months before?
- A. I knew you was going to ask that. He's out of Liberty. I can't remember his name.
- Q. But you hired him to cut some big limbs and he was \$750?
- A. He wanted 7-, 8-, 900, 10- -- thousand -- last time it was 1100.
- Q. He did the job, he just was expensive?
- A. Yes, and he didn't do a good job. He didn't haul off all of the broken limbs and stuff. And I made Lee -- and Lee knew it. He picked up everything. It looked like he'd run a vacuum cleaner back there when he got through.
- Q. How old is Lee?
- A. He's probably -- I'm 70, so 74. He won't get on the roof. He gets his son and son-in-law to get on the roof.

when he mowed, he would say, "Could you get that trimmed? It's hitting me in the head when I mow." And I'd get Lee to come out and take five minutes and mow, but no, no tree limbs. I hired a guy. The reason -- I won't go into it. I hired a guy who came out in a bucket and he ripped me off, and I quit using him because he would trim one limb, charge me \$750, and then I said the heck with this, I'll get me somebody that will trim it. I'm not supposed to tell, but you understand this tree was already three-quarters broken, okay?

- Q. Right.
- A. It wasn't just like he cut the tree. He finished based on a phone call.
- Q. And I'll get to that. I want to make sure I understand exactly what happened, Mr. Hobbs.
- A. Yeah.
- Q. So the bucket truck man, do you recall when --
- A. I had him cut the big ones about three months ago.
- Q. Three months before your accident or since the accident?
- A. Yeah, the big ones. No, three months before the accident. The big ones that you had to have a bucket.
- Q. Right.

- Q. Now, I'm going to maybe go back to Lee, but as the president of the HOA, did you hire the guy who cut your grass? Did you all have a grass cutter?
- A. A standard guy who'd been cutting it 20-something years.
- Q. Who was that?
- A. Daniel Lappin.
- Q. Did you have anything to do with him? I mean, did you supervise his work or pay?
- A. Just paid him. He got paid once a month, and he mowed once a week on Tuesdays, and that's the reason he was out there and saw it all. He was mowing. He'd just started.
- Q. Just started on the day of the accident?
- A. The day of the accident, right.
- Q. How about painters, did you hire painters to do work for the HOA?
- A. I contracted. The bylaws require three quotes, and I get the quotes. It ain't driven all by price, you know. Depending on quality -- the looks and when they drive up, if it's a beat up truck. You know, I've been around thousands of people in 34 years, so I can pick you out and -- if you're good enough to do a job. So I picked them. Nobody else approved them. I picked them.

A. Is don't show up, right?

Q. I've been elected by not showing up, so I can appreciate that.

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A. Greenville, Easley, yeah. Nice man. A really nice man. They started the club.

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A. A month or two afterwards. You can say 12. It was right after I started.

Q. I guess as president you hired him to do certain jobs around the HOA?

A. Any of the other 17 people would call me, and that's

Q. So if you brought Mr. Lambright out there and you're voluntarily standing where you're standing, what did the homeowners association do to cause the accident, if you know?

A. Other than the phone call Friday night and going down and seeing the limb hanging, and it was going to hit his house, and to protect his house from being hit, from the new section being hit by the tree limb. And we all agreed it would have it the -- quote, unquote from them, that it would have probably hit his sunroom, sundecks, and all that.

Q. Yes, sir. You know, your lawyer filed a complaint of your behalf against the homeowners association.

A. Yes.

Q. And I want to ask you some questions about that, maybe kind of zero in on what I'm getting at. And I can show you. I'm looking at the complaint and I'm sure you may have seen it.

A. Oh-huh.

Q. Paragraph 22, it talks about what the homeowners association -- well, I'll just read it. It says, Defendant, is the homeowners association. It says, Defendant, by and through the acts or omissions of Lambright for which the Defendant is liable, was negligent, reckless, willful, won't and careless and

Q. Would you expect the homeowners association to warn you of the hazard of Mr. Lambright's cutting the tree limb? Would you expect someone from the homeowners association to warn you of that?

A. Other than Benny who warned me to come out the tree because it was going to fall if we didn't cut the tree, and when we went down there, we made the decision to cut the tree. They agreed. Benny obviously -- obviously, he'd already agreed. He was the one who called me.

Q. Sure. Right.

A. But between us three, we agreed that the limb was going to hit his house if we didn't get it cut. So we cut it.

Q. And you made the decision to use Lee, is that correct?

A. Yes. Well, I made -- Lee, because the tree was barely hanging, and the guy charges \$750 to come out in a bucket, and I wasn't paying \$750 to pay a guy in a bucket to come out and cut a limb.

Q. And you trusted Lee?

A. Yeah, he's done thousands of jobs for us.

Q. It also says, "In failing to take proper precautionary steps to keep persons like Tommy from encountering such a hazard."

grossly negligent in the following particulars:

Let me first stop there. You don't think Mr. Lambright did anything wrong?

A. No. Absolutely.

Q. But it says, "The Defendant was negligent in the following particulars: In failing to keep Tommy and other persons from coming near the area where the tree cutting was occurring."

Now, you stood where you stood on your own, is that right?

A. On my own, yes.

Q. No one told you to stand there, is that right?

A. Right.

Q. Then B, "In failing to warn Tommy or other persons of a hazard of tree cutting." I mean, you were aware of that?

A. Yeah, but he warned me, all of us, and looked, he says, and warned us. And Daniel will tell you that he warned us to get out of the way.

Q. Right.

A. To make sure we were all out of the way.

Q. And you thought you were out of the way?

A. We thought we were out of the way. And they said he turned around on the ladder and looked to see if we were all out of the way before he made the cut.

What should the association have done differently, do you know?

A. What should the association have done differently?

Q. Yes, sir.

A. Other than warned us? Well, they warned us to get out of the way. We got out of the way as far as we could get, as far as the association being in the way of the way cutting the tree. Again, we had no idea the tree was falling this way and nobody can do that.

Q. And no one expected the tree to fall that way?

A. No.

Q. You were the only person out there on behalf of the association, is that right?

A. I'm the president. I was repressing their -- I don't get a penny, not a penny.

Q. Yes, sir.

A. Daniel Lappin is the only one who gets paid.

Q. Yes, sir. And did Lee get paid for this?

A. No.

Q. He didn't take any money?

A. The president don't get paid.

Q. No, I'm talking about did Lee get paid for cutting that limb?

A. Well, he didn't charge us because all this happened.

Q. Right.

A. He took Mary to the hospital in his truck, but other than that, no.

Q. Is there anything that you can think of that the homeowners association, who you're suing, is there anything that you can think of that they should have done differently to have kept this accident from happening?

A. Well, there's nothing -- I couldn't go any farther.

Q. Yes, sir.

A. I would say no, other than we had to get the tree cut because it was going to fall on his house if we didn't, that would be the only thing right now that I could say would be a reasoning that they would have. The person living up where I live, next door to me, is not going to see this tree limb down here. This is the end tree limb. Nobody else is going to see this but Benny. The lady next door, she works, she's not going to see it. So nobody is going to see the tree limb there but Benny. So being president, he calls me on a Friday, all right?

Q. Right.

A. Which would be natural. I'd call you if you was the president to tell you I've got a limb fixing to hit my house.

A. 10:30 that night. She's laying next to me in a cot and I ask where I am and what I'm doing here. For about 400 times I'd asked that day, where am I. And I'm still having trouble remembering dates, days. I can't even remember your name right now, or hers.

Q. John.

A. Okay.

Q. Sandy.

A. I can't remember.

Q. Right.

A. I've got golfers I've known 40 years. I'll walk up and they'll see the look in my face. They laugh and say, "You can't remember me, can you?" And I say, "No, don't tell me." And they start laughing and say, "Wait. I'll wait and you guess." In about two minutes, I'll remember Daniel or Dan or whatever his name is.

Q. Yes, sir.

A. But I have headaches. Balance is awful. I fell about ten times. I've had about three, four, five concussions. I fell off a porch. I fell in my own bedroom and hit my bedpost and caused seven staples. I've had 40-something in my head. I'm hurt for life.

Q. Yes, sir.

Q. Yes, sir.

A. Yeah. But I can't think of any -- you know, it was a bad storm.

Q. Yes, sir. And I don't want to put words in your mouth, I just want to make sure I understand. The main reason you're suing the association is because you were out there as the president and you got hit by the tree limb, is that correct?

A. The one reason, yes.

Q. I mean, had you not been president, you would not have been out there?

A. I had not been president, I don't know. I don't know. I can't answer that.

Q. You got Lee out there. You picked Lee to do it.

A. Yeah, I picked Lee.

Q. And you voluntarily stood where you stood?

A. I volunteered, to my knowledge, of standing where I did. And I don't remember anything. I could have stood down here, you know, but I did. Lee made a statement I think according to him, to tell us to get out of the way, to make sure we were out of the way, and he told us that. Now I'm quoting him. I don't know that for a fact because I don't remember.

Q. The next thing you remember, I guess, you were in the hospital?

A. And I'll tell anybody that.

Q. Right.

A. I'll never be the same.

Q. Yes, sir.

A. You, her. You can put whatever you want to on that pad. I'll never be the same. Now I'm 70 years old. I don't expect to be running around the block. I moved here to play golf. I moved into the townhouse to play golf and I'm not getting to do it. It's been two years since I got to play.

Q. You haven't played no golf since?

A. No golf. I gave up my presidency, gave up president of the golf association. I'm fixing to have to give up the president of the church because I can't sign checks. I can't even get in my car and go. I can't drive. So do you blame me for doing what I'm doing when my life ended?

Q. Yes, sir. So have you surrendered your license?

A. No, but they're wanting me to. She drives.

Q. When is your license --

A. I haven't lost my license. She does all the driving.

Q. Have you driven since the accident?

A. To McDonald's.

Q. Yes, sir.

remember helping him put it in the truck, I don't remember helping him tie it off. I don't remember nothing. She says we took the little girl to school first day. I don't remember that. I don't even remember getting out of bed.

Q. But you don't think Lee is responsible because he had no control over where the limb was going to fall?

A. No. How the hell do you know that? I mean, that's a stupid question to ask, how do you know which way a limb is going to fall. Do tree people know which way? Go ask the guys in Liberty and ask him if he knows which way a tree is going to fall when he cuts it.

Q. Yes, sir.

A. Or ask anybody in this thing. You don't know where it's going to fall.

Q. Yes, sir. In hindsight, Mr. Hobbs, do you think you have any responsibility?

A. No, not absolutely. If you're asking me if I was representing the president of the association, yeah.

Q. Yes, sir.

A. I walked down to Lee, with him, to make sure he remembered and knew which one to cut and that I wanted it hauled off, cut up into lengths and hauled

fix the creek.

Q. Yes, sir. And I apologize if it's a stupid question or a hard question, but I need to ask you, why are you suing the homeowners association?

A. Because I think that it's their fault, and my medical bills and my inconvenience that I've had for two years. I've had four pins and two plates put in my head. I've had headaches for a year every dang day, every day for a year. I've took 2,000 ibuprofen since this happened. I can't do nothing. I'm in the bed. I'm about to fall out of this chair now. I'm weak.

Q. Yes, sir.

A. And the inconvenience to my wife is, she gets up, she has to hold me to use the bathroom. It's not fair to say Tommy Hobbs is at fault because he was standing where he was and representing what his responsibilities are as president of the association and all to show Lee which tree limb to cut.

Q. Yes, sir. What do you believe the homeowners association did wrong or what do you believe the homeowners association did to cause your accident?

A. What did the homeowners do to cause my accident?

Q. Yes.

A. To fix the tree limb in case it fell and hit the

off. This city will pick them up if you put them out in the front.

Q. Yes, sir.

A. I said, "Lee, I want them hauled out on the front. I want them picked up." He said, "I'll do all that." That's what I mean by vacuum cleaning and things. He picked every limb up.

Q. Yes, sir. He made it look like it didn't fall at all?

A. You didn't even know there was a limb there.

Q. Yes, sir. You stood where you stood voluntarily, didn't you?

A. Yeah. I could have stood back to my house, you know, and got back into bed with my wife, but I didn't, you know.

Q. Yes, sir. I mean, you picked where you were standing?

A. I picked where I was standing. I can't go this way, I'd fall in the creek. So you can't go anywhere down that way or you're in the creek. If you've been out there, and it looks like you have, you're going to fall in the creek. You can't see it because it's --

Q. And I don't have a picture of the creek.

A. In fact, we're in a thing with the city right now to

house, and it would have hit the house.

Q. Yes, sir.

A. It was broke that had that it was leaning that far. It would have hit this brand new house here, okay.

Q. Yes, sir. Well, so do you believe the homeowners association did anything wrong?

A. The association did anything wrong?

Q. Yes, sir.

A. The good Lord broke the limb, I didn't do it, you know. The good Lord broke the limb when he had the storm Friday night or Thursday night. Friday day.

Q. Yes, sir.

A. But no, I don't believe that they actually went down with a chainsaw and started chopping on it, you know.

Q. Yes, sir. You tell me if you disagree. You were acting on behalf of the association when you brought Mr. Lambright out there?

A. Yes.

Q. And you were acting on behalf of the association when you were standing there?

A. Yes.

Q. If you were not president, you'd have been home or on the golf course?

A. Yes.

EXHIBIT B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) CASE NO. 2014-CP-39-00613

COPY

CHARLES THOMAS HOBBS AND
MARY HOBBS,

PLAINTIFFS,

vs.

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION,

DEFENDANT.

DEPOSITION

OF

BENNY ROPER

Deposition on the oral examination of BENNY ROPER, reported by Andrea Shorb, Verbatim Court Reporter and Notary Public for the State of South Carolina; said deposition taken pursuant to notice and in accordance with the South Carolina Rules of Civil Procedure at the law offices of Smith, Jordan, Lavery & Lee, 1810 East Main Street, Easley, South Carolina on Wednesday, November 19th, 2014, commencing at 11:20 a.m.

1 who hired Lambright; is that right?

2 A. That's correct.

3 Q. Do you know if Mr. Lambright had any license or
4 insurance or if his work was bonded?

5 A. None, to my knowledge.

6 Q. Okay. Is Mr. Lambright a personal friend of Mr.
7 Hobbs?

8 A. Yes, sir.

9 Q. And do you know why Mr. Lambright was hired
10 instead of a professional tree trimmer?

11 A. No, sir. I do not.

12 Q. Okay.

13 A. I was told it would be Mr. Brilar that was a
14 professional tree trimmer when I told him I
15 needed some limbs removed. That's -- they told
16 me that's -- Tommy told me he'd get Mr. Brilar.

17 Q. When did Mr. Hobbs promise you that a
18 professional tree trimmer would be hired?

19 A. When I told him at the time, that I told him
20 those limbs needed trimmed to keep them off my
21 deck.

22 Q. Do you know what month that was?

23 A. It was two days before the accident.

24 Q. Okay. So two days before this accident Mr. Hobbs
25 told you that he would hire a professional tree

1 trimmer to take care of the branch?

2 A. Yes, sir.

3 Q. And when you showed up the day the branch was
4 being removed, it was Mr. Hobbs and Mr. Lambright
5 removing the branch?

6 A. Yes, sir.

7 Q. Okay. And do you know why the professional tree
8 trimmer was not hired?

9 A. No, sir; I don't.

10 Q. Okay.

11 A. I do know that this past year Mr. Brilar, which
12 is a professional tree trimmer, was hired to
13 remove some dead limbs; and this was in June or
14 May, late May or early June. And he came and
15 started work and Ms. Massingale, which was the
16 treasurer, got mad because he cut a tree limb
17 that was green behind her place and fired him.
18 Paid him the full amount and run him off and paid
19 him \$1125.

20 Q. Okay. So Mr. Brilar had showed up on the
21 property to remove limbs in 2014.

22 A. Yes, sir.

23 Q. But in 2012, the time of this accident, Mr. Hobbs
24 and Lambright were the two folks removing the
25 branch; is that right?

1 Q: Was within 10 feet of?

2 A: Mr. Hobbs.

3 Q: Mr. Hobbs, okay.

4 A: I think he'd been closer than that, but --

5 Q: So there was about 10 feet between Lappin and
6 Hobbs; is that right?

7 A: Yeah, yeah.

8 Q: Okay.

9 A: Yeah.

10 Q: And did you ever -- when Mr. Lambright was up on
11 top of the ladder, did he have a chainsaw?

12 A: Yes, sir.

13 Q: And was that chainsaw running so he was cutting
14 limbs down?

15 A: Yes, sir.

16 Q: And did you see Mr. Hobbs walk underneath the
17 branches?

18 A: Mr. Hobbs didn't walk underneath them. He was
19 standing --

20 Q: Okay.

21 A: -- right there.

22 Q: Did you see him standing underneath the branches?

23 A: Yes, sir.

24 Q: As Lambright was cutting them?

25 A: Yes, sir.

1 A. Better areas, yes, sir.

2 Q. Safer areas?

3 A. Yes, sir.

4 Q. Could he have been closer to your condo or down
5 in the meadow or closer to the --

6 A. He couldn't have got no closer to the condo.

7 Q. Okay.

8 A. Now, he could have been stood out here a little
9 further or stood over here or stood back here;
10 but, you know, he was in direct line of fire.

11 Q. So do you think that Mr. Hobbs was, in your
12 words, in the direct line of fire underneath the
13 branch?

14 A. Yes, sir.

15 Q. And you don't think that was a smart place to
16 stand?

17 A. No, sir.

18 Q. And there were safer places that he could have
19 been standing?

20 A. Yes, sir.

21 Q. Okay. Let me ask you this; who do you think is
22 responsible for this accident?

23 A. Mr. Lambright, but I think -- well, I think
24 Tommy's in the wrong place at the wrong time, and
25 Mr. Lambright is the one that cut the limb.

1 going on? What did you see?

2 A. I seen Mr. Lambright on the ladder, cutting limbs
3 up here. Tommy, he was down here and then he was
4 over there. I'm thinking that they threw a rope
5 with a drop tied to it around that limb to pull
6 down where they'd know which one to cut. But,
7 you know, I wasn't expecting this to happen, and
8 I wasn't really paying attention to what was
9 happening. At this time I -- when the accident
10 actually happened, Mr. Lappin had just got there;
11 and he was talking to Tommy. And I was right
12 here, and I just happened to be watching when Mr.
13 Lambright cut that limb that was right here. I'm
14 going to mark this limb. There was another limb
15 under it that had been cut, that hadn't fell to
16 the ground. It still liked this much being cut
17 and hanging down, and you can see that clearly if
18 you look at those limbs that were cut. But when
19 he cut this bigger limb right here on top, it
20 fell down on the smaller limb that hadn't fell
21 and both limbs at that time came down; and Tommy
22 was under them when they came down. I seen
23 Lappin run over there to Tommy, and I knew
24 something was wrong. I came out the front door
25 and came around the side of my house. And at

1 A. I don't know that Mr. Hobbs hired anybody.

2 Q. Okay. That's not who showed up to remove this
3 limb; is that right?

4 A. No, sir.

5 Q. Okay. And who showed up to remove this limb?

6 A. Mr. Hobbs and Mr. Lambright.

7 Q. Okay. And so instead of the professional tree
8 trimmer, you saw Mr. Hobbs and Mr. Lambright
9 removing the limbs that day?

10 A. Yes, sir.

11 Q. Okay. Were you helping them too or no?

12 A. No, sir.

13 Q. Were you doing your own business --

14 A. I was screening my porch on the third deck.

15 Q. Okay. And you --

16 A. Which was in line with limbs that were being cut,
17 hanging over the first floor deck.

18 Q. And you had a good eyesight of what was happening
19 that day?

20 A. Yes, sir.

21 Q. And did you actually watch this accident unfold?

22 A. Yes, sir.

23 Q. And you don't have any doubt of how it unfolded;
24 is that right?

25 A. There's no doubt in my mind.

1 A. Yes, sir.

2 Q. And would you agree that Mr. Hobbs has some
3 responsibility for his injuries?

4 A. Yes, sir.

5 Q. Okay. Are you aware of anyone who forced or made
6 Mr. Hobbs stand where he was standing?

7 A. Pardon me.

8 Q. Was anyone out there forcing Mr. Hobbs to stand
9 where he was standing?

10 A. No, sir.

11 Q. Did anyone tell him where he had to stand?

12 A. No, sir.

13 Q. Do you believe that he stood where he was
14 standing on his own free choice?

15 A. Yes, sir.

16 Q. Okay. And let's talk about the HOA. Do you
17 think the HOA did anything wrong to cause Mr.
18 Hobbs' injury?

19 A. No, sir.

20 Q. And would it be your testimony that this
21 accident, responsibility for this accident, rests
22 with Mr. Lambright and with Mr. Hobbs?

23 A. Yes, sir.

24 Q. And it does not rest with the HOA?

25 A. No, sir.

EXHIBIT C

STATE OF SOUTH CAROLINA.) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) CASE NO. 2014-CP-39-00613

COPY

CHARLES THOMAS HOBBS AND
MARY HOBBS,

PLAINTIFFS,

vs.

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION,

DEFENDANT.

DEPOSITION

OF

LEE LAMBRIGHT

Deposition on the oral examination of LEE LAMBRIGHT, reported by Andrea Shorb, Verbatim Court Reporter and Notary Public for the State of South Carolina; said deposition taken pursuant to notice and in accordance with the South Carolina Rules of Civil Procedure at the law offices of Smith, Jordan, Lavery & Lee, 1810 East Main Street, Easley, South Carolina on Wednesday, November 19th, 2014, commencing at 1:03 p.m.

1 Tommy was always in charge of a -- or was for
2 years in charge of the senior's group.

3 Q. Okay.

4 A. So he'd always go off in the last group. Well,
5 sometimes, on occasion, I'd be paired with the
6 last group; but normally I'd be in one of the
7 first groups, so --

8 Q. Okay. So you golfed with him throughout the year
9 on and off, and you'd describe your relationship
10 as friends; right?

11 A. Yeah, sure.

12 Q. And do you keep up with Tommy on a social basis
13 before the accident and after the accident?

14 A. Yeah; yes.

15 Q. And you know his wife and you know where he
16 lives?

17 A. Correct.

18 Q. And had his phone number?

19 A. Yeah.

20 Q. And you check in on him regularly?

21 A. Yes.

22 Q. Okay. And so, tell me how you became the
23 contractor for the HOA. I guess you were working
24 for Tommy and he said --

25 A. I'm not a contractor.

1 Q. Okay.

2 A. I'm just a neighborhood friend, and I do a lot of
3 little projects for people; but I don't have a
4 business, so to speak or --

5 Q. Okay. So you're not a contractor and you're more
6 of a neighborhood friend?

7 A. Yeah.

8 Q. And you're a friend of Tommy Hobbs; is that
9 right?

10 A. Right.

11 Q. And he said would you come help us out and do
12 some projects for the HOA?

13 A. Yeah.

14 Q. And that's how you began working at the HOA
15 property?

16 A. Right.

17 Q. And that work continued for seven or eight years?

18 A. Yes, probably so.

19 Q. Okay. Do you have a business that's
20 incorporated?

21 A. No, no.

22 Q. Are you a licensed contractor?

23 A. No.

24 Q. Are you bonded?

25 A. No.

1 Q. Do you have worker's comp insurance?

2 A. No.

3 Q. Do you have any employees?

4 A. No.

5 Q. Do you have other clients?

6 A. Off and on I do. Yes, I guess you would say.

7 Q. Okay. And how were you selected to perform the
8 handyman work? Was it an election by the Board;
9 or was it just a question Tommy asked you and you
10 said yes, I'll do it for you?

11 A. Yeah, he just -- he just asked me.

12 Q. Okay. And each job that you performed -- well,
13 let me ask you this. Over those seven or eight
14 years, how many projects do you think you
15 performed on the property?

16 A. A couple of dozen, anyway. A lot of them were
17 inside work that the residents themselves asked
18 me to do.

19 Q. Okay. So also the residents would hire you in
20 their own capacity and not just --

21 A. Right.

22 Q. -- through the HOA?

23 A. Right.

24 Q. And how many times do you think over the last
25 eight years you went to that property to perform

1 work?

2 A. Probably a hundred times, if you add the days
3 together that I'd be doing a painting project or
4 a ceramic tile or something like that.

5 Q. So it seems pretty frequent. I mean, you would
6 do --

7 A. Yeah.

8 Q. -- it on a regular basis?

9 A. Yeah.

10 Q. And what about for the HOA? How many of those
11 projects would have been for the HOA?

12 A. Maybe, maybe a third.

13 Q. So more than thirty projects, at least, you
14 performed for the HOA over eight years; is that
15 right?

16 A. Right.

17 Q. And did Tommy Hobbs hire you for each one of
18 those?

19 A. Yeah, pretty -- pretty much, he and the
20 treasurer.

21 Q. When you were asked to perform a new project, was
22 it Tommy Hobbs who asked you to do the work?

23 A. Generally.

24 Q. Okay.

25 A. Yeah.

1 Q. And was it the treasurer who gave you a check?

2 A. Yeah.

3 Q. Okay. How long have you been doing work as a
4 handyman? Is that how you describe yourself, a
5 handyman?

6 A. Yeah, I guess. I don't know. We used to have
7 some apartment buildings in Indiana and I -- and,
8 of course, I grew up on a farm, and we just did a
9 lot of our work. And I've been doing stuff like
10 that for many years on the side.

11 Q. When you were a sports writer, a sports editor,
12 would you do handy work on the side for money?

13 A. I mainly did it just for myself.

14 Q. And did you only begin to get paid for your work
15 as a handyman once you came to South Carolina?

16 A. Yeah.

17 Q. Okay. So it sounds like you've had about
18 fourteen years of paid work as a handyman, but
19 you describe yourself more as a neighborhood
20 friend than a professional contractor; is that
21 right?

22 A. Right; yeah.

23 Q. Okay. What kind of projects would you be hired
24 for?

25 A. Trim work, painting, ceramic tile, plumbing

1 leaks, repairs.

2 Q. What about --

3 A. Door problems.

4 Q. What about tree limbs? Have you ever been hired
5 before to cut tree limbs?

6 A. I don't believe I had.

7 Q. So the time that you cut tree limbs in August of
8 2012, when the branch fell on Mr. Hobbs, was that
9 the first time you've ever been hired to cut tree
10 limbs?

11 A. I believe it was. I had cut a lot of them myself
12 for my own properties, but --

13 Q. Did Mr. Hobbs know that, that you had never been
14 paid to cut tree limbs before?

15 A. I don't know. We didn't discuss that. I, of
16 course, have told him that, you know, I have a
17 saw and --

18 Q. So when he approached you with the tree-limb
19 project, how did that conversation go?

20 A. He -- he said they had this big limb back there
21 behind the house where Benny lives, and it was
22 getting close to it and wanted to know if I could
23 cut it off. And I said, "Well, I can do it, but
24 I have to get a guy to help me with the ladder.
25 It would take a big ladder to get up there." And

1 A. He might have. I couldn't say yes or no on that
2 one.

3 Q. Okay. And you get to the property and you have
4 the ladder. Is it in your truck? Do you have a
5 truck?

6 A. Yeah.

7 Q. Okay. And does Mr. Hobbs help you get the ladder
8 out of your truck?

9 A. And again, I'm not sure; but I would guess he
10 did.

11 Q. And you two walked the ladder down together to
12 the grassy area where the limb was?

13 A. Yeah, probably so.

14 Q. Okay. And you testified that Mr. Hobbs helped
15 you set the ladder up?

16 A. Correct. That I do know for sure.

17 Q. Okay. And describe that for me. How did that
18 happen?

19 A. We stretched out the ladder to reach the limb and
20 just --

21 Q. Was it an extension ladder?

22 A. Yeah.

23 Q. And did it require two people to use the rope, to
24 pull the ladder up?

25 A. No.

1 Q. Okay.

2 A. We just -- we didn't have to put it up very high,
3 so we got it up high enough to reach the limb;
4 and one of us has to keep the end of the ladder
5 down and the other can walk the ladder up, you
6 know.

7 Q. Which one of you two kept the ladder down at the
8 bottom?

9 A. It was probably Tommy.

10 Q. And do you think that you climbed the ladder?

11 A. Not to get it set up.

12 Q. Okay.

13 A. You just -- you get under the ladder and walk it
14 up with your hands as you straighten it up, you
15 know.

16 Q. Okay. And that would have been what Tommy had
17 done; is that right?

18 A. He would have -- he would have held the end of
19 the ladder down, I believe.

20 Q. Okay. And after the ladder gets set up, what
21 happens next?

22 A. And I go up and start cutting the tree.

23 Q. All right.

24 A. The limb.

25 Q. Did Tommy ever check the ladder to make sure it

1 Q. And then like a long arch, it tipped over?

2 A. Correct.

3 Q. And that's when the branch fell and hit Tommy
4 Hobbs in the head?

5 A. Yeah. That splintered end hit him on the top of
6 the head.

7 Q. And was it the end that was attached to the tree
8 trunk?

9 A. Yeah.

10 Q. Okay. So it sort of did a somersault when you
11 pushed it and hit him on top of the head; is that
12 right?

13 A. Yeah.

14 Q. Okay.

15 A. Yeah. It just sort of flipped on out.

16 Q. At the time of the accident, when you pushed the
17 branch forward and it hit Mr. Hobbs, how far
18 apart was Tommy Hobbs and Daniel Lappin standing?

19 A. I would guess at least 20 feet.

20 Q. Okay. So there was 20 feet between Lappin and
21 Hobbs. Could you see where they were standing
22 through all the branches when you pushed the tree
23 forward?

24 A. Not really, but --

25 Q. Were the tree branches and leaves blocking your

1 A. Right.

2 Q. Okay. And you had your own little side business,
3 and they would hire you for individual projects;
4 is that right?

5 A. Correct.

6 Q. Do you think that that would make you an
7 independent contractor in this case?

8 A. Probably so.

9 Q. Okay. What about Mr. Hobbs? Did he have any
10 experience in cutting tree limbs, that you know
11 of?

12 A. I doubt it. I don't know, maybe some small-type
13 projects over the years but --

14 Q. Okay. And before this incident and before this
15 tree-limb issue, had there ever been problems
16 with your work on the property?

17 A. Not that I'm aware of.

18 Q. Okay. And just so we're -- just to be clear, Mr.
19 Hobbs is the one who hired you for this work; is
20 that right?

21 A. I would say so; yeah.

22 Q. Okay. And he's the one who asked you to cut this
23 tree limb; is that right?

24 A. Yeah.

25 Q. And he did so probably because of your price and

1 vision?

2 A. Pretty much.

3 Q. Okay.

4 A. Pretty much, it was so thick. It was just like
5 the thickness was like this tree, this picture
6 right in here; and you can see how thick that is.

7 Q. And you're indicating the leaves on the main
8 tree, on the side of the photograph; right? I'm
9 sorry.

10 A. Yeah.

11 Q. The thickness you're referring to were the leaves
12 up in the tree --

13 A. Yeah.

14 Q. -- on the side of the photograph?

15 A. Yeah.

16 Q. And they were so thick that you couldn't see
17 through them; is that right?

18 A. Well, I wouldn't honestly say that I couldn't see
19 through them; but I guess at the point in time I
20 didn't look to see, didn't really look to see if
21 any of those guys had moved up or moved over
22 there.

23 Q. Okay. So you walked underneath the --

24 A. That's right.

25 Q. -- beside the tree, beside the branch, and you

1 Q. And how would it be done differently?

2 A. I'd just make more sure, I guess, that
3 everybody's, you know, in a safe spot.

4 Q. Okay. Do you think Mr. Hobbs has some
5 responsibility for this accident?

6 A. Oh, of course.

7 Q. And what do you mean by that?

8 A. Well, he wouldn't have had to be there to begin
9 with. You know, it was his choice of being out
10 there and --

11 Q. And he knew that the limb was coming down; is
12 that correct?

13 A. Sure; yeah.

14 Q. And did he choose where to stand at the time of
15 the accident? No one forced him to stand where
16 he was?

17 A. No.

18 Q. Okay.

19 A. No.

20 Q. Do you think he could have avoided the accident
21 if he stood in a safer place?

22 A. Sure; yes. I mean, this -- this thing is about
23 this wide; and it was a wide, open area that it
24 could have come down a thousand different little
25 places and not hit anybody. It just -- just an

1 act of God, I guess, that it came down right in a
2 specific place. And why he was over there, like
3 I say, I don't know. I don't know.

4 Q. Okay. Do you think that he was there in his
5 capacity as the president of the HOA?

6 A. Well, probably. Yeah, sure.

7 Q. Okay. Do you believe that the HOA did anything
8 wrong to cause this accident?

9 A. If they did, I don't know what it would be.

10 Q. Can you name anything that the HOA did wrong to
11 cause Mr. Hobbs' injury?

12 A. No, no.

13 Q. And, of course, you were there that day and you
14 know exactly how this happened and you know how
15 you were hired and the work you do and how Mr.
16 Hobbs was injured; is that right?

17 A. Correct.

18 Q. Can you name anything that the HOA did wrong to
19 cause Mr. Hobbs' injury?

20 A. No.

21 Q. Do you think that the HOA is responsible for Mr.
22 Hobbs' injury in any way?

23 A. I have no idea.

24 Q. Okay. I'm going to show you a document that Mr.
25 Hobbs' attorney filed to initiate this suit.

1 responsibility do you think it was to keep Tommy
2 Hobbs from coming where the tree cutting was
3 occurring?

4 A. It was probably as much his as anybody's, in my
5 opinion, I guess, but --

6 Q. Okay. So you think it was Tommy's responsibility
7 to avoid coming where the cutting was occurring?

8 A. Well, when you got -- you got three or four guys
9 out there and adults, you know, I think it's
10 pretty much everybody's responsibility.

11 Q. Okay.

12 A. Make this happen in a safe kind of way.

13 Q. Okay. Do you think it was also your
14 responsibility to keep Tommy from coming where
15 the cutting was occurring?

16 A. Well, I was part of it, no doubt about it; yeah.

17 Q. Was that a "yes"?

18 A. To say totally, no. But I should have done my
19 part; yes.

20 Q. Okay. Do you think that -- whose responsibility
21 do you think it was that Tommy was allegedly not
22 warned of the dangers of tree cutting?

23 A. I'm sure you're pointing at me on that; but
24 again, I would say Tommy didn't have to be out
25 there.

1 Q. Okay.

2 A. He was out there by his own choice.

3 Q. Okay.

4 A. His own choosing.

5 Q. Would you agree that the warning about the
6 dangers of tree cutting would be either your or
7 Mr. Hobbs' responsibility?

8 A. Well, yeah. I would guess so; yeah.

9 Q. Okay. And what about the line where it said
10 proper precautionary steps, proper safety gear,
11 and proper degree of care and caution were not
12 used? Whose responsibility do you think those
13 were?

14 A. That's probably true, but you're not dealing with
15 a professional tree cutter, you know. And I was
16 just asked to cut the limb; and knowing that this
17 type of thing can be very dangerous and so, you
18 know, I thought we were using precautionary means
19 and --

20 Q. And whose responsibility do you think those
21 precautionary and safety measures were?

22 A. Well, probably mine.

23 Q. And in any of those six allegations that you
24 read, did you see anything that the HOA did
25 wrong?

1 A. If they did anything wrong, is that they asked me
2 to do it; yes.

3 Q. Okay. And let me just see if I understand you
4 correctly. If the HOA did anything wrong, it's
5 your opinion it's in hiring a non-professional
6 tree cutter?

7 A. Probably so; yeah.

8 Q. And who at the HOA hired you as the tree cutter?

9 A. Tommy would have been the one that -- would have
10 hired me, I guess.

11 Q. So if the HOA did anything wrong, do you think
12 that that responsibility lies with Tommy?

13 A. He was the president and, you know, he's the one.
14 He's the one that talked to me about doing it;
15 yeah.

16 Q. Is that a "yes"?

17 A. What was the question again?

18 Q. If the HOA did anything wrong, then do you think
19 that it was Tommy's responsibility?

20 A. Probably so; and I guess that would be a yes.

21 Q. Okay. Is there anything the HOA, and
22 particularly the other members of the HOA, could
23 have done differently that would have prevented
24 Tommy from being injured?

25 A. Well, if they had hired a professional tree

1 cutter, maybe. And, I mean, he could have got
2 hurt then too, but -- if he had gone out there.

3 Q. And do you think that it's the HOA's fault that
4 Mr. Hobbs was injured?

5 A. I have no opinion on that. I don't know.

6 Q. Okay. Is there anything that the rest of the
7 HOA, besides Tommy Hobbs, could have done
8 differently that would have kept Mr. Hobbs from
9 being injured that day?

10 A. Hired a professional tree, hired somebody else,
11 perhaps, and not -- and not had him go out there.

12 Q. Okay. Did the HOA, to your knowledge, require
13 Mr. Hobbs to go out there that day; or was it his
14 choice?

15 A. It was his choice. As far as I know, it was his
16 choice.

17 Q. And as far as you know, it was his choice where
18 to stand and whether or not to help you; is that
19 right?

20 A. Pretty much; yeah.

21 Q. Okay. Do you think it's the HOA's fault in any
22 way that Mr. Hobbs stood near the tree when the
23 limb fell and hit him on the head?

24 A. I don't see how it would have been.

25 Q. And you would agree you testified earlier that if

EXHIBIT D

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) CASE NO. 2014-CP-39-00613

COPY

CHARLES THOMAS HOBBS AND
MARY HOBBS,

PLAINTIFFS,

vs.

FAIRWAY OAKS HOMEOWNERS
ASSOCIATION,

DEFENDANT.

DEPOSITION

OF

DAVID LAPPIN

Deposition on the oral examination of DAVID LAPPIN, reported by Andrea Shorb, Verbatim Court Reporter and Notary Public for the State of South Carolina, said deposition taken pursuant to notice and in accordance with the South Carolina Rules of Civil Procedure at the law offices of Smith, Jordan, Lavery & Lee, 1810 East Main Street, Easley, South Carolina on Wednesday, November 19th, 2014, scheduled for 10:00 a.m. and commencing at 10:02 a.m.

1 tree; is that right?

2 A. Yes.

3 Q. Okay. And were you facing the tree also?

4 A. Yes.

5 Q. And were you to Mr. Hobbs left?

6 A. Yes.

7 Q. And he was to your right?

8 A. Yes.

9 Q. And what was the distance between you two?

10 A. Maybe 8 or 10 feet.

11 Q. Okay. So he was about 8 or 10 feet to your
12 right?

13 A. Yes.

14 Q. Okay. And what was the distance between Mr.
15 Hobbs and the tree, do you think?

16 A. Probably 15 feet.

17 Q. Okay. Was Mr. Hobbs standing -- excuse me -- was
18 Mr. Hobbs standing as far away as possible from
19 the tree?

20 A. We were both dragging limbs at the time.

21 Q. Okay.

22 A. And that's where we -- because we were both
23 dragging, and that's where we were when the limb
24 fell.

25 Q. Okay. And it looks like there was some distance

1 between Mr. Hobbs and the condo. Is that right?

2 A. Yes.

3 Q. Okay. What do you think that distance was?

4 A. Ten feet, maybe.

5 Q. Okay. So he was not standing all the way against
6 the condo when the limb fell and hit him; is that
7 right?

8 A. No.

9 Q. Okay. Do you agree he could have been standing
10 close to the condo?

11 A. Well, we were -- we were dragging limbs. I mean
12 at that time he wasn't.

13 Q. Okay, okay. And it looks like there -- let me
14 strike that question. Okay. So I understand
15 you're standing about 5 to 8 feet beside Mr.
16 Hobbs.

17 A. Yes.

18 Q. And the limb begins to fall, and you tell him to
19 watch out. What happens next, in your own words?

20 A. I yell to Tommy to move, and within seconds I --
21 I guess he just looked up and that's -- the limb
22 just -- just hit him. Because it was -- by the
23 time I saw it falling and yelling, I mean, it was
24 right on him.

25 Q. Okay. And the base of that limb flipped over and

1 -- well, let me ask you this question. Looking
2 back on the accident, do you believe the HOA
3 caused Mr. Hobbs' injuries?

4 A. No.

5 Q. And do you believe the HOA is at fault for Mr.
6 Hobbs' injuries?

7 A. No.

8 Q. Okay. Is there anything Mr. Hobbs could have
9 done to avoid this?

10 A. I guess we both could -- should have waited until
11 he had all the limbs cut.

12 Q. Okay. I understand. So do you believe Mr. Hobbs
13 could have avoided the injury if he had waited
14 until the limb's cut to walk underneath the
15 branch?

16 A. Yes, yeah.

17 Q. Okay. And if he had done that, he would have
18 avoided being injured?

19 A. Right.

20 Q. Okay. And what about Mr. Lambright? Is there
21 anything he could have done to avoid Mr. Hobbs
22 being injured?

23 A. Told us to wait until he had it cut.

24 Q. Okay. And if Mr. Lambright had asked you guys to
25 wait and not walk under the branches, Mr. Hobbs

1 years, as a contractor, with this HOA; is that
2 right?

3 A. Right.

4 Q. So you understand, generally, the working
5 relationship between the HOA and the contractors,
6 who's responsible for what; is that right?

7 A. Uh-huh.

8 Q. Okay. Here on page 4, starting in paragraph 22,
9 a letter "A," you'll see where the Complaint
10 filed by Mr. Hobbs' attorney alleges what the HOA
11 did wrong. Could you read "A" out loud for me?

12 A. "In failing to keep Tommy and other persons from
13 coming near the area where the tree was cutting
14 was concerning."

15 Q. Do you believe that the HOA made any mistakes in
16 this respect?

17 A. I don't think this is the HOA's fault.

18 Q. Okay, and that's fair. And so if anyone was
19 keeping Mr. Hobbs from coming near the area where
20 the branches were coming down, was it the
21 responsibility of the other HOA members?

22 A. I wouldn't think so.

23 Q. Okay. And would that have been something that
24 Mr. Lambright would have been responsible for?

25 A. Yes.

1 A. Uh-huh.

2 Q. And with respect to those allegations that you
3 read, do you think that the HOA did anything
4 wrong?

5 A. I don't think the HOA did.

6 Q. Okay. And some of those responsibilities or
7 allegations, where do you think they would lie?

8 A. Probably on Lee, with him cutting it.

9 Q. And that's Mr. Lambright?

10 A. Yes. That's correct.

11 Q. Okay. And is there anything you read in this
12 Complaint that you think the HOA failed to do or
13 did wrong that caused Mr. Hobbs to get hurt?

14 A. No.

15 Q. Okay. And just to wrap up, do you think the HOA
16 did anything wrong at all in this case?

17 A. Not that I know of. I mean, it's -- like I say,
18 the work was between, you know, Tommy and Lee.
19 And, well, I mean, Tommy is the president of the
20 HOA, so --

21 Q. Do you think that there's anything that the rest
22 of the HOA should have done differently?

23 A. Hired a professional.

24 Q. Okay.

25 A. That's what they had done in the past.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	C/A No. 2014-CP-39-00613
	)	
Charles Thomas Hobbs and Mary Hobbs,	)	
	)	
Plaintiffs,	)	
	)	MEMORANDUM IN OPPOSITION
vs.	)	TO DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
Fairway Oaks Homeowners Association,	)	
	)	
Defendant.	)	
	)	

Plaintiffs submit this memorandum in opposition to Defendant's Motion for Summary Judgment. Defendant moves for Summary Judgment as to Plaintiffs' causes of action on the ground that because Lee Lambright was an independent contractor, it is not liable for his actions. However, Defendant is liable for Lambright's actions as it had a non-delegable duty of reasonable care when making repairs or improvements, including when maintaining trees in the common area, so that Defendant cannot escape liability because of Lambright's status as an independent contractor.

I. STATEMENT OF FACTS

- 1) Plaintiff Tommy Hobbs was struck in the head by a tree limb on August 21, 2012.
- 2) Plaintiff Tommy Hobbs suffered memory loss as a result of the accident and does not recall the events that occurred on August 21, 2012. (See Deposition of Tommy Hobbs, pg. 31, ll. 12-14, Exhibit A)
- 3) The accident occurred on the common areas of the Fairway Oaks Townhome development which was owned by Defendant.

- 4) Pursuant to the Declaration of Covenants and Restrictions for Fairway Oaks Townhouses, Easley, South Carolina and Provisions for Fairway Oaks Homeowners' Association ("Covenants and Restrictions"), Defendant was responsible for maintaining the common areas. The Covenants and Restrictions provide: "Section 12. Common Area Maintenance. Common Areas shall be the responsibility of the Association, which shall maintain the parking lots, grounds and common buildings. The Association shall make such capital improvements to common areas as the shareholders may determine to be in the best interest of Fairway Oaks Townhouses. The Association shall maintain liability insurance for the common areas." (Covenants and Restrictions, Article VI, Section 12, pg. 18, Exhibit B)
- 5) Plaintiff Tommy Hobbs was the President of the HOA at the time of his accident, and he had been for many years. (See Deposition of Tommy Hobbs, pg. 15, ll. 16-19, Exhibit A)
- 6) Plaintiff Tommy Hobbs' duties as president were set forth in Defendant's By-Laws which provide that "The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments." (Bylaws, Article XI, Section 4, pg. 6, Exhibit C)
- 7) In his role as President, Plaintiff Tommy Hobbs hired Lee Lambright to cut the tree limb.
- 8) Lambright was a local handyman who performed various jobs for Defendant and the residents of Fairway Oaks. (See Deposition of Lee Lambright, pg. 12, ll. 11-18; pg. 13, l. 12 - pg. 14, l. 12, Exhibit D)

- 9) Lambright asked Plaintiff Tommy Hobbs to help him carry a ladder to the site where the tree limb would be cut as the ladder was too large for him to handle by himself. (See Deposition of Lee Lambright, pg. 16, l. 18 – pg. 17, l. 2, Exhibit D)
- 10) Plaintiff Tommy Hobbs agreed, and on August 21, 2012 did in fact assist Lambright in taking the ladder to the job site and setting it up. (See Deposition of Lee Lambright, pg. 25, ll. 14-16, Exhibit D)
- 11) After getting the ladder set up, Lambright began to work on the tree limb. (See Deposition of Lee Lambright, pg. 26, ll. 20-22, Exhibit D)
- 12) The various witnesses have provided differing accounts of what Plaintiff Tommy Hobbs was doing as Lambright worked on the tree.
- a. Lambright testified that Plaintiff Tommy Hobbs was just standing off to the side. (See Deposition of Lee Lambright, pg. 28, l. 25- pg. 29, l. 6, Exhibit D)
 - b. Benny Roper testified that Plaintiff Tommy Hobbs was talking to David Lappin. (See Deposition of Benny Roper, pg. 38, ll. 9-11, Exhibit E)
 - c. David Lappin, Defendant's landscaper at the time, testified that Plaintiff Tommy Hobbs was pulling branches out from underneath the tree. (See Deposition of David Lappin, pg. 28, ll. 14-19, Exhibit F)
- 13) Lambright cut a large tree limb, however the limb did not fall all the way to the ground, and was leaning against the tree. After cutting the tree limb, Lambright climbed down and spoke with Plaintiff Tommy Hobbs and Daniel Lappin. Lambright then went back to the tree and pushed the already cut limb over onto the ground. The limb struck Plaintiff Tommy Hobbs in the head. (See Deposition of Lee Lambright, pg. 31, l. 4- pg. 32, l. 24; pg. 33, l. 22- pg. 34, l. 13, Exhibit D)

- 14) While cutting tree limbs and pushing over the tree limb after it had been separated from the tree, Mr. Lambright took no safety precautions, provided no warnings and did not look to make sure everyone was out of the way immediately prior to pushing over the tree limb. (See Deposition of Lee Lambright, pg. 57, ll. 13-24; pg. 58, l. 23 - pg. 59, l. 3, Exhibit D).

II. ARGUMENT

"Summary judgment is proper only when it is clear 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), SCRCP. 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). (internal citations omitted).

A. DEFENDANT HAD A NON-DELEGABLE DUTY OF REASONABLE CARE WHEN MAKING REPAIRS OR IMPROVEMENTS, INCLUDING WHEN MAINTAINING TREES IN THE COMMON AREA, AND IS LIABLE FOR THE NEGLIGENT ACTIONS OF LEE LAMBRIGHT

Plaintiff Tommy Hobbs was injured when he was struck in the head by a tree limb cut and pushed over by Lee Lambright. It is undisputed that Mr. Lambright was hired by Defendant to cut the tree limb, and that the tree from which the limb was cut and fell and the spot where Plaintiff Tommy Hobbs was standing when he was hit by the tree limb were both in the common area owned by Defendant. It is undisputed that Mr. Lambright cut and pushed over the tree limb which hit Tommy in the head, causing his severe injuries. Further, it is undisputed that, prior to pushing over the tree limb after it had been separated from the tree, Mr. Lambright took no

safety precautions, provided no warnings and did not look to make sure everyone was out of the way immediately prior to pushing over the tree limb. (See Deposition of Lee Lambright, pg. 57, ll. 13-24; pg. 58, l. 23 – pg. 59, l. 3, Exhibit D). Defendant had a duty to maintain the common area where Plaintiff Tommy Hobbs was injured. The Declaration of Covenants and Restrictions For Fairway Oaks Townhouses, Easley, South Carolina and Provisions for Fairway Oaks Homeowners' Association provides in pertinent part:

"Section 12. Common Area Maintenance. Common Areas shall be the responsibility of the Association, which shall maintain the parking lots, grounds and common buildings. The Association shall make such capital improvements to common areas as the shareholders may determine to be in the best interest of Fairway Oaks Townhouses. The Association shall maintain liability insurance for the common areas." (Covenants and Restrictions, Article VI, Section 12, pg. 18, Exhibit B)

Defendant was carrying out its duty to maintain the common areas when it hired Lambright to cut the tree limb which struck Tommy.

Defendant contends that it is not liable for Lambright's negligent actions because he was an independent contractor. Defendant states "[b]ecause Lambright is an independent contractor, Defendant is not liable for Lambright's negligence, and Defendant is entitled to judgment as a matter of law." (Memorandum of Law in Support of Defendant's Motion for Summary Judgment, pg. 6). It is true that "[t]he general rule is that an employer is not vicariously liable for the negligent acts of an independent contractor." Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390 (2005) (internal citations omitted). However, "[a]n

exception to the general rule is that "[a] person who delegates to an independent contractor an absolute duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee." Id. (internal citations omitted). In Simmons v. Tuomey Regional Medical Center, our Supreme Court noted a number of non-delegable duties that have been recognized in South Carolina. The Court stated, "[t]his Court and the Court of Appeals have applied the nondelegable duty doctrine in several situations. An employer has a nondelegable duty to employees to provide a reasonably safe work place and suitable tools, and remains vicariously liable for injuries caused by unsafe activities or tools under the employer's control. A landlord who undertakes repair of his property by use of a contractor has a nondelegable duty to see that the repair is done properly, and remains vicariously liable for injuries caused by improper repairs. A common carrier has a nondelegable duty to ensure that cargo is properly loaded and secured, and remains vicariously liable for injuries caused by an unsecured load. A bail bondsman has a nondelegable duty to supervise the work of his employees, and remains vicariously liable for injuries caused by those employees. A municipality has a nondelegable duty to provide safe streets even when maintenance is undertaken by the state Highway Department, and remains vicariously liable for injuries caused by defective repairs." 341 S.C. 32, 42-43 (2000). In Simmons, the Court found that a hospital had a non-delegable duty with regard to physicians who practice in their emergency rooms, despite the fact that this non-delegable duty exception had not previously been specified. Id. at 53.

One such circumstance in which a non-delegable duty was found, as set forth above, was "[a] landlord who undertakes repair of his property by use of a contractor has a nondelegable duty to see that the repair is done properly, and remains vicariously liable for injuries caused by

improper repairs.” Id at 42-43. This non-delegable duty was considered in Durkin v. Hansen, wherein the Court stated that “where the landlord undertakes to repair or improve the demised premises, whether he is under an obligation imposed by a covenant on his part to repair or improve or not, he is required to exercise reasonable care in making such repairs or improvements, and is liable for injuries caused by his negligence or unskillfulness or that of his servants and employees in making them or in leaving the premises in an unsafe condition.” 313 S.C. 343, 346-47 (Ct. App. 1993). Further, the Court stated that “[a] landlord who makes repairs and improvements on the demised premises owes a duty of reasonable care to the occupying tenants which he cannot escape by placing the work with an independent contractor. This is especially true where the work to be done is attended with danger to the tenant. Moreover, a landlord owes his tenants a non-delegable duty not to create unsafe conditions on premises and is thus vicariously liable for torts of his independent contractor.” Id at 348. (internal citations omitted). In Durkin a tenant was injured by the negligence of an independent contractor carpet cleaner. The landlord was obligated to maintain the condominium premises by virtue of its lease agreement with the tenant.¹ Id at 347-348. Like the agreement in Durkin, the Covenants and Restrictions in the present case created an obligation on the part of Defendant to maintain the common area. (Covenants and Restrictions, Article VI, Section 12, pg. 18, Exhibit B)

Defendant asserts that the current case does not fall within one of the non-delegable duty exceptions to the general rule that a principal is not liable for the acts of an independent contractor, and therefore the exception does not exist. Defendant states “[w]hile the general rule is clear- in South Carolina, a principal is not responsible for the negligence of an independent contractor- a few particularized exceptions have been recognized under the ‘nondelegable duty

¹ In Durkin, the Court states that, in addition to the duties set forth in the rental agreement, Defendants also had duties imposed by the South Carolina Residential Landlord Tenant Act. 313 S.C. at 348 and 349.

doctrine.' However, no exception applies here." (Memorandum of Law in Support of Defendant's Motion for Summary Judgment, pg. 6). The question of whether a homeowners association ("HOA") has a non-delegable duty of reasonable care when making repairs or improvements, including when maintaining trees in the common area, is a novel question in South Carolina. Other courts have found that HOAs have non-delegable duties in regard to common areas and features. In Affan v. Portofino Cove Homeowners Association, the California 4th District Court of Appeals found that an HOA had a non-delegable duty to property owners to maintain common area plumbing, and that the HOA could be liable for damage caused by an independent contractors' negligent actions. See 189 Cal. App. 4th 930, 945 (2010 Cal. App. 4th). In Vasquez v. Lago Grand Homeowners Association, the court noted that the Defendant HOA had a duty to keep the premises secure, and was liable for their failure to do so, as a result of its contractual promise to do so, and that it could not escape liability because it had hired an independent contractor. 900 So.2d 587, Foot Note 7. The fact that this issue has not been specifically addressed does not mean that Defendant did not have a non-delegable duty. In Simmons, the defendant hospital argued that the non-delegable duty of hospitals was not supported by South Carolina law. 341 S.C. 32, 42. The Court, in addressing this novel issue of law and finding that a non-delegable duty existed, reasoned "[t]he cited cases clearly illustrate that a person or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong." Id at 44. In the present case, the facts are very similar to the already recognized non-delegable duty owed by a landlord to a tenant. Here, Defendant was obligated to maintain the common areas by the Covenants and Restrictions and hired an independent contractor to perform the necessary tree work. Similarly, in Durkin, the defendant undertook maintenance which it was obligated to

perform pursuant to its lease, by hiring an independent contractor. In the present case, the independent contractor's negligence caused Plaintiffs' injuries, like the negligence of the independent contractor in Durkin. The fact that this is a novel issue should not preclude Plaintiffs recovery against Defendant. Instead, the Court should find that Defendant had a non-delegable duty of reasonable care when making repairs or improvements, including when maintaining trees in the common area, so that Defendant is liable for Lambright's negligence just as if Lambright had been an employee of Defendant, and deny Defendant's Motion for Summary Judgment.

**B. DEFENDANT MAKES SEVERAL ARGUMENTS THAT ARE NOT RELEVANT TO THE
GROUNDS CITED AS THE BASIS FOR THEIR MOTION FOR SUMMARY JUDGMENT AND
DO NOT ENTITLE THEM TO SUMMARY JUDGMENT**

**a. Defendant appears to argue that Plaintiff Tommy Hobbs' own alleged
negligence should prevent Plaintiffs' recovery**

Defendant appears to argue that Plaintiff Tommy Hobbs is liable for his injuries so that Defendant should be entitled to Summary Judgment. Defendant spends several pages discussing Plaintiff Tommy Hobbs' actions and why he was negligent. (Memorandum of Law in Support of Defendant's Motion for Summary Judgment, pgs. 4-6). However, it is well settled that questions of comparative negligence are properly questions of fact for the jury to determine. Our Supreme Court stated that "[t]he determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn." *Hurd v. Williamsburg County*, 363 SC 421, 429 (2005). Here, there is evidence that Lambright's negligence was responsible for Plaintiffs' injuries. (See Deposition of Lee Lambright, pg. 57, ll. 13-24; pg. 58, l. 23 – pg. 59, l. 3). Defendant even states that "all

evidence points to the negligence of two parties: Plaintiff and independent contractor Lee Lambright.” (Memorandum of Law in Support of Defendant’s Motion for Summary Judgment, pg. 5). Because conflicting inferences can be drawn, the degree to which Plaintiff Tommy Hobbs was comparatively negligent as alleged by Defendant is properly a jury question.

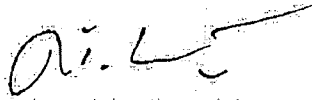
- b. Defendant also appears to argue that because Plaintiff Tommy Hobbs, acting in his capacity as President of Defendant, hired Lambright, Plaintiffs should be prevented from recovery

Defendant also seems to argue that because Plaintiff Tommy Hobbs hired Lambright on behalf of Defendant, he is prevented from recovering for Lambright’s negligence. Defendant states “the only mistake the HOA could have made, according to witness testimony, was a mistake made by Plaintiff himself: hiring a non-professional instead of a professional tree service.” (Memorandum of Law in Support of Defendant’s Motion for Summary Judgment, pg. 5). This argument might be persuasive were Plaintiffs asserting that Defendant was liable because it was negligent in hiring Lambright. However, Plaintiffs did not assert negligent hiring as a basis for Defendant being liable. Therefore, the fact that Plaintiff Tommy Hobbs hired Lambright on behalf of Defendant in his capacity as president of Defendant has no bearing on Defendant’s argument that it is not liable for Lambright’s negligence because he was an independent contractor.

III. CONCLUSION

For the reasons detailed herein, Plaintiff’s Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,



Raymond T. Wooten (S.C. Bar #81483)

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Easley, South Carolina

August 6, 2015

- 1 Q. But whatever he did, whatever the doctor did for you
2 with a pill --
- 3 A. He gave me a pill and it went away. I haven't had
4 it since.
- 5 Q. Even after this accident, you haven't had that
6 burning feet problem since?
- 7 A. No, I haven't had burning nothing.
- 8 Q. Okay. Good.
- 9 A. Toes or nothing, legs or nothing.
- 10 Q. Good. All right. Now, when did you move to Fairway
11 Oaks?
- 12 A. In 2002.
- 13 Q. I guess when you moved to Fairway Oaks, did you
14 immediately join the homeowners association?
- 15 A. You're automatically a homeowner. There's 18 units.
- 16 Q. And have you held positions with the homeowners
17 association?
- 18 A. President from 2007. I resigned after I couldn't do
19 my duties from this accident, after this accident.
- 20 Q. Approximately, when did you resign, if the accident
21 was in August 2012?
- 22 A. That's when I -- not long after. We had a paint job
23 going on and I wanted to finish it. I didn't do
24 anything but walk around to make sure they showed
25 up, that's all. I didn't do anything else.

- 1 ladder and saw or is that --
- 2 A. I don't know. I don't know.
- 3 Q. Does the HOA have a ladder?
- 4 A. No. I can honestly say no. We don't have a ladder.
- 5 Q. Do y'all have any --
- 6 A. We don't have any tools.
- 7 Q. I was going to ask do you all provide Mr. Lambright
- 8 with any tools?
- 9 A. He has his own.
- 10 Q. He has his own tools.
- 11 A. Or he goes and borrows.
- 12 Q. So the day of, do you remember anything leading up
- 13 to the accident?
- 14 A. No, I don't even remember getting out of bed.
- 15 Q. Really?
- 16 A. The whole day.
- 17 Q. The whole day is just kind of --
- 18 A. Nothing. When you put 48 staples in your head, you
- 19 don't remember a whole lot.
- 20 Q. Yes, sir. I'm not trying to doubt you.
- 21 A. You don't doubt me, no, I know.
- 22 Q. I just need to make sure it's clear to me. So if I
- 23 ask you anything about the circumstances before the
- 24 accident or the accident itself, you have no memory
- 25 of it?

damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall obtain bids from at least two reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance bond for the repair, reconstruction or rebuilding of such building or buildings.

(10) Also, the Association may levy in any calendar year, a special assessment for the purpose of defraying the cost of construction, reconstruction, repair or replacement of a building or buildings containing single family residential units, to the extent that insurance proceeds under a group insurance policy containing a Replacement Cost Endorsement are insufficient to pay all costs of said construction, reconstruction, repair or replacement to as good condition as prior to damage or destruction by fire or other casualty covered by said insurance.

(11) The reconstructed or repaired residence shall be substantially identical to the destroyed residence, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(12) If a dwelling is not habitable by reason of damage, the obligation of the owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the dwelling is restored to a habitable condition, whichever shall first occur. In the event a dwelling is damaged or destroyed, and the owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the lot, so that it shall be placed in a neat, clean and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the dwelling until paid by the owner, unless the dwelling is thereafter acquired by the Association.

Section 12. Common Area Maintenance. Common Areas shall be the responsibility of the Association, which shall maintain the parking lots, grounds and common buildings. The Association shall make such capital improvements to common areas as the shareholders may determine to be in the best interest of Fairway Oaks Townhouses. The Association shall maintain liability insurance for the common areas.

Section 13. Exterior Maintenance of Buildings. In addition to maintenance of the common area, the Association shall provide

Exhibit C

shall be conclusive evidence of any assessment therein stated to have been paid.

ARTICLE X

Director's Meetings

Section 1. The annual meeting of the Board of Directors shall be held at the discretion of the Board of Directors with ample notice given to each member.

Section 2. Ten (10) days written notice of such annual meeting shall be given each Director.

Section 3. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or whenever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or consent to the holding of such a meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records and made part of the minutes of the meeting.

Section 4. The majority of the Board of Directors shall constitute a quorum thereof.

ARTICLE XI

Officers

Section 1. The officers shall be president, a vice-president, a secretary, a treasurer. Any or all officers may be but shall not be required to be members of the Board of Directors.

Section 2. The officers shall be chosen by a majority of the Directors.

Section 3. All officers shall hold office during the pleasure of the Board of Directors.

Section 4. The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 5. The vice-president shall perform all the duties in the absence of the president.

Section 6. The secretary shall be ex officio the secretary of the Board of Directors, shall record the votes and keep the

1 Q. Okay.

2 A. I'm just a neighborhood friend, and I do a lot of
3 little projects for people; but I don't have a
4 business, so to speak or --

5 Q. Okay. So you're not a contractor and you're more
6 of a neighborhood friend?

7 A. Yeah.

8 Q. And you're a friend of Tommy Hobbs; is that
9 right?

10 A. Right.

11 Q. And he said would you come help us out and do
12 some projects for the HOA?

13 A. Yeah.

14 Q. And that's how you began working at the HOA
15 property?

16 A. Right.

17 Q. And that work continued for seven or eight years?

18 A. Yes, probably so.

19 Q. Okay. Do you have a business that's
20 incorporated?

21 A. No, no.

22 Q. Are you a licensed contractor?

23 A. No.

24 Q. Are you bonded?

25 A. No.

1 Q. Do you have worker's comp insurance?

2 A. No.

3 Q. Do you have any employees?

4 A. No.

5 Q. Do you have other clients?

6 A. Off and on I do. Yes, I guess you would say.

7 Q. Okay. And how were you selected to perform the
8 handyman work? Was it an election by the Board;
9 or was it just a question Tommy asked you and you
10 said yes, I'll do it for you?

11 A. Yeah, he just -- he just asked me.

12 Q. Okay. And each job that you performed -- well,
13 let me ask you this. Over those seven or eight
14 years, how many projects do you think you
15 performed on the property?

16 A. A couple of dozen, anyway. A lot of them were
17 inside work that the residents themselves asked
18 me to do.

19 Q. Okay. So also the residents would hire you in
20 their own capacity and not just --

21 A. Right.

22 Q. -- through the HOA?

23 A. Right.

24 Q. And how many times do you think over the last
25 eight years you went to that property to perform

1 work?

2 A. Probably a hundred times, if you add the days
3 together that I'd be doing a painting project or
4 a ceramic tile or something like that.

5 Q. So it seems pretty frequent. I mean, you would
6 do --

7 A. Yeah.

8 Q. -- it on a regular basis?

9 A. Yeah.

10 Q. And what about for the HOA? How many of those
11 projects would have been for the HOA?

12 A. Maybe, maybe a third.

13 Q. So more than thirty projects, at least, you
14 performed for the HOA over eight years; is that
15 right?

16 A. Right.

17 Q. And did Tommy Hobbs hire you for each one of
18 those?

19 A. Yeah, pretty -- pretty much, he and the
20 treasurer.

21 Q. When you were asked to perform a new project, was
22 it Tommy Hobbs who asked you to do the work?

23 A. Generally.

24 Q. Okay.

25 A. Yeah.

- 1 A. He might have. I couldn't say yes or no on that
2 one.
- 3 Q. Okay. And you get to the property and you have
4 the ladder. Is it in your truck? Do you have a
5 truck?
- 6 A. Yeah.
- 7 Q. Okay. And does Mr. Hobbs help you get the ladder
8 out of your truck?
- 9 A. And again, I'm not sure; but I would guess he
10 did.
- 11 Q. And you two walked the ladder down together to
12 the grassy area where the limb was?
- 13 A. Yeah, probably so.
- 14 Q. Okay. And you testified that Mr. Hobbs helped
15 you set the ladder up?
- 16 A. Correct. That I do know for sure.
- 17 Q. Okay. And describe that for me. How did that
18 happen?
- 19 A. We stretched out the ladder to reach the limb and
20 just --
- 21 Q. Was it an extension ladder?
- 22 A. Yeah.
- 23 Q. And did it require two people to use the rope, to
24 pull the ladder up?
- 25 A. No.

1 Q. Okay.

2 A. We just -- we didn't have to put it up very high,
3 so we got it up high enough to reach the limb;
4 and one of us has to keep the end of the ladder
5 down and the other can walk the ladder up, you
6 know.

7 Q. Which one of you two kept the ladder down at the
8 bottom?

9 A. It was probably Tommy.

10 Q. And do you think that you climbed the ladder?

11 A. Not to get it set up.

12 Q. Okay.

13 A. You just -- you get under the ladder and walk it
14 up with your hands as you straighten it up, you
15 know.

16 Q. Okay. And that would have been what Tommy had
17 done; is that right?

18 A. He would have -- he would have held the end of
19 the ladder down, I believe.

20 Q. Okay. And after the ladder gets set up, what
21 happens next?

22 A. And I go up and start cutting the tree.

23 Q. All right.

24 A. The limb.

25 Q. Did Tommy ever check the ladder to make sure it

1 A. We set up the ladder, and that was the main
2 thing. Again, we probably talked about how this
3 thing is going to come down. It was a big, big
4 limb. And it stuck -- stuck out quite a ways and
5 had a lot of small twigs, little limbs on the end
6 of it. You know, it sort of umbrella'd out and
7 --

8 Q. Okay. So you two set the ladder up, and you
9 talked about how the limb would come down. What
10 else happened?

11 A. I don't know. We may have talked about news of
12 the day or something. It's hard telling.

13 Q. That's fine.

14 A. And I don't remember.

15 Q. You got to work; is that right?

16 A. Yeah.

17 Q. Were you at the top of the ladder?

18 A. Pretty much.

19 Q. Okay.

20 A. I actually got off on a limb. Because they were
21 so big and a lot of limbs up there, so I had
22 plenty of space to actually get on a limb and --

23 Q. You actually sat on it?

24 A. -- do the cutting? Yeah.

25 Q. Okay. So you were working at the top of the

1 ladder. Was Tommy working underneath the ladder?

2 A. No. He was standing off to the side.

3 Q. What was he doing while you began to take the
4 branches down?

5 A. As far as I know, he was standing off to behind
6 me.

7 Q. And is that closer to Benny Roper's condo?

8 A. No. It was more to the left..

9 Q. Okay.

10 A. Benny's condo was more to the south and --

11 Q. I have a photograph here of, I think, what shows
12 the accident scene. Do you recognize that?

13 A. Yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. And we'll mark this Exhibit No. 1. Can you point
17 to me where you indicated to the west where Tommy
18 Hobbs was standing as he began to --

19 A. It would be out this direction.

20 Q. Okay. And there's a Sharpie right here. Could
21 you make a mark where you think Tommy was
22 standing before the tree limb came down?

23 A. About in here somewhere.

24 Q. Okay. Could you make a -- just make an "X", just
25 to make it a little bit darker?

1 Q. Did you ever climb down the ladder and get back
2 up a second time?

3 A. I don't believe so.

4 Q. Okay. So you stayed up there the whole time
5 until the branch came down and hit Tommy?

6 A. Yeah.

7 Q. Okay.

8 A. No, it didn't hit him when it first came down.

9 Q. Okay. And can you explain that to me?

10 A. Well, the branch had so much weight on the
11 outside, over here towards this house.

12 Q. Okay.

13 A. You know, the branch came out here like this; and
14 it was big, a lot of -- a lot of twigs and stuff.
15 So when I cut about halfway through that 8 to 10
16 inch limb, it broke because of the weight out on
17 the end; and it came straight down and it rested
18 against the ladder, the ladder and the tree. And
19 it stood straight up, the limb of the tree was
20 sticking straight up. And it was resting on the
21 ground on all those twigs and branches. Okay?
22 So at that point, when I was still up there, I
23 cut the -- I cut the remaining bottom half of the
24 limb off, and it continued to stand straight up
25 against that ladder and the tree.

1 Q. Okay.

2 A. Okay? And then I'd come down, and I walked out
3 here. And by this time, the landscaper was
4 there, the guy that does the mowing.

5 Q. Is that Daniel Lappin?

6 A. Yeah, he and his helper Ray. They were standing
7 over here in this area where I have marked for
8 Tommy.

9 Q. Okay.

10 A. And so we stood there and talked a little bit.
11 Just what we talked about, I'm not sure. But
12 anyway, this tree limb was standing, still
13 standing up against this ladder and the tree.
14 Okay. So to get it down, it had to be tipped out
15 towards the house. And so I -- these guys were
16 all standing over in here, I would say, at least
17 25 to 30 feet away from where the limb was
18 standing up against the tree. And I walked in
19 behind that big limb to tip it out, to get it on
20 the ground. And it was so thick in there, that
21 when I -- I never saw Tommy move. I thought he
22 was still over here on the side, but apparently
23 he walked -- well, he had to. He walked in
24 there.

25 Q. Can you put an arrow towards where he walked --

1 A. Well, he actually -- he actually was about right
2 in here, I would say.

3 Q. And could you put an arrow showing where he would
4 have walked when you were --

5 A. Well, this is back about 30 feet. This is back
6 this way a ways, so he would have -- he would
7 have walked over in there. So why he walked
8 over, I have no idea; and I don't think anybody
9 else does, you know, as far as I know.

10 Q. Did he walk closer to the branch?

11 A. No, no. He actually -- actually, walked closer
12 to the house. But anyway, that branch was so
13 long, it -- when I walked in and tip it out,
14 that's when it hit him.

15 Q. Okay. Just so I understand this right, the
16 branch was separated but still leaning against
17 the main tree trunk; is that right?

18 A. Correct.

19 Q. And you walked underneath the branch, between the
20 tree --

21 A. Well, sort of around it.

22 Q. Okay. You walked around the branch, close to the
23 tree trunk, and actually pushed the branch
24 forward; is that right?

25 A. Correct.

1 Q. And then like a long arch, it tipped over?

2 A. Correct.

3 Q. And that's when the branch fell and hit Tommy
4 Hobbs in the head?

5 A. Yeah. That splintered end hit him on the top of
6 the head.

7 Q. And was it the end that was attached to the tree
8 trunk?

9 A. Yeah.

10 Q. Okay. So it sort of did a somersault when you
11 pushed it and hit him on top of the head; is that
12 right?

13 A. Yeah.

14 Q. Okay.

15 A. Yeah. It just sort of flipped on out.

16 Q. At the time of the accident, when you pushed the
17 branch forward and it hit Mr. Hobbs, how far
18 apart was Tommy Hobbs and Daniel Lappin standing?

19 A. I would guess at least 20 feet.

20 Q. Okay. So there was 20 feet between Lappin and
21 Hobbs. Could you see where they were standing
22 through all the branches when you pushed the tree
23 forward?

24 A. Not really, but --

25 Q. Were the tree branches and leaves blocking your

1 Q. Okay. So you talked to them, and then you came
2 back; and at that point you went in and you
3 pushed the limb over?

4 A. Right.

5 Q. And I believe when you described doing it the
6 first time, you said "tip out." When you said
7 "tip out," did you just mean push over?

8 A. Yeah, yeah.

9 Q. Okay. Now, prior to, I guess -- you said when
10 you went to push the tree over, you couldn't see
11 very well?

12 A. Right.

13 Q. Did you yell out or anything that you were about
14 to push it over?

15 A. No. I don't remember yelling.

16 Q. Could you see where the other people were once
17 you were up there to push the branch over?

18 A. I'm not sure if I could have or not, but I really
19 didn't look to see if they had moved from the
20 positions that they were in when I walked back
21 there. And I probably could have peered through
22 there somehow and just to get a little glimpse to
23 make sure that they were still over there where
24 they were, but --

25 Q. All right. And what type of cut did you make on

1 the branch initially? Were you trying to do
2 directional cutting, or did you just do a basic
3 type cut?

4 A. Just a straight cut, you know.

5 Q. Did you have any idea where the limb was going to
6 fall?

7 A. Well, yeah, yeah. They were all off to the side
8 when I first made the cut, but I didn't expect it
9 to stand up like that, you know. And I figured
10 it would just fall right down on the ground, so

11 --

12 Q. So, basically, if I'm getting this right, when
13 you were cutting, about halfway through the
14 branch cracked and the bottom half of it kind of
15 kept it attached?

16 A. Yeah. It -- it was hanging pretty much straight
17 down and it splintered, you know, the bottom part
18 like -- I don't know if you've ever seen a tree
19 cut like that, but it gets a lot of odd shape
20 ends to it and, you know, it gets pretty sharp.
21 That's the part that, I guess, ended up hitting
22 him in the head.

23 Q. Okay. Were there any physical barriers to keep
24 people away from the tree?

25 A. No.

1 Q. And was there anybody like working with you to
2 make sure nobody was in the way?

3 A. No.

4 Q. And you said that you think the only thing that
5 the HOA did wrong was not hiring a professional.
6 What do you think would have been done
7 differently if they had hired a professional?

8 A. Who knows, I don't know. They probably would
9 have come with a boom truck that has a lift on
10 it. And those guys, they tend to cut pieces,
11 like they may have cut part of the limb out on
12 the end and worked back towards the main trunk of
13 the tree. I'm just guessing that they could have
14 done that. And they may have just cut the whole
15 thing off like I tried to do, but --

16 Q. Do you think that they would have had somebody
17 there on the ground to keep people out, to keep
18 people away from the danger --

19 A. Well, they -- you know, they do that stuff every
20 day. And they get hurt too occasionally, just
21 had a guy in Easley about a year ago got killed
22 by a falling tree or a limb. You probably heard
23 about that, that Gantt. Yeah, it's a -- it's
24 dangerous work, no doubt about it.

25 Q. Did you actually see the limb hit Tommy?

Exhibit E

DEPOSITION OF BENNY ROPER

-38-

1 going on? What did you see?

2 A. I seen Mr. Lambright on the ladder, cutting limbs
3 up here. Tommy, he was down here and then he was
4 over there. I'm thinking that they threw a rope
5 with a drop tied to it around that limb to pull
6 down where they'd know which one to cut. But,
7 you know, I wasn't expecting this to happen, and
8 I wasn't really paying attention to what was
9 happening. At this time I -- when the accident
10 actually happened, Mr. Lappin had just got there;
11 and he was talking to Tommy. And I was right
12 here, and I just happened to be watching when Mr.
13 Lambright cut that limb that was right here. I'm
14 going to mark this limb. There was another limb
15 under it that had been cut, that hadn't fell to
16 the ground. It still liked this much being cut
17 and hanging down, and you can see that clearly if
18 you look at those limbs that were cut. But when
19 he cut this bigger limb right here on top, it
20 fell down on the smaller limb that hadn't fell
21 and both limbs at that time came down; and Tommy
22 was under them when they came down. I seen
23 Lappin run over there to Tommy, and I knew
24 something was wrong. I came out the front door
25 and came around the side of my house. And at

1 Hobbs in those five minutes?

2 A. No.

3 Q. Did he have a chainsaw going?

4 A. Yes.

5 Q. Was it a tall ladder?

6 A. Yes.

7 Q. So did he seem sort of separated from you and Mr.
8 Hobbs?

9 A. Yes.

10 Q. Okay. And that wasn't the kind of situation
11 where you two would talk back and forth? He just
12 kept cutting with a chainsaw. Is that right?

13 A. Right.

14 Q. Okay. And in those five minutes that you were
15 removing limbs, what did you see Tommy do, Mr.
16 Hobbs?

17 A. He was pulling limbs. We both were.

18 Q. Okay. And where was he pulling limbs from?

19 A. Underneath that tree.

20 Q. Okay. And so the pile of limbs where Tommy was
21 moving, was actually located until the branches
22 and under the tree; is that right?

23 A. Right.

24 Q. Okay. And as Mr. Lambricht was sawing down
25 limbs, Tommy was walking underneath the tree and

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Charles Thomas Hobbs and Mary Hobbs,

☒ Plaintiff

v.

Fairway Oaks Homeowners Association

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-39-000613

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 OCT 2 PM 4 35

Plaintiff's Attorney: Raymond T. Wooten
Bar No: 81483
Address: Post Office Box 1207
Easley, SC 29641

phone: 864-855-1661 fax: 864-855-1685
e-mail: wooten@smithjordan.com other:

Defendant's Attorney:
Bar No.:
Address:
phone: fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 2, 2015
Date submitted

SECTION III: Motion Fee

☒ PAID AMOUNT: ~~\$25.00~~

- ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other: see

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the
attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

- ☐ MOTION FEE COLLECTED:
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Charles Thomas Hobbs and Mary Hobbs,

Plaintiffs,

vs.

Fairway Oaks Homeowners Association,

Defendant.

) IN THE COURT OF COMMON PLEAS

) C/A No.: 2014-CP-39-00613

) PLAINTIFFS' NOTICE OF MOTION
) AND MOTION TO ALTER OR
) AMEND JUDGMENT PURSUANT
) TO RULE 59, SCRPC

TO: DEFENDANT AND IT ATTORNEY, ELLIOT DANIELS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs will move, ten (10) days after service hereof or as soon thereafter as Plaintiffs may be heard, pursuant to Rule 59, SCRPC, for an Order altering or amending the Court's Order granting Defendant's Motion for Summary Judgment filed on September 23, 2015.

The grounds for this motion are as follows:

1. The Court finds that "Because Lambright is an independent contractor, Defendant is not liable for Lambright's negligence." While it is true that Lambright was an independent contractor, Defendant owed a nondelegable duty to Plaintiff Charles Thomas Hobbs when performing maintenance so that it is responsible for the negligent actions of its independent contractor. The Court erred in failing to recognize this exception to the general rule that a principal is not liable for the actions of its independent contractor.
2. The Court states that "Plaintiffs raised the landlord-tenant exception, which has only been applied hereto in the landlord-tenant context: 'a landlord who

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PICKENS COUNTY
SOUTH CAROLINA

undertakes repair of his property by use of a contractor has a nondelegable duty to see that the repairs are done properly, and remains vicariously liable for injuries caused by improper repairs.'...However, the landlord-tenant exception does not apply: Defendant is not a landlord and Plaintiff is not a tenant. Rather, Defendant is an HOA, and Plaintiff was its President. This case has no nexus to a landlord-tenant relationship, and this case does not involve a landlord who undertakes repairs. Plaintiff offers no statutory support or applicable case law that imputes the duties and obligations of a landlord onto an HOA." (Order pgs. 3-4). However, Plaintiffs did not argue that the landlord-tenant exception to the rule that a principal is not liable for the acts of an independent contractor applied in this case. Instead, Plaintiffs argued that whether or not a homeowners association owed a non-delegable duty when performing maintenance and making repairs was a novel issue of law. Plaintiffs argued that, because it was a novel issue of law, the Court should look to similar cases, such as the landlord-tenant exception, when determining whether Defendant had a non-delegable duty as to the acts of the independent contractor it hired. The Court erred in failing to recognize this exception to the general rule that a principal is not liable for the actions of its independent contractor, when such an exception exists in other similar contexts such as the landlord-tenant context.

3. The Court states that "Plaintiff also argued that the present case is analogous to other situations in which a principal was found to have a nondelegable duty so that they were liable for the actions of an independent contractor. However, there is no recognized exception in South Carolina that removes this case from the

general independent contractor rule. To find otherwise would require this court to expand the existing body of case law. Because there is no recognized exception to the general independent contractor rule, Defendant is entitled to judgment as a matter of law." (Order pg. 4). Whether a homeowners association has a nondelegable duty for the actions of independent contractors who perform repair and maintenance work on its property is a novel question of law. Because it is a novel question of law, the Court is not bound by any prior precedent, or any lack of precedent, and was free to decide the issue. Therefore, the Court erred in finding that Defendant was entitled to judgment because there was no already recognized exception to the general independent contractor rule.

4. The Court found that Defendant did not have a nondelegable duty for the acts of its independent contractor. It was undisputed that Defendant hired the independent contractor to perform maintenance work on a tree located in Defendant's common area, and that Defendant had a duty to perform this maintenance work. It is further undisputed that Plaintiffs were injured as a result of the independent contractor's negligence. It is true that "[t]he general rule is that an employer is not vicariously liable for the negligent acts of an independent contractor." Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390 (2005) (internal citations omitted). However, "[a]n exception to the general rule is that '[a] person who delegates to an independent contractor an absolute duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee.'" Id. (internal citations omitted). The present case is similar to other circumstances

where the Court has found that a nondelegable duty exists, such as the landlord-tenant context. The Court erred in finding that Defendant did not have a nondelegable duty for the acts of its independent contractor, when a nondelegable duty exists in other similar circumstances, and where Defendant was delegating an absolute duty owed to Plaintiffs to an independent contractor.

5. The Court found that Defendant did not have a nondelegable duty for the acts of its independent contractor. This is a novel issue in South Carolina. The court erred in failing to consider the decisions of courts in other states who have determined that homeowners associations have nondelegable duties in circumstances similar to the present case. See Affan v. Portofino Cove Homeowners Association, 189 Cal. App. 4th 930, 945 (2010 Cal. App. 4th) and Vasquez v. Lago Grand Homeowners Association, 900 So.2d 587, Foot Note 7.
6. The Court found that Defendant did not have a nondelegable duty for the acts of its independent contractor. The Court found this despite the fact that Plaintiff Charles Thomas Hobbs, as a member of Defendant, was considered an invitee in Defendant's common area. See Landry v. Hilton Head Plantation, 317 SC 200, 204 (S.C. Ct. App. 1994). In other similar cases where the injured party had the same or a lesser status than Mr. Hobbs had as an invitee, the court has found a nondelegable duty exists. In Durkin v. Hansen, the court stated that "[a] landlord who makes repairs and improvements on the demised premises owes a duty of reasonable care to the occupying tenants which he cannot escape by placing the work with an independent contractor. This is especially true where the work to be done is attended with danger to the tenant. Moreover, a landlord owes his tenants

a non-delegable duty not to create unsafe conditions on premises and is thus vicariously liable for torts of his independent contractor." 313 S.C. 343, 348 (Ct. App. 1993). (internal citations omitted). As an invitee, Plaintiff Charles Thomas Hobbs had at least the same status as the tenant in Durkin, to whom the court found that the landlord owed a nondelegable duty when making repairs. Another exception to the general rule that a principal is not liable for the acts of its independent contractor involves customers in stores. See South Carolina Natural Gas Co. V. Phillips, 289 F.2d 143 (U.S. Court App. 4th Cir. 1961). Plaintiff Charles Thomas Hobbs, as an invitee, has the same status as a store customer. Given Plaintiff Charles Thomas Hobbs' status as an invitee, the Court erred in finding that Defendant did not owe him a nondelegable duty when a nondelegable duty has been found in other situations involving visitors with equal or lesser status.

7. The Court makes several factual findings which are unsupported, or for which there was conflicting evidence. The Court states that "With Plaintiff Charles Thomas Hobbs holding the bottom of the ladder, Lambright climbed up and began to remove branches." (Order, pg. 2). However, there is no testimony to support this factual finding. The only testimony is that Plaintiff Charles Thomas Hobbs helped set up the ladder, but not that he was holding the ladder as the independent contractor began to climb the ladder. (See Deposition of Lee Lambright, pg. 26, ll. 2-22).¹ The Court also states that "Plaintiff chose to be present and chose to stand in that particular location under the tree." (Order, pg.

¹The deposition excerpts referenced in this motion were attached to Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment, which is already on file with the Court. Copies are also attached hereto for the Court's convenience.

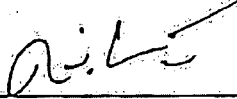
2) There is testimony which directly conflicts this factual finding. (See Deposition of Lee Lambright, pg. 28, l. 25- pg. 29, l. 6, Deposition of Benny Roper, pg. 38, ll. 9-11, Deposition of David Lappin, pg. 28, ll. 14-19). "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Knight v. Austin, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012). Therefore, the Court erred by making these factual findings at summary judgment when there is conflicting evidence.

8. Defendant's motion was based on the narrow grounds that Defendant was not liable for the negligence of its independent contractor. In its memorandum in support of its Motion for Summary Judgment, Defendant states "[b]ecause Lambright is an independent contractor, Defendant is not liable for Lambright's negligence, and Defendant is entitled to judgment as a matter of law." (Memorandum of Law in Support of Defendant's Motion for Summary Judgment, pg. 6). It was undisputed that Plaintiffs were harmed by the negligence of an independent contractor hired by Defendant. It is further undisputed that the independent contractor was hired by Defendant to perform maintenance on a tree located in Defendant's common area. Beyond this, all factual findings by the Court are unnecessary. For example, the Court states that "Testimony from the resident indicates that Plaintiff Charles Thomas Hobbs advised he would hire a professional tree service based out of Liberty, S.C. on behalf of the HOA to remove the limb." (Order, pg. 1). This finding is unnecessary and not relevant to Defendant's Motion for Summary Judgment. To the extent that the Court considered unnecessary facts or made factual findings that were not germane to

the narrow issue of law on which Defendant moved for summary judgment, the Court erred in considering these facts and making these findings.

For the reasons set forth herein, Plaintiffs respectfully request an Order of this Court vacating its prior Order, and/or altering its prior Order, and/or amending its prior Order, and/or denying Defendant's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED,



Raymond T. Wooten (S.C. Bar # 81483)
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Attorney for Plaintiffs

Easley, South Carolina
October 2, 2015

Deposition Transcript of Lee Lambright

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1 Q. Okay.

2 A. We just -- we didn't have to put it up very high,
3 so we got it up high enough to reach the limb;
4 and one of us has to keep the end of the ladder
5 down and the other can walk the ladder up, you
6 know.

7 Q. Which one of you two kept the ladder down at the
8 bottom?

9 A. It was probably Tommy.

10 Q. And do you think that you climbed the ladder?

11 A. Not to get it set up.

12 Q. Okay.

13 A. You just -- you get under the ladder and walk it
14 up with your hands as you straighten it up, you
15 know.

16 Q. Okay. And that would have been what Tommy had
17 done; is that right?

18 A. He would have -- he would have held the end of
19 the ladder down, I believe.

20 Q. Okay. And after the ladder gets set up, what
21 happens next?

22 A. And I go up and start cutting the tree.

23 Q. All right.

24 A. The limb.

25 Q. Did Tommy ever check the ladder to make sure it

1 A. We set up the ladder, and that was the main
2 thing. Again, we probably talked about how this
3 thing is going to come down. It was a big, big
4 limb. And it stuck -- stuck out quite a ways and
5 had a lot of small twigs, little limbs on the end
6 of it. You know, it sort of umbrella'd out and
7 --

8 Q. Okay. So you two set the ladder up, and you
9 talked about how the limb would come down. What
10 else happened?

11 A. I don't know. We may have talked about news of
12 the day or something. It's hard telling.

13 Q. That's fine.

14 A. And I don't remember.

15 Q. You got to work; is that right?

16 A. Yeah.

17 Q. Were you at the top of the ladder?

18 A. Pretty much.

19 Q. Okay.

20 A. I actually got off on a limb. Because they were
21 so big and a lot of limbs up there, so I had
22 plenty of space to actually get on a limb and --

23 Q. You actually sat on it?

24 A. -- do the cutting? Yeah.

25 Q. Okay. So you were working at the top of the

1 ladder. Was Tommy working underneath the ladder?

2 A. No. He was standing off to the side.

3 Q. What was he doing while you began to take the
4 branches down?

5 A. As far as I know, he was standing off to behind
6 me.

7 Q. And is that closer to Benny Roper's condo?

8 A. No. It was more to the left.

9 Q. Okay.

10 A. Benny's condo was more to the south and --

11 Q. I have a photograph here of, I think, what shows
12 the accident scene. Do you recognize that?

13 A. Yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. And we'll mark this Exhibit No. 1. Can you point
17 to me where you indicated to the west where Tommy
18 Hobbs was standing as he began to --

19 A. It would be out this direction.

20 Q. Okay. And there's a Sharpie right here. Could
21 you make a mark where you think Tommy was
22 standing before the tree limb came down?

23 A. About in here somewhere.

24 Q. Okay. Could you make a -- just make an "X", just
25 to make it a little bit darker?

Deposition Transcript of Benny Roper

1 going on? What did you see?

2 A. I seen Mr. Lambright on the ladder, cutting limbs
3 up here. Tommy, he was down here and then he was
4 over there. I'm thinking that they threw a rope
5 with a drop tied to it around that limb to pull
6 down where they'd know which one to cut. But,
7 you know, I wasn't expecting this to happen, and
8 I wasn't really paying attention to what was
9 happening. At this time I -- when the accident
10 actually happened, Mr. Lappin had just got there;
11 and he was talking to Tommy. And I was right
12 here, and I just happened to be watching when Mr.
13 Lambright cut that limb that was right here. I'm
14 going to mark this limb. There was another limb
15 under it that had been cut, that hadn't fell to
16 the ground. It still liked this much being cut
17 and hanging down, and you can see that clearly if
18 you look at those limbs that were cut. But when
19 he cut this bigger limb right here on top, it
20 fell down on the smaller limb that hadn't fell
21 and both limbs at that time came down; and Tommy
22 was under them when they came down. I seen
23 Lappin run over there to Tommy, and I knew
24 something was wrong. I came out the front door
25 and came around the side of my house. And at

Deposition Transcript of David Lappin

1 Hobbs in those five minutes?

2 A. No.

3 Q. Did he have a chainsaw going?

4 A. Yes.

5 Q. Was it a tall ladder?

6 A. Yes.

7 Q. So did he seem sort of separated from you and Mr.
8 Hobbs?

9 A. Yes.

10 Q. Okay. And that wasn't the kind of situation
11 where you two would talk back and forth? He just
12 kept cutting with a chainsaw. Is that right?

13 A. Right.

14 Q. Okay. And in those five minutes that you were
15 removing limbs, what did you see Tommy do, Mr.
16 Hobbs?

17 A. He was pulling limbs. We both were.

18 Q. Okay. And where was he pulling limbs from?

19 A. Underneath that tree.

20 Q. Okay. And so the pile of limbs where Tommy was
21 moving, was actually located until the branches
22 and under the tree; is that right?

23 A. Right.

24 Q. Okay. And as Mr. Lambright was sawing down
25 limbs, Tommy was walking underneath the tree and

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CIVIL ACTION NO: 2014-CP-39-00613

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs.

Fairway Oaks Homeowners Association,

Defendant,

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND JUDGMENT
PURSUANT TO RULE 59, SCRPC**

**TO: RAYMOND T. WOOTEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

The Defendant Fairway Oaks Homeowners Association submits this memorandum in response to Plaintiffs' Notice of Motion and Motion to Alter or Amend Judgment pursuant to Rule 59, *SCRPC*, as requested by the Honorable Judge Edward Miller.

BACKGROUND

On August 21, 2012, Plaintiff was injured on Fairway Oaks Townhouse common area grounds in Easley, S.C. when a tree limb being removed by independent contractor Lee Lambright fell and struck Plaintiff on the head. Lambright was hired by Plaintiff in Plaintiff's capacity as President of the Defendant HOA.

Suit was filed on May 15, 2014, and, after discovery of all pertinent facts was complete, Defendant filed a Motion for Summary Judgment on December 29, 2014. Oral arguments for that motion were heard on August 7, 2015. On September 15, 2015, the Honorable Judge Edward Miller signed an Order granting Defendant's Motion for Summary Judgment, attached hereto as Exhibit A. On October 7, 2015, Plaintiff filed a Motion to Alter or Amend the Order granting Defendant's Motion for Summary Judgment. Defendant submits this Memorandum of

Law in opposition to Plaintiff's motion, pursuant to Rule 59, *SCRCP*, as requested by Judge Miller.

ANALYSIS

For the reasons set forth in the prior Order, Defendant is entitled to judgment as a matter of law, and, for the reasons set forth herein, Plaintiff has provided no grounds to alter or amend the Court's Order granting Defendant's Motion for Summary Judgment. Responding to each of the claims of error alleged in Plaintiff's motion, Defendant would show unto the Court the following:

1. **The Court did not err in its conclusion that Defendant is not liable as a matter of law for the actions of the independent contractor.**

The general rule in South Carolina is clear: a principal that hires an independent contractor is not liable for the negligence of that independent contractor, or for harm caused by that negligence. *Cherry v. Myers Timber Co., Inc.*, 404 S.C. 596, 745 S.E.2d 405 (Ct. App. 2013) (holding that timber company was not responsible for torts of logger hired to harvest and haul timber to mills because the logger was an independent contractor); *See* 18 S.C. Jur. Negligence § 35. While South Carolina courts have recognized a few, particularized exceptions to this rule under the "nondelegable duty doctrine," this Court's Order correctly acknowledged that the factual scenario here does not fall under a recognized exception to the general independent contractor rule.

Plaintiff's Motion to Alter or Amend contends that this case presents "a novel question of law" and that the Court was "free to decide" whether Defendant was liable for the negligence of its independent contractor. Indeed, the trial court remains the capable and appropriate venue to interpret and apply the law. It did just that in determining that no recognized exception to the independent contractor rule applies here. Instead, the Court was correct in noting that the

Plaintiff is effectively requesting the trial court expand the existing body of case law and announce a new exception to the independent contractor rule. This would create an entirely new line of actionable cases under the nondelegable duty doctrine not previously recognized under the laws of South Carolina. The Court considered Plaintiff's request to effectively develop new law, and declined to do so. This does not constitute error, as Plaintiff contends, but instead demonstrates the appropriate interpretation and application of the law by the Court.

Further, to the extent Plaintiff argues that the Court erred in failing to consider case law involving independent contractors and invitees, the Court did consider these cases, which are inapplicable to the factual scenario here. Specifically, Plaintiff cites to Durkin v. Hansen, 313 S.C. 343, 348 (Ct. App. 1993), in which the Defendant was a landlord and the Plaintiff was a tenant. Plaintiff also cites to South Carolina Natural Gas Co. v. Phillips, 289 F.2d 143 (U.S. Court App. 4th Cir. 1961), a case that upheld judgement for Defendants, for its reference to 1868 decision involving a shop owner and a customer: Conlin v. City Council of Charleston, 49 S.C.L. 201, 201 (S.C. Ct. App. 1868). The Court in South Carolina Natural Gas Co., however, recognized that a potential shop owner-customer exception had no bearing where the case at hand presented very different facts.

The same is true here: Unlike Durkin, Defendant is not a landlord and Plaintiff is not a tenant. Unlike the exception referenced in South Carolina Natural Gas Co., Defendant is not a shop owner and Plaintiff is not a customer. Here, Defendant is an HOA, and Plaintiff was its President. Further, the independent contractor here was hired by Plaintiff, and Plaintiff elected to be present on the date of his injury to help the independent contractor:

The Court considered every exception to the independent contractor rule raised by Plaintiff and correctly determined that, as a matter of law, no exception applies here. In so

doing, the Court correctly acknowledged that the factual scenario present in this case does not fall under a recognized exception. Instead, the well-established independent contractor rule applies, and Defendant cannot be held liable for the negligence of the independent contractor. While Plaintiff attempts to reargue its original position in order to persuade the Court to find a new exception, Plaintiff fails to point to any error of law in the Court's Order that would justify altering or amending the Court's Order.

2. The Court did not fail to "consider similar cases" including the "landlord-tenant exception" and "decisions of courts in other states" when determining Defendant is not liable for the negligence of the independent contractor.

In its Motion, Plaintiff argues the Court failed to "look to similar cases, such as the landlord-tenant exception" and that the court failed "to consider the decisions of courts in other states." However, the Court committed no such error. The Court's Order unequivocally states that the Court considered all "arguments of counsel," which includes the "similar cases" raised by counsel in its memorandum and at oral argument. Further, the Court itself is not bound to consider cases from outside jurisdictions or case law that is not controlling on an issue. Accordingly, Plaintiff's claim of error regarding the Court's failure to consider "similar cases" is without merit.

3. There are no material facts in dispute, and the Court did not err "in making ... factual findings at summary judgment "when there is conflicting evidence" or that were "unnecessary" or "not germane."

Finally, Plaintiff argues in its Motion that "the Court erred by making ... factual findings at summary judgment where there is contradictory evidence." Plaintiff also argues the Court erred in making factual findings that Plaintiff considers "unnecessary" and "not germane."

However, parties agreed at Motion for Summary Judgment that there are no material facts in dispute and that, instead, this matter presented a pure question of law. Any factual differences

between witness testimonies raised by Plaintiff are not material and would have no effect on the outcome of Defendant's Motion for Summary Judgment. *See Wade v. Berkeley Cnty.*, 339 S.C. 495, 500, 529 S.E.2d 734, 736 (Ct. App. 1999); *on reh'g en banc*, 339 S.C. 513, 529 S.E.2d 743 (Ct. App. 2000) *aff'd in part, rev'd in part*, 348 S.C. 224, 559 S.E.2d 586 (2002) (recognizing that a certain factual dispute was "not material so as to prevent disposition by summary judgment").

Rather, there are no material facts in dispute here: Defendant acted as principal, Lambright acted as an independent contractor, and the pure question of law is whether Defendant is liable for the negligence of the independent contractor. The answer to that question is no. There are no relevant or material facts in dispute, and the Plaintiff's claim of an error here is without merit.

CONCLUSION

For the reasons set forth herein, it was proper for the Court to grant Defendant's Motion for Summary Judgment, and, while Plaintiff attempts to reargue its original position, Plaintiff fails to point to any error of law in the Court's Order that would justify altering or amending the Court's Order. Defendant prays the Court deny Plaintiff's motion.


John M. Grantland, Esquire
Elliott B. Daniels, Esquire
MURPHY & GRANTLAND, P.A.
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Defendant

Columbia, South Carolina
November 3, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA
2015 SEP 23 AM 9 28

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP3900613

Charles Thomas Hobbs vs. Fairway Oaks Homeowners Association

CHECK ONE:

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

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

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

Order Granting Summary Judgment from Judge Miller

Court Reporter:

PRESIDING JUDGE -

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

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

John Martin Grantland PO Box 6648 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ Harold P. Welborn Jr

Harold P Welborn, Jr. - Clerk of Court



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Edward W. Miller
Judge

Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, SC 29609-4751
Phone: (864) 467-8559
Fax: (864) 233-4173

September 15, 2015

Pat Welborn
Pickens County Clerk of Court
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

RE: *Charles Thomas Hobbs and Mary Hobbs v. Fairway Oaks Homeowners Association*, 2014-CP-39-00613

Dear Clerk:

Enclosed please find **Order Granting Summary Judgment** to be filed and mailed to the parties. The order was signed by The Honorable Edward W. Miller on September 15, 2015.

Sincerely,

Hood Dawson
Law Clerk to the Honorable Edward W. Miller
305 E. North Street, Suite 219
Greenville, South Carolina 29601
(864) 467-8558
(864) 233-4173 Fax
emillerlc@scccourts.org

2015 SEP 23 AM 9:28
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PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Charles Thomas Hobbs and Mary Hobbs,

Plaintiff,

vs.

Fairway Oaks Homeowners Association,

Defendant,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-39-00613

**ORDER GRANTING SUMMARY
JUDGMENT**

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

FINDING OF FACTS

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

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

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

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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

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

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

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271 (Ct. App. 2002). Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

ANALYSIS

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

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

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

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

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

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

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

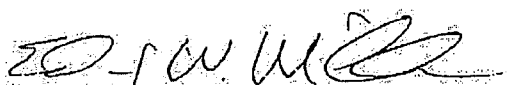
exception does not apply: Defendant is not a landlord and Plaintiff is not a tenant. Rather, Defendant is an HOA, and Plaintiff was its President. This case has no nexus to a landlord-tenant relationship, and this case does not involve a landlord who undertakes repairs. Plaintiff offers no statutory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

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

CONCLUSION

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

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


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

Pickens, South Carolina

Date: 2/15/15

Certified Copy


Clerk of Court

Pickens County, SC

Dated Sept 2015

MB

State of South Carolina

County of Pickens

In the Court of Common Pleas

Charles Thomas Hobbs,

Plaintiff,

-vs-

Fairway Oakes Homeowners
Association,

Defendant.

2014-CP-39-00613

August 7, 2015

Transcript of Record

BEFORE:

The Honorable Edward Milel, Judge

APPEARANCES:

Raymond T. Wooten, Esquire
Attorney for the Plaintiff

Elliott Daniels, Esquire
Attorneys for Defendants

Renee Tollison
Circuit Court Reporter

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EXHIBITS

No.	DESCRIPTION	ID	EV
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No exhibits were presented during the hearing

1 August 7, 2015

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 10:45 a.m.)

5 THE COURT: Hobbs versus Fairway.

6 MR. DANIELS: Your Honor, we do have a
7 memorandum in support of our motion for summary judgment.
8 We have hard copies. If you'd like for me to approach.

9 THE COURT: Yeah, that'd be good. I didn't
10 bring my computer with me.

11 MR. DANIELS: Just one's fine, or would you
12 like another one for the law clerk?

13 THE COURT: Okay.

14 MR. WOOTEN: Your Honor, if I could pass up
15 mine as well?

16 THE COURT: Yeah, sure.

17 MR. WOOTEN: It looks a little better than the
18 copy we emailed you.

19 THE COURT: Okay.

20 MR. DANIELS: May it please the Court. Your
21 Honor, my name is Elliott Daniels. I'm an attorney with
22 Murphy and Grantland in Columbia. And I represent the
23 defendant, Fairway Oaks Homeowners Association. Fairway
24 Oaks is a townhouse complex in Easley here in Pickens
25 County. Mostly older residents. It's on a golf course.

1 It's a nice quiet street. I represent the homeowners
2 association at Fairway Oaks.

3 The plaintiff in this case was the president of the
4 HOA. And he's suing the HOA because he was injured by an
5 independent contractor the plaintiff himself hired.

6 The parties in this -- you'll hear from Attorney
7 Wooten that we agree completely on the facts. This is a
8 purely legal question for the Court today. Is the HOA
9 liable for the negligence of an independent contractor
10 the plaintiff himself hired? Today we respectfully move
11 for summary judgment because we believe the answer to
12 that questions is no.

13 Briefly, Your Honor, here are the facts. The
14 plaintiff, who I understand is with us here today, he's a
15 long-time resident of Fairway Oaks. And he was the
16 president for about five years prior to his injury.

17 On August 18th, 2012, a resident living in the last
18 unit by the name of Benny Roper called the plaintiff to
19 request the removal of a tree limb that was hanging over
20 his unit. The plaintiff told Roper on the phone that
21 day, according to testimony, that he would hire a
22 professional tree service based out of Liberty, South
23 Carolina, on behalf of the HOA. Instead, during a golf
24 outing, the plaintiff asked a personal friend named Lee
25 Landbright to remove the limb. The plaintiff had hired

1 Landbright over the years for various odd jobs. But in
2 Landbright's words, quote, "I am not a contractor. I'm
3 just a neighborhood friend. I do a lot of little
4 projects for people."

5 Your Honor, Landbright is not a licensed contractor.
6 He's not bonded and insured. He has no employees. He is
7 not incorporated. He had never been hired to remove a
8 limb, and he had no training in limb removal or tree
9 service. By plaintiff's admission, he hired Landbright
10 because the labor was cheap, because Landbright costs
11 less than a professional tree service. And that's how,
12 Your Honor, an unskilled non-professional friend of the
13 plaintiff was hired for this work. And testimony makes
14 it clear that it was the plaintiff's decision alone to
15 hire Landbright. This was not a decision anyone else
16 made and not a decision anyone else at the HOA made.
17 Okay.

18 On August 20, Landbright and the plaintiff visited
19 the area. It was raining. They decided to come back the
20 next day. On August 21, Landbright and the plaintiff
21 arrived, again together, on the property. They carried
22 the ladder together, set up the ladder together, and the
23 plaintiff held the ladder for Landbright as he climbed up
24 to the top. The plaintiff was injured about fifteen to
25 twenty minutes after this happened. He remained under or

1 near the tree the plaintiff -- remained under or near the
2 tree as Landbright began removing limbs with the chain
3 saw. The plaintiff admitted that it was his own choice
4 to be present, it was his own choice to help, and it was
5 his own choice to stand where he was. No one at the HOA
6 asked him to do this. Witnesses have also indicated
7 there were safer areas for the plaintiff to stand. And
8 in a witness named Daniel Lapin's words, plaintiff was
9 picking up branches underneath the tree limbs that
10 Landbright was removing with the chainsaw. A limb fell,
11 hit the plaintiff on the head and he was hurt. No one
12 questions that. We're not here today to question whether
13 he was hurt. We're in complete agreement about the
14 facts. We're in complete agreement -- I don't believe --
15 we haven't reached damages at this point, but we agree
16 completely with the facts. And the question today for
17 the Court is a purely legal question.

18 After his injury, the plaintiff filed suit against
19 the HOA, of which he was the president, for his injury.
20 The question today for the Court is, is the HOA liable
21 for the negligence of Lee Landbright, an independent
22 contractor the plaintiff hired. To that we believe the
23 answer is no.

24 Your Honor, the general rule is clear: Under South
25 Carolina law, the principal that hires an independent

1 contractor is not liable for the negligence of that
2 independent contractor. Here the HOA is the principal;
3 Landbright is the independent contractor. And everyone
4 agrees Landbright was negligent. But the rule applies.
5 The HOA, as the principal, is not liable for the
6 independent contractor's negligence because Landbright is
7 an independent contractor.

8 And here's where the dispute between Attorney Wooten
9 and I comes. We believe there's no exception to the
10 rule. No court has ever recognized an exception that
11 applies in this case. Over time the court has recognized
12 a very few exceptions to the independent contractor rule
13 under the non-delegable duty doctrine. None apply here.

14 Attorney Wooten will argue that an exception
15 available only in the landlord/tenant context applies
16 here. It was recognized by the court in Simmons, and
17 Simmons references two other cases. And it says, quote,
18 "A landlord who undertakes repair of his property by use
19 of a contractor has a non-delegable duty to see that the
20 repairs are done properly and remains vicariously liable
21 for injuries caused by improper repairs."

22 Your Honor, the landlord/tenant exception does not
23 apply. The defendant is not a landlord, and the
24 plaintiff is not a tenant. Rather the defendant is an
25 HOA, and the plaintiff is its president. The exception

1 is not applicable here. There is no case law, and there
2 is no statutory support for applying the landlord
3 exception to an HOA or for applying the tenant exception
4 to the president of an HOA or for imputing the duties and
5 obligations of a landlord on an HOA.

6 As you know, Your Honor, those duties and
7 obligations have been developed very specifically over a
8 long period of time. They're even memorialized in
9 statute. The case law that Attorney Wooten will cite, in
10 fact, indicates that the duties in part arise out of the
11 Residential Landlord and Tenant Act. These duties do not
12 apply here. This is not a landlord case. This is not a
13 tenant case.

14 And further, Your Honor, even assuming for the sake
15 of this motion that this was brought by a tenant and the
16 defendant was a landlord and the exception did apply, the
17 exception leaves the plaintiff himself liable. Your
18 Honor, in the South Carolina Supreme Court words where
19 the plaintiff sought exception applies, quote, "The
20 delegating person remains liable for the breach." The
21 plaintiff was the delegating person. He is suing the HOA
22 because of a duty he delegated to an independent
23 contractor as president of the HOA. Essentially, he is
24 suing himself. It was his decision -- it was his
25 decision. He's the personification, the person of the

1 HOA. It was his decision to hire an independent
2 contractor. There's nothing the rest of the HOA could
3 have done either to hire or not hire Landbright, to go
4 that day and to help or to stand where the plaintiff did.
5 But, indeed, we don't need to reach that question because
6 the landlord/tenant exception does not apply.

7 Finally, Your Honor, I think that Attorney Wooten
8 will agree with me that there is not a scintilla of
9 evidence that the HOA itself was negligent. Witness
10 Lapin, said, quote, "I don't think this is the HOA's
11 fault." He was asked, "Do you believe the HOA did
12 anything wrong to cause this accident?" And he answered,
13 "No." He said the accident could have been avoided if
14 the plaintiff waited until after the limbs fell to walk
15 under the tree.

16 The second witness, Benjamin Roper, said it is --
17 the question was, "Is it your testimony that
18 responsibility for this case rests with Landbright and
19 the plaintiff?" He said, "Yes, sir." "And it does not
20 rest with the HOA?" "No, sir."

21 Finally, Your Honor, the independent contractor
22 himself said, "Of course, the plaintiff shared
23 responsibility for the accident." But he also admitted
24 that the independent contractor himself shares the blame
25 for the accident. He says that it was the plaintiff's

1 choice to help, his choice to hire him, his choice where
2 to stand, that he knew the limb was coming down, and that
3 it could have been avoided if he stood in a safer place.

4 There's not a scintilla of evidence that the HOA
5 itself was negligent, and there is no testimony that the
6 HOA could have done anything differently. All evidence
7 points to the negligence of two parties, the independent
8 contractor and the plaintiff himself, Your Honor.

9 And with this, I'll close. Your Honor, we agree
10 completely on the facts. We all agree here that
11 Landbright is at fault for this accident. The question
12 for the Court today is a pure question of law. Is the
13 HOA liable for the negligence of Lee Landbright, an
14 independent contractor the plaintiff hired?

15 There is no exception that has ever been recognized
16 in South Carolina law that applies here. There is no --
17 the plaintiff is essentially suing himself for hiring the
18 independent contractor, helping and standing where he
19 stood, Your Honor. We believe the answer to that
20 question is no, the HOA is not liable for the independent
21 contractor's conduct. And we believe there's no
22 exception that applies. And for that we ask the Court to
23 grant our motion for summary judgment.

24 THE COURT: Okay.

25 MR. DANIELS: Thank you, Your Honor.

1 MR. WOOTEN: Thank you, Your Honor. Raymond
2 Wooten here on behalf of Hobbs. At the outset, I would
3 note based on their memo, which is the notice they gave
4 us of what they're moving for summary judgment on,
5 they're moving on the ground of Landbright was an
6 independent contractor, and therefore, they're not
7 liable. And because of the grounds they're moving on, I
8 don't think that Tommy's position with the HOA, the fact
9 that he was the one that hired Landbright, earning
10 comparative negligence on Tommy's part are really
11 pertinent to today's legal issue that we're talking
12 about. Certainly, if we go to trial, those could be
13 issues that they would try and bring up. But as to the
14 independent contractor question, you know, it's a
15 different question.

16 And, Your Honor, Mr. Hobbs, he was president of the
17 HOA. He hired Mr. Landbright to cut this tree limb. Mr.
18 Landbright was the local handyman that they used over and
19 over for any kind of repairs they needed for the HOA, or
20 any individual's houses, he did it. He was just a local
21 retired man and charged a lot less than professionals.
22 And everybody used him and was always happy with his
23 work. They've even said it's undisputed that Mr.
24 Landbright was negligent. He even admitted it in his
25 deposition.

1 It's undisputed that the tree limb hit Mr. Hobbs in
2 the head.

3 THE COURT: Okay.

4 MR. WOOTEN: Undisputed that it was on the
5 common areas owned by defendant. And defendant's arguing
6 that because Mr. Landbright was an independent
7 contractor, he's not liable. There's no dispute that Mr.
8 Landbright was anything but an independent contractor.
9 And we also don't dispute the general rule that an
10 independent -- or that a principal is not liable for the
11 conduct of an independent contractor. But there are
12 certain exceptions to the general rule where a principal
13 has a non-delegable duty and cannot escape liability by
14 hiring an independent contractor.

15 And in Simmons versus Tuomey Regional, they went
16 through the recognized exceptions at that point. An
17 employer has a non-delegable duty to provide a safe work
18 place and suitable tools. A landlord who undertakes
19 repair to his property has a non-delegable duty to see
20 that the repair is done properly and is liable for any
21 resulting injuries. A common carrier has a non-delegable
22 duty to ensure that cargo is properly loaded and secured.
23 A bail bondsman has a non-delegable duty to supervise the
24 work of his employees. A municipality has a non-
25 delegable duty to provide safe streets and remains liable

1 even when the highway department is responsible for
2 maintenance. And then in South Carolina Natural Gas
3 Company versus Phillips, a shopkeeper has a non-delegable
4 duty to its customers.

5 Now, our courts have not specifically addressed
6 whether an HOA has a non-delegable duty to use reasonable
7 care when maintaining and repairing common areas. We
8 think that this situation is analogous to the
9 landlord/tenant situation, which is an accepted and
10 already outlined exception to the general rule of non-
11 liability.

12 And the main case on this is Dirken versus Hanson.
13 And I've got a copy of that case if Your Honor would like
14 me to pass it up.

15 THE COURT: Thank you.

16 MR. WOOTEN: Your Honor, this case revolves
17 around carpet cleaning where a landlord hired a carpet
18 cleaner to clean the carpets. A tenant slipped and fell
19 on residue that was left on a tile floor, suffered an
20 injury. And the Court ended up holding that the landlord
21 was liable for the independent contractor's actions
22 because it had a non-delegable duty. And if you look at
23 that case, it says both as a result of its contractual
24 duty with the tenant and then also as a result of the
25 Residential Tenant Landlord Act that both independently

1 it has a duty when it does undertake to make a repair to
2 do that -- or owes a duty of reasonable care. The court
3 stated, "The landlord who makes repairs and improvements
4 on the demised premises owes a duty of reasonable care to
5 the occupying tenants which he cannot escape by placing
6 the work with an independent contractor. This is
7 especially true where the work to be done is attended
8 with danger to the tenant. Moreover, the landlord owes
9 his tenants a non-delegable duty not to create unsafe
10 conditions on premises and is thus vicariously liable for
11 torts of his independent contractor."

12 In the current case, the defendant hired an
13 independent contractor to perform maintenance. The
14 independent contractor in this case, like the contractor
15 in Dirken, performed maintenance. In that case, the
16 court held that the landlord cannot escape liability
17 because of the negligent party's status as an independent
18 contractor. And the court noted that the landlord in
19 that case had a duty to make those repairs. Just like in
20 this case, the covenants and restrictions for defendant
21 require defendant to maintain the common areas.

22 Another case, Your Honor, is Simmons versus Tuomey
23 Regional Medical Center. And I already went over the
24 exceptions to the general rule they noted. That's a very
25 pertinent case to ours which is in that case, the Supreme

1 Court was taking up the novel issue of whether a hospital
2 had a non-delegable duty to its patients even though it's
3 ER physicians were independent contractors. The court
4 did, in fact, find that the hospital owed a non-delegable
5 duty to its patients. And the court reasoned, "The cited
6 cases clearly illustrate that a person or entity
7 entrusted with important duties in certain circumstances
8 may not assign those duties to someone else and then
9 expect to walk away unscathed when things go wrong." And
10 in addressing the novel issue, the Court looked at other
11 states that had already decided the issue.

12 One -- and I tried to look for other states that
13 have addressed the similar issue as this case. In
14 California, there's a case where property owners sued
15 their HOA because negligent plumbing repairs had caused
16 their apartment to flood. Not their apartment. I'm
17 sorry. I think it was a condo -- to flood, and they had
18 suffered property damage. And the court held that the
19 HOA could be liable for the negligent repairs of its
20 independent contractor.

21 Another case was in Florida. The estate -- property
22 owner was murdered. Or I'm sorry. The property owner
23 was murdered at a condominium. His estate filed suit.
24 The HOA had a contractual duty to provide security of the
25 property like the defendant here had a contractual duty

1 to maintain the common areas. The condominium in the
2 Florida case, they hired a security firm to perform the
3 security. And the court stated that the homeowners
4 association could not escape liability because it had
5 hired an independent contractor.

6 And in Simmons, like here, the defendant argued that
7 there was no basis in law for the non-delegable duty.
8 The fact that it was a novel issue in that case did not
9 mean that there was no non-delegable duty owed. And the
10 court found that one did, in fact, exist.

11 And, Your Honor, I think you have to look at this
12 case like an employer/employee situation. If Landbright
13 had been an employee of the defendant, there would be no
14 basis for the motion they're filing today. In certain
15 situations, such as the one we have here, independent
16 contractors are treated the same as employees for
17 liability purposes. The present case is extremely
18 similar to the already established landlord/tenant non-
19 delegable duty exception.

20 Your Honor, I'd also note that members of a
21 homeowners association are considered invitees in common
22 areas. That's the highest standard owed by a property
23 owner to a person on their property. This is the same
24 status afforded to customers in stores where there's a
25 non-delegable duty owed. This is at least the same

1 status as tenants have in an apartment owned by their
2 landlord.

3 And based on all of this, we believe that the
4 defendant owed a non-delegable duty to use reasonable
5 care when performing the maintenance and repairs. And
6 defendant cannot escape liability by virtue of
7 Landbright's status as an independent contractor.

8 Your Honor, I would note Tommy's negligence, as I
9 said at the start, that's a jury question. Clearly,
10 they've admitted that the independent contractor was
11 negligent. The fact that he would hire the independent
12 contractor, we never asserted a claim for negligent
13 hiring or said the HOA was negligent because of hiring
14 Mr. Landbright. And it has no bearing on whether or not
15 they're liable because he's an independent contractor.

16 Also, the fact that Tommy was president of the HOA
17 at the time doesn't preclude him from recovering. Your
18 Honor, I think the best way to think of that is if the
19 mayor of Pickens was walking down the street and tripped
20 on a hole in the sidewalk that shouldn't have been there,
21 because he's mayor doesn't mean he can't go and sue the
22 city for the problem with the sidewalk. His
23 responsibility as set out in the bylaws as testified to
24 by Benny Roper and Tommy, the last two presidents of the
25 HOA, was that the president's only duty was to hire a

1 contractor. It was not to perform any work.

2 Therefore, Your Honor, based on all this, we think
3 that there is a non-delegable duty by defendant to use
4 reasonable care. And based on this non-delegable duty,
5 they're potentially liable. And it's really a jury
6 question to determine liability. And, therefore, we
7 think their motion should be denied.

8 MR. DANIELS: Your Honor, briefly in response
9 if I may. We heard from Attorney Wooten much about
10 Florida case law, California case law and case law about
11 emergency rooms and ER doctors and patients. Those don't
12 apply here. This is not an emergency room, and this is
13 not a patient. And this is not Florida, and this is not
14 California. The defendant in this case is not a
15 landlord, and the plaintiff in this case is not a tenant.
16 The defendant is an HOA, and the landlord -- and the
17 plaintiff its president. This is not analogous to the
18 Pickens analogy where in this case every decision that
19 potentially would have led to the HOA's liability was
20 made by the plaintiff. In the Pickens example with the
21 mayor, that was not the case.

22 Your Honor, Ray was right that there are certain
23 exceptions to the rule, but none apply here. None. The
24 one that applies here has never been recognized in South
25 Carolina law. And he's required to come today with a

1 theory of liability against a homeowners association. He
2 didn't come with that today. He came today with the
3 theory of liability against a landlord. There's no
4 landlord here today. There's no tenant here today. And
5 the Residential Landlord Tenant Act does not apply.

6 There is not a scintilla of evidence that the HOA
7 was negligent in any way. And there's not an exception
8 that would take this out of the general independent
9 contractor body of case law. And for that, the HOA is
10 not liable for the independent contractor's negligence
11 particularly.

12 And with that, Your Honor, we'll rest. And we ask
13 that the Court grant our motion for summary judgment.

14 MR. WOOTEN: Your Honor, very briefly. One
15 point I forgot to make. In the Simmons case, they do say
16 a person may delegate a duty to an independent
17 contractor. And they talk about the delegating person,
18 and Elliott mentioned that in his initial arguments. The
19 fact that they used a person, the way you look at it,
20 they could have used an entity. They could have said the
21 delegating party. They just happened to say -- use the
22 word person. So that doesn't imply that because Tommy
23 was the one that hired him, that in any way changes the
24 non-delegable duty doctrine.

25 That's all I have, Your Honor. Thank you.

1 THE COURT: Okay. Well, interesting arguments.
2 Well, I -- a very good argument. I am not, I think, in a
3 position to expand the scope of exception to the rule.
4 And so I'm going to grant their motion for summary
5 judgment, which is not what I normally do. Okay.

6 MR. DANIELS: Thank you, Your Honor. We can
7 have a proposed order to you by today.

8 MR. WOOTEN: Thank you.

9 THE COURT: Well, that's fine. Share it with
10 Mr. Wooten first.

11 MR. DANIELS: Okay. We'll do that.

12 THE COURT: And you can email it to us.

13 MR. DANIELS: Do you prefer they be sent to you
14 directly or to your clerk?

15 THE COURT: Well, both. Just send it to both.

16 MR. DANIELS: We'll do. Thank you, your Honor.

17 THE COURT: All right.

18 MR. WOOTEN: Thank you, Your Honor.

19 THE COURT: Good arguments. Interesting stuff.

20 (WHEREUPON, the hearing concluded at approximately
21 11:09 a.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Circuit Court Reporter

1 Q. But whatever he did, whatever the doctor did for you
2 with a pill --

3 A. He gave me a pill and it went away. I haven't had
4 it since.

5 Q. Even after this accident, you haven't had that
6 burning feet problem since?

7 A. No, I haven't had burning nothing.

8 Q. Okay. Good.

9 A. Toes or nothing, legs or nothing.

10 Q. Good. All right. Now, when did you move to Fairway
11 Oaks?

12 A. In 2002..

13 Q. I guess when you moved to Fairway Oaks, did you
14 immediately join the homeowners association?

15 A. You're automatically a homeowner. There's 18 units.

16 Q. And have you held positions with the homeowners
17 association?

18 A. President from 2007. I resigned after I couldn't do
19 my duties from this accident, after this accident.

20 Q. Approximately, when did you resign, if the accident
21 was in August 2012?

22 A. That's when I -- not long after. We had a paint job
23 going on and I wanted to finish it. I didn't do
24 anything but walk around to make sure they showed
25 up, that's all. I didn't do anything else.

1 Q. You said you were president from 2007 --

2 A. '07 until about --

3 Q. -- August, September 2012?

4 A. Something like that. Yeah, seven years exactly. I
5 looked on the minutes of the notes that we took and
6 it was July 7th.

7 Q. And before 2007, did you hold any other positions
8 with the homeowners association?

9 A. No.

10 Q. This isn't meant to be a stupid question, but what
11 was your job responsibility as the president of the
12 homeowners association?

13 A. It's going to be a stupid answer.

14 Q. That's okay.

15 A. This is 18 units. They're all about 65 to 90. The
16 guy that had it was unhealthy, he couldn't keep it.
17 So I was the youngest, so I got volunteered at one
18 meeting -- would I take it. And I had took a lot of
19 positions at 3M and they kind of volunteered me. We
20 only meet once a year and they volunteered me, kind
21 of.

22 Q. Were you at the meeting?

23 A. Yes. I didn't vote, but I was at the meeting.

24 Q. I was thinking that the best way to get elected to
25 something is to not show up.

1 A. Is don't show up, right.

2 Q. I've been elected by not showing up, so I can
3 appreciate that.

4 Now, as president, was one of your duties
5 hiring contractors to do work around the HOA?

6 A. It was to go through me. I had to approve them. It
7 could be recommended by secretary, treasurer, or
8 anybody, but I had to approve them.

9 Q. How about supervising contractors, did that go
10 through you, as well?

11 A. When you say supervising contractors, go to them if
12 I wanted something?

13 Q. Yes, sir.

14 A. Yeah. If they missed a spot painting, I'd tell
15 them. If they missed a shingle, I'd tell them,
16 stuff like that, but I had a handyman that did a lot
17 of our handy stuff.

18 Q. Who was your handyman? Was that Lee Lambright?

19 A. Lee Lambright.

20 Q. Let me ask you about Lee. How long have you known
21 Mr. Lambright?

22 A. Thirty years.

23 Q. Did you all work together at 3M?

24 A. No, I met him at the golf course. I play golf with
25 him.

1 Q. I guess y'all are friends?

2 A. Good Christian friends.

3 Q. I assume you have his contact information. If we
4 need to find him or talk to him, we could do that?

5 A. Uh-huh. Raymond.

6 Q. Raymond has it?

7 A. I think Raymond has it.

8 THE WITNESS: Don't you, Raymond?

9 MR. WOOTEN: I think I probably do. I can get
10 that for you, if you need that.

11 MR. GRANTLAND: Okay.

12 A. Yeah, if he don't, I can get it.

13 Q. So he's been a friend for, approximately, 30 years?

14 A. Uh-huh.

15 Q. Do you know what his background is in, what work did
16 he do before he was --

17 A. He's from the Amish Country, so he's from up in --

18 Q. He's from Pennsylvania?

19 A. Yeah.

20 Q. Now, does he have any licenses?

21 A. That, I don't know. You mean, contract licenses?

22 Q. Yes, sir, like a licensed plumber?

23 A. Bonded and everything like that?

24 Q. Yes, sir.

25 A. He may be bonded.

1 when he mowed, he would say, "Could you get that
2 trimmed? It's hitting me in the head when I mow."
3 And I'd get Lee to come out and take five minutes
4 and mow, but no, no tree limbs. I hired a guy. The
5 reason -- I won't go into it. I hired a guy who
6 came out in a bucket and he ripped me off, and I
7 quit using him because he would trim one limb,
8 charge me \$750, and then I said the heck with this,
9 I'll get me somebody that will trim it. I'm not
10 supposed to tell, but you understand this tree was
11 already three-quarters broken, okay?

12 Q. Right.

13 A. It wasn't just like he cut the tree. He finished
14 based on a phone call.

15 Q. And I'll get to that. I want to make sure I
16 understand exactly what happened, Mr. Hobbs.

17 A. Yeah.

18 Q. So the bucket truck man, do you recall when --

19 A. I had him cut the big ones about three months ago.

20 Q. Three months before your accident or since the
21 accident?

22 A. Yeah, the big ones. No, three months before the
23 accident. The big ones that you had to have a
24 bucket.

25 Q. Right.

1 A. See, we have tree limbs that hang over the buildings
2 as they grow and the people will start calling me
3 saying they're going to fall on my roof and knock a
4 hole in it. You know, 89-year-olds don't take much
5 patience.

6 Q. No.

7 A. And they call on anything.

8 Q. Who was the contractor in the bucket truck that cut
9 limbs three months before?

10 A. I knew you was going to ask that. He's out of
11 Liberty. I can't remember his name.

12 Q. But you hired him to cut some big limbs and he was
13 \$750?

14 A. He wanted 7-, 8-, 900, 10- -- thousand -- last time
15 it was 1100.

16 Q. He did the job, he just was expensive?

17 A. Yes, and he didn't do a good job. He didn't haul
18 off all of the broken limbs and stuff. And I made
19 Lee -- and Lee knew it. He picked up everything.
20 It looked like he'd run a vacuum cleaner back there
21 when he got through.

22 Q. How old is Lee?

23 A. He's probably -- I'm 70, so 74. He won't get on the
24 roof. He gets his son and son-in-law to get on the
25 roof.

1 crank a chainsaw. I don't even know how to crank
2 one.

3 Q. And I assume before this accident you've never had
4 any issues with anything Mr. Lambright had done at
5 Fairway Hills?

6 A. Oh, Lord, no. Good Christian man, goes to Rock
7 Springs. He's there when they open the door.

8 Q. That's a big, big church.

9 A. That's the building. He's there when they open the
10 door. Both the preacher and his son are members of
11 Smithfield. No.

12 Q. Are you a member of Rock Springs?

13 A. No.

14 Q. What church are you all members of?

15 A. Trinity Point. I'm the treasurer at Trinity Point.

16 Q. Is that a Baptist church?

17 A. Yes.

18 Q. I grew up Baptist. I moved to Columbia and married
19 a Methodist, but that's another story.

20 A. I was a Methodist.

21 Q. Let me take you now to the date of the accident.

22 How is it that you got Mr. Lambright out there
23 that day?

24 A. I got a phone call on Friday night. We had a
25 gentleman who moved in the end unit, I'd say, a

1 month before. He called me on Friday night.

2 Q. Who is that?

3 A. Benny Roper. And he said, "Mr. Hobbs, I know you
4 don't know me real well and you probably don't even
5 know me. I've got a tree limb broke back here. I'm
6 afraid it's going to fall on my house. Would you
7 come down and look at it?" And it wasn't quite
8 dark, so I walked down to the back and it had broken
9 and it was hanging.

10 Q. Right.

11 A. So I play golf with Lee on Saturday. I said, well
12 I'll just save this \$700 that this guy is going to
13 charge me, or eight, no more than that it, that
14 ain't but one or two cuts. So when I played golf
15 with Lee, he says, -- I've been told this and I
16 don't remember it, "But you've got to help me load
17 my ladder. I can't load it by myself."

18 Q. Right.

19 A. And I said, "Okay, I'll help you." I don't remember
20 him asking me or any of that. I don't remember
21 anything with that part, okay.

22 Q. Where did you all play golf?

23 A. Smithfield.

24 Q. Smithfield. Okay. I'm sorry.

25 A. I live across the street from it.

- 1 ladder and saw or is that --
- 2 A. I don't know. I don't know.
- 3 Q. Does the HOA have a ladder?
- 4 A. No. I can honestly say no. We don't have a ladder.
- 5 Q. Do y'all have any --
- 6 A. We don't have any tools.
- 7 Q. I was going to ask do you all provide Mr. Lambright
- 8 with any tools?
- 9 A. He has his own.
- 10 Q. He has his own tools.
- 11 A. Or he goes and borrows.
- 12 Q. So the day of, do you remember anything leading up
- 13 to the accident?
- 14 A. No, I don't even remember getting out of bed.
- 15 Q. Really?
- 16 A. The whole day.
- 17 Q. The whole day is just kind of --
- 18 A. Nothing. When you put 48 staples in your head, you
- 19 don't remember a whole lot.
- 20 Q. Yes, sir. I'm not trying to doubt you.
- 21 A. You don't doubt me, no, I know.
- 22 Q. I just need to make sure it's clear to me. So if I
- 23 ask you anything about the circumstances before the
- 24 accident or the accident itself, you have no memory
- 25 of it?

1 off. This city will pick them up if you put them
2 out in the front.

3 Q. Yes, sir.

4 A. I said, "Lee, I want them hauled out on the front.
5 I want them picked up." He said, "I'll do all
6 that." That's what I mean by vacuum cleaning and
7 things. He picked every limb up.

8 Q. Yes, sir. He made it look like it didn't fall at
9 all?

10 A. You didn't even know there was a limb there.

11 Q. Yes, sir. You stood where you stood voluntarily,
12 didn't you?

13 A. Yeah. I could have stood back to my house, you
14 know, and got back into bed with my wife, but I
15 didn't, you know.

16 Q. Yes, sir. I mean, you picked where you were
17 standing?

18 A. I picked where I was standing. I can't go this way,
19 I'd fall in the creek. So you can't go anywhere
20 down that way or you're in the creek. If you've
21 been out there, and it looks like you have, you're
22 going to fall in the creek. You can't see it
23 because it's --

24 Q. And I don't have a picture of the creek.

25 A. In fact, we're in a thing with the city right now to

1 house, and it would have hit the house.

2 Q. Yes, sir.

3 A. It was broke that bad that it was leaning that far.
4 It would have hit this brand new house here, okay.

5 Q. Yes, sir. Well, so do you believe the homeowners
6 association did anything wrong?

7 A. The association did anything wrong?

8 Q. Yes, sir.

9 A. The good Lord broke the limb, I didn't do it, you
10 know. The good Lord broke the limb when he had the
11 storm Friday night or Thursday night. Friday day.

12 Q. Yes, sir.

13 A. But no, I don't believe that they actually went down
14 with a chainsaw and started chopping on it, you
15 know.

16 Q. Yes, sir. You tell me if you disagree. You were
17 acting on behalf of the association when you brought
18 Mr. Lambright out there?

19 A. Yes.

20 Q. And you were acting on behalf of the association
21 when you were standing there?

22 A. Yes.

23 Q. If you were not president, you'd have been home or
24 on the golf course?

25 A. Yes.

1 Q. Would you expect the homeowners association to warn
2 you of the hazard of Mr. Lambright's cutting the
3 tree limb? Would you expect someone from the
4 homeowners association to warn you of that?

5 A. Other than Benny who warned me to come cut the tree
6 because it was going to fall if we didn't cut the
7 tree, and when we went down there, we made the
8 decision to cut the tree. They agreed. Benny
9 obviously -- obviously, he'd already agreed. He was
10 the one who called me.

11 Q. Sure. Right.

12 A. But between us three, we agreed that the limb was
13 going to hit his house if we didn't get it cut. So
14 we cut it.

15 Q. And you made the decision to use Lee, is that
16 correct?

17 A. Yes. Well, I made -- Lee, because the tree was
18 barely hanging, and the guy charges \$750 to come out
19 in a bucket, and I wasn't paying \$750 to pay a guy
20 in a bucket to come out and cut a limb.

21 Q. And you trusted Lee?

22 A. Yeah, he's done thousands of jobs for us.

23 Q. It also says, "In failing to take proper
24 precautionary steps to keep persons like Tommy from
25 encountering such a hazard."

- 1 Q. Yes, sir.
- 2 A. Yeah. But I can't think of any -- you know, it was
- 3 a bad storm.
- 4 Q. Yes, sir. And I don't want to put words in your
- 5 mouth, I just want to make sure I understand. The
- 6 main reason you're suing the association is because
- 7 you were out there as the president and you got hit
- 8 by the tree limb, is that correct?
- 9 A. The one reason, yes.
- 10 Q. I mean, had you not been president, you would not
- 11 have been out there?
- 12 A. I had not been president, I don't know. I don't
- 13 know. I can't answer that.
- 14 Q. You got Lee out there. You picked Lee to do it.
- 15 A. Yeah, I picked Lee.
- 16 Q. And you voluntarily stood where you stood?
- 17 A. I volunteered, to my knowledge, of standing where I
- 18 did. And I don't remember anything. I could have
- 19 stood down here, you know, but I did. Lee made a
- 20 statement I think, according to him, to tell us to
- 21 get out of the way, to make sure we were out of the
- 22 way, and he told us that. Now I'm quoting him. I
- 23 don't know that for a fact because I don't remember.
- 24 Q. The next thing you remember, I guess, you were in
- 25 the hospital?

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1 Tommy was always in charge of a -- or was for
2 years in charge of the senior's group.

3 Q. Okay.

4 A. So he'd always go off in the last group. Well,
5 sometimes, on occasion, I'd be paired with the
6 last group; but normally I'd be in one of the
7 first groups, so --

8 Q. Okay. So you golfed with him throughout the year
9 on and off, and you'd describe your relationship
10 as friends; right?

11 A. Yeah, sure.

12 Q. And do you keep up with Tommy on a social basis
13 before the accident and after the accident?

14 A. Yeah; yes.

15 Q. And you know his wife and you know where he
16 lives?

17 A. Correct.

18 Q. And had his phone number?

19 A. Yeah.

20 Q. And you check in on him regularly?

21 A. Yes.

22 Q. Okay. And so, tell me how you became the
23 contractor for the HOA. I guess you were working
24 for Tommy and he said --

25 A. I'm not a contractor.

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1 Q. Okay.

2 A. I'm just a neighborhood friend, and I do a lot of
3 little projects for people; but I don't have a
4 business, so to speak or --

5 Q. Okay. So you're not a contractor and you're more
6 of a neighborhood friend?

7 A. Yeah.

8 Q. And you're a friend of Tommy Hobbs; is that
9 right?

10 A. Right.

11 Q. And he said would you come help us out and do
12 some projects for the HOA?

13 A. Yeah.

14 Q. And that's how you began working at the HOA
15 property?

16 A. Right.

17 Q. And that work continued for seven or eight years?

18 A. Yes, probably so.

19 Q. Okay. Do you have a business that's
20 incorporated?

21 A. No, no.

22 Q. Are you a licensed contractor?

23 A. No.

24 Q. Are you bonded?

25 A. No.

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1 Q. Do you have worker's comp insurance?

2 A. No.

3 Q. Do you have any employees?

4 A. No.

5 Q. Do you have other clients?

6 A. Off and on I do. Yes, I guess you would say.

7 Q. Okay. And how were you selected to perform the
8 handyman work? Was it an election by the Board;
9 or was it just a question Tommy asked you and you
10 said yes, I'll do it for you?

11 A. Yeah, he just -- he just asked me.

12 Q. Okay. And each job that you performed -- well,
13 let me ask you this. Over those seven or eight
14 years, how many projects do you think you
15 performed on the property?

16 A. A couple of dozen, anyway. A lot of them were
17 inside work that the residents themselves asked
18 me to do.

19 Q. Okay. So also the residents would hire you in
20 their own capacity and not just --

21 A. Right.

22 Q. -- through the HOA?

23 A. Right.

24 Q. And how many times do you think over the last
25 eight years you went to that property to perform

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1 work?

2 A. Probably a hundred times, if you add the days
3 together that I'd be doing a painting project or
4 a ceramic tile or something like that.

5 Q. So it seems pretty frequent. I mean, you would
6 do --

7 A. Yeah.

8 Q. -- it on a regular basis?

9 A. Yeah.

10 Q. And what about for the HOA? How many of those
11 projects would have been for the HOA?

12 A. Maybe, maybe a third.

13 Q. So more than thirty projects, at least, you
14 performed for the HOA over eight years; is that
15 right?

16 A. Right.

17 Q. And did Tommy Hobbs hire you for each one of
18 those?

19 A. Yeah, pretty -- pretty much, he and the
20 treasurer.

21 Q. When you were asked to perform a new project, was
22 it Tommy Hobbs who asked you to do the work?

23 A. Generally.

24 Q. Okay.

25 A. Yeah.

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1 Q. And was it the treasurer who gave you a check?

2 A. Yeah.

3 Q. Okay. How long have you been doing work as a
4 handyman? Is that how you describe yourself, a
5 handyman?

6 A. Yeah, I guess. I don't know. We used to have
7 some apartment buildings in Indiana and I -- and,
8 of course, I grew up on a farm, and we just did a
9 lot of our work. And I've been doing stuff like
10 that for many years on the side.

11 Q. When you were a sports writer, a sports editor,
12 would you do handy work on the side for money?

13 A. I mainly did it just for myself.

14 Q. And did you only begin to get paid for your work
15 as a handyman once you came to South Carolina?

16 A. Yeah.

17 Q. Okay. So it sounds like you've had about
18 fourteen years of paid work as a handyman, but
19 you describe yourself more as a neighborhood
20 friend than a professional contractor; is that
21 right?

22 A. Right; yeah.

23 Q. Okay. What kind of projects would you be hired
24 for?

25 A. Trim work, painting, ceramic tile, plumbing

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1 leaks, repairs.

2 Q. What about --

3 A. Door problems.

4 Q. What about tree limbs? Have you ever been hired
5 before to cut tree limbs?

6 A. I don't believe I had.

7 Q. So the time that you cut tree limbs in August of
8 2012, when the branch fell on Mr. Hobbs, was that
9 the first time you've ever been hired to cut tree
10 limbs?

11 A. I believe it was. I had cut a lot of them myself
12 for my own properties, but --

13 Q. Did Mr. Hobbs know that, that you had never been
14 paid to cut tree limbs before?

15 A. I don't know. We didn't discuss that. I, of
16 course, have told him that, you know, I have a
17 saw and --

18 Q. So when he approached you with the tree-limb
19 project, how did that conversation go?

20 A. He -- he said they had this big limb back there
21 behind the house where Benny lives, and it was
22 getting close to it and wanted to know if I could
23 cut it off. And I said, "Well, I can do it, but
24 I have to get a guy to help me with the ladder.
25 It would take a big ladder to get up there." And

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1 A. Right.

2 Q. Okay. And you had your own little side business,
3 and they would hire you for individual projects;
4 is that right?

5 A. Correct.

6 Q. Do you think that that would make you an
7 independent contractor in this case?

8 A. Probably so.

9 Q. Okay. What about Mr. Hobbs? Did he have any
10 experience in cutting tree limbs, that you know
11 of?

12 A. I doubt it. I don't know, maybe some small-type
13 projects over the years but --

14 Q. Okay. And before this incident and before this
15 tree-limb issue, had there ever been problems
16 with your work on the property?

17 A. Not that I'm aware of.

18 Q. Okay. And just so we're -- just to be clear, Mr.
19 Hobbs is the one who hired you for this work; is
20 that right?

21 A. I would say so; yeah.

22 Q. Okay. And he's the one who asked you to cut this
23 tree limb; is that right?

24 A. Yeah.

25 Q. And he did so probably because of your price and

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1 A. He might have. I couldn't say yes or no on that
2 one.

3 Q. Okay. And you get to the property and you have
4 the ladder. Is it in your truck? Do you have a
5 truck?

6 A. Yeah.

7 Q. Okay. And does Mr. Hobbs help you get the ladder
8 out of your truck?

9 A. And again, I'm not sure; but I would guess he
10 did.

11 Q. And you two walked the ladder down together to
12 the grassy area where the limb was?

13 A. Yeah, probably so.

14 Q. Okay. And you testified that Mr. Hobbs helped
15 you set the ladder up?

16 A. Correct. That I do know for sure.

17 Q. Okay. And describe that for me. How did that
18 happen?

19 A. We stretched out the ladder to reach the limb and
20 just --

21 Q. Was it an extension ladder?

22 A. Yeah.

23 Q. And did it require two people to use the rope, to
24 pull the ladder up?

25 A. No.

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1 Q. Okay.

2 A. We just -- we didn't have to put it up very high,
3 so we got it up high enough to reach the limb;
4 and one of us has to keep the end of the ladder
5 down and the other can walk the ladder up, you
6 know.

7 Q. Which one of you two kept the ladder down at the
8 bottom?

9 A. It was probably Tommy.

10 Q. And do you think that you climbed the ladder?

11 A. Not to get it set up.

12 Q. Okay.

13 A. You just -- you get under the ladder and walk it
14 up with your hands as you straighten it up, you
15 know.

16 Q. Okay. And that would have been what Tommy had
17 done; is that right?

18 A. He would have -- he would have held the end of
19 the ladder down, I believe.

20 Q. Okay. And after the ladder gets set up, what
21 happens next?

22 A. And I go up and start cutting the tree.

23 Q. All right.

24 A. The limb.

25 Q. Did Tommy ever check the ladder to make sure it

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1 A. We set up the ladder, and that was the main
2 thing. Again, we probably talked about how this
3 thing is going to come down. It was a big, big
4 limb. And it stuck -- stuck out quite a ways and
5 had a lot of small twigs, little limbs on the end
6 of it. You know, it sort of umbrella'd out and

7

8 Q. Okay. So you two set the ladder up, and you
9 talked about how the limb would come down. What
10 else happened?

11 A. I don't know. We may have talked about news of
12 the day or something. It's hard telling.

13 Q. That's fine.

14 A. And I don't remember.

15 Q. You got to work; is that right?

16 A. Yeah.

17 Q. Were you at the top of the ladder?

18 A. Pretty much.

19 Q. Okay.

20 A. I actually got off on a limb. Because they were
21 so big and a lot of limbs up there, so I had
22 plenty of space to actually get on a limb and --

23 Q. You actually sat on it?

24 A. -- do the cutting? Yeah.

25 Q. Okay. So you were working at the top of the

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1 Q. Did you ever climb down the ladder and get back
2 up a second time?

3 A. I don't believe so.

4 Q. Okay. So you stayed up there the whole time
5 until the branch came down and hit Tommy?

6 A. Yeah.

7 Q. Okay.

8 A. No, it didn't hit him when it first came down.

9 Q. Okay. And can you explain that to me?

10 A. Well, the branch had so much weight on the
11 outside, over here towards this house.

12 Q. Okay.

13 A. You know, the branch came out here like this; and
14 it was big, a lot of -- a lot of twigs and stuff.
15 So when I cut about halfway through that 8 to 10
16 inch limb, it broke because of the weight out on
17 the end; and it came straight down and it rested
18 against the ladder, the ladder and the tree. And
19 it stood straight up, the limb of the tree was
20 sticking straight up. And it was resting on the
21 ground on all those twigs and branches. Okay?
22 So at that point, when I was still up there, I
23 cut the -- I cut the remaining bottom half of the
24 limb off, and it continued to stand straight up
25 against that ladder and the tree.

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1 A. Well, he actually -- he actually was about right
2 in here, I would say.

3 Q. And could you put an arrow showing where he would
4 have walked when you were --

5 A. Well, this is back about 30 feet. This is back
6 this way a ways, so he would have -- he would
7 have walked over in there. So why he walked
8 over, I have no idea; and I don't think anybody
9 else does, you know, as far as I know.

10 Q. Did he walk closer to the branch?

11 A. No, no. He actually -- actually, walked closer
12 to the house. But anyway, that branch was so
13 long, it -- when I walked in and tip it out,
14 that's when it hit him.

15 Q. Okay. Just so I understand this right, the
16 branch was separated but still leaning against
17 the main tree trunk; is that right?

18 A. Correct.

19 Q. And you walked underneath the branch, between the
20 tree --

21 A. Well, sort of around it.

22 Q. Okay. You walked around the branch, close to the
23 tree trunk, and actually pushed the branch
24 forward; is that right?

25 A. Correct.

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1 Q. Okay. So you talked to them, and then you came
2 back; and at that point you went in and you
3 pushed the limb over?

4 A. Right.

5 Q. And I believe when you described doing it the
6 first time, you said "tip out." When you said
7 "tip out," did you just mean push over?

8 A. Yeah, yeah.

9 Q. Okay. Now, prior to, I guess -- you said when
10 you went to push the tree over, you couldn't see
11 very well?

12 A. Right.

13 Q. Did you yell out or anything that you were about
14 to push it over?

15 A. No. I don't remember yelling.

16 Q. Could you see where the other people were once
17 you were up there to push the branch over?

18 A. I'm not sure if I could have or not, but I really
19 didn't look to see if they had moved from the
20 positions that they were in when I walked back
21 there. And I probably could have peered through
22 there somehow and just to get a little glimpse to
23 make sure that they were still over there where
24 they were, but --

25 Q. All right. And what type of cut did you make on

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1 the branch initially? Were you trying to do
2 directional cutting, or did you just do a basic
3 type cut?

4 A. Just a straight cut, you know.

5 Q. Did you have any idea where the limb was going to
6 fall?

7 A. Well, yeah, yeah. They were all off to the side
8 when I first made the cut, but I didn't expect it
9 to stand up like that, you know. And I figured
10 it would just fall right down on the ground, so
11 --

12 Q. So, basically, if I'm getting this right, when
13 you were cutting, about halfway through the
14 branch cracked and the bottom half of it kind of
15 kept it attached?

16 A. Yeah. It -- it was hanging pretty much straight
17 down and it splintered, you know, the bottom part
18 like -- I don't know if you've ever seen a tree
19 cut like that, but it gets a lot of odd shape
20 ends to it and, you know, it gets pretty sharp.
21 That's the part that, I guess, ended up hitting
22 him in the head.

23 Q. Okay. Were there any physical barriers to keep
24 people away from the tree?

25 A. No.



1 Hobbs in those five minutes?

2 A. No.

3 Q. Did he have a chainsaw going?

4 A. Yes.

5 Q. Was it a tall ladder?

6 A. Yes.

7 Q. So did he seem sort of separated from you and Mr.
8 Hobbs?

9 A. Yes.

10 Q. Okay. And that wasn't the kind of situation
11 where you two would talk back and forth? He just
12 kept cutting with a chainsaw. Is that right?

13 A. Right.

14 Q. Okay. And in those five minutes that you were
15 removing limbs, what did you see Tommy do, Mr.
16 Hobbs?

17 A. He was pulling limbs. We both were.

18 Q. Okay. And where was he pulling limbs from?

19 A. Underneath that tree.

20 Q. Okay. And so the pile of limbs where Tommy was
21 moving, was actually located until the branches
22 and under the tree; is that right?

23 A. Right.

24 Q. Okay. And as Mr. Lambright was sawing down
25 limbs, Tommy was walking underneath the tree and

DEPOSITION OF DAVID LAPPIN

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1 tree; is that right?

2 A. Yes.

3 Q. Okay. And were you facing the tree also?

4 A. Yes.

5 Q. And were you to Mr. Hobbs left?

6 A. Yes.

7 Q. And he was to your right?

8 A. Yes.

9 Q. And what was the distance between you two?

10 A. Maybe 8 or 10 feet.

11 Q. Okay. So he was about 8 or 10 feet to your
12 right?

13 A. Yes.

14 Q. Okay. And what was the distance between Mr.
15 Hobbs and the tree, do you think?

16 A. Probably 15 feet.

17 Q. Okay. Was Mr. Hobbs standing -- excuse me -- was
18 Mr. Hobbs standing as far away as possible from
19 the tree?

20 A. We were both dragging limbs at the time.

21 Q. Okay.

22 A. And that's where we -- because we were both
23 dragging, and that's where we were when the limb
24 fell.

25 Q. Okay. And it looks like there was some distance

DEPOSITION OF DAVID LAPPIN

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1 between Mr. Hobbs and the condo. Is that right?

2 A. Yes.

3 Q. Okay. What do you think that distance was?

4 A. Ten feet, maybe.

5 Q. Okay. So he was not standing all the way against
6 the condo when the limb fell and hit him; is that
7 right?

8 A. No.

9 Q. Okay. Do you agree he could have been standing
10 close to the condo?

11 A. Well, we were -- we were dragging limbs. I mean
12 at that time he wasn't.

13 Q. Okay, okay. And it looks like there -- let me
14 strike that question. Okay. So I understand
15 you're standing about 5 to 8 feet beside Mr.
16 Hobbs.

17 A. Yes.

18 Q. And the limb begins to fall, and you tell him to
19 watch out. What happens next, in your own words?

20 A. I yell to Tommy to move, and within seconds I --
21 I guess he just looked up and that's -- the limb
22 just -- just hit him. Because it was -- by the
23 time I saw it falling and yelling, I mean, it was
24 right on him.

25 Q. Okay. And the base of that limb flipped over and

DEPOSITION OF BENNY ROPER

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1 who hired Lambright; is that right?

2 A. That's correct.

3 Q. Do you know if Mr. Lambright had any license or
4 insurance or if his work was bonded?

5 A. None, to my knowledge.

6 Q. Okay. Is Mr. Lambright a personal friend of Mr.
7 Hobbs?

8 A. Yes, sir.

9 Q. And do you know why Mr. Lambright was hired
10 instead of a professional tree trimmer?

11 A. No, sir. I do not.

12 Q. Okay.

13 A. I was told it would be Mr. Brilar that was a
14 professional tree trimmer when I told him I
15 needed some limbs removed. That's -- they told
16 me that's -- Tommy told me he'd get Mr. Brilar.

17 Q. When did Mr. Hobbs promise you that a
18 professional tree trimmer would be hired?

19 A. When I told him at the time, that I told him
20 those limbs needed trimmed to keep them off my
21 deck.

22 Q. Do you know what month that was?

23 A. It was two days before the accident.

24 Q. Okay. So two days before this accident Mr. Hobbs
25 told you that he would hire a professional tree

DEPOSITION OF BENNY ROPER

-25-

1 trimmer to take care of the branch?

2 A. Yes, sir.

3 Q. And when you showed up the day the branch was
4 being removed, it was Mr. Hobbs and Mr. Lambright
5 removing the branch?

6 A. Yes, sir.

7 Q. Okay. And do you know why the professional tree
8 trimmer was not hired?

9 A. No, sir; I don't.

10 Q. Okay.

11 A. I do know that this past year Mr. Brilar, which
12 is a professional tree trimmer, was hired to
13 remove some dead limbs; and this was in June or
14 May, late May or early June. And he came and
15 started work and Ms. Massingale, which was the
16 treasurer, got mad because he cut a tree limb
17 that was green behind her place and fired him.
18 Paid him the full amount and run him off and paid
19 him \$1125.

20 Q. Okay. So Mr. Brilar had showed up on the
21 property to remove limbs in 2014.

22 A. Yes, sir.

23 Q. But in 2012, the time of this accident, Mr. Hobbs
24 and Lambright were the two folks removing the
25 branch; is that right?

DEPOSITION OF BENNY ROPER

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1 going on? What did you see?

2 A. I seen Mr. Lambright on the ladder, cutting limbs
3 up here. Tommy, he was down here and then he was
4 over there. I'm thinking that they threw a rope
5 with a drop tied to it around that limb to pull
6 down where they'd know which one to cut. But,
7 you know, I wasn't expecting this to happen, and
8 I wasn't really paying attention to what was
9 happening. At this time I -- when the accident
10 actually happened, Mr. Lappin had just got there;
11 and he was talking to Tommy. And I was right
12 here, and I just happened to be watching when Mr.
13 Lambright cut that limb that was right here. I'm
14 going to mark this limb. There was another limb
15 under it that had been cut, that hadn't fell to
16 the ground. It still liked this much being cut
17 and hanging down, and you can see that clearly if
18 you look at those limbs that were cut. But when
19 he cut this bigger limb right here on top, it
20 fell down on the smaller limb that hadn't fell
21 and both limbs at that time came down; and Tommy
22 was under them when they came down. I seen
23 Lappin run over there to Tommy, and I knew
24 something was wrong. I came out the front door
25 and came around the side of my house. And at

DEPOSITION OF BENNY ROPER

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1 A. Better areas, yes, sir.

2 Q. Safer areas?

3 A. Yes, sir.

4 Q. Could he have been closer to your condo or down
5 in the meadow or closer to the --

6 A. He couldn't have got no closer to the condo.

7 Q. Okay.

8 A. Now, he could have been stood out here a little
9 further or stood over here or stood back here;
10 but, you know, he was in direct line of fire.

11 Q. So do you think that Mr. Hobbs was, in your
12 words, in the direct line of fire underneath the
13 branch?

14 A. Yes, sir.

15 Q. And you don't think that was a smart place to
16 stand?

17 A. No, sir.

18 Q. And there were safer places that he could have
19 been standing?

20 A. Yes, sir.

21 Q. Okay. Let me ask you this; who do you think is
22 responsible for this accident?

23 A. Mr. Lambright, but I think -- well, I think
24 Tommy's in the wrong place at the wrong time, and
25 Mr. Lambright is the one that cut the limb.

damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall obtain bids from at least two reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance bond for the repair, reconstruction or rebuilding of such building or buildings.

(10) Also, the Association may levy in any calendar year, a special assessment for the purpose of defraying the cost of construction, reconstruction, repair or replacement of a building or buildings containing single family residential units, to the extent that insurance proceeds under a group insurance policy containing a Replacement Cost Endorsement are insufficient to pay all costs of said construction, reconstruction, repair or replacement to as good condition as prior to damage or destruction by fire or other casualty covered by said insurance.

(11) The reconstructed or repaired residence shall be substantially identical to the destroyed residence, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(12) If a dwelling is not habitable by reason of damage, the obligation of the owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the dwelling is restored to a habitable condition, whichever shall first occur. In the event a dwelling is damaged or destroyed, and the owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the lot, so that it shall be placed in a neat, clean and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the dwelling until paid by the owner, unless the dwelling is thereafter acquired by the Association.

Section 12. Common Area Maintenance. Common Areas shall be the responsibility of the Association, which shall maintain the parking lots, grounds and common buildings. The Association shall make such capital improvements to common areas as the shareholders may determine to be in the best interest of Fairway Oaks Townhouses. The Association shall maintain liability insurance for the common areas.

Section 13. Exterior Maintenance of Buildings. In addition to maintenance of the common area, the Association shall provide

shall be conclusive evidence of any assessment therein stated to have been paid.

ARTICLE X

Director's Meetings

Section 1. The annual meeting of the Board of Directors shall be held at the discretion of the Board of Directors with ample notice given to each member.

Section 2. Ten (10) days written notice of such annual meeting shall be given each Director.

Section 3. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or whenever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or consent to the holding of such a meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records and made part of the minutes of the meeting.

Section 4. The majority of the Board of Directors shall constitute a quorum thereof.

ARTICLE XI

Officers

Section 1. The officers shall be president, a vice-president, a secretary, a treasurer. Any or all officers may be but shall not be required to be members of the Board of Directors.

Section 2. The officers shall be chosen by a majority of the Directors.

Section 3. All officers shall hold office during the pleasure of the Board of Directors.

Section 4. The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 5. The vice-president shall perform all the duties in the absence of the president.

Section 6. The secretary shall be ex officio the secretary of the Board of Directors, shall record the votes and keep the

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No.: 2014-CP-39-00613

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Hobbs,

Appellants,

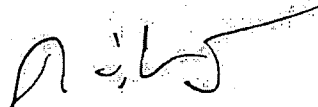
v.

Fairway Oaks Homeowners
Association,

Respondent.

CERTIFICATE OF COUNSEL

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



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Easley, South Carolina
Date: June 30, 2016

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SC Court of Appeals

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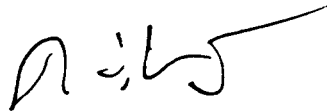
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Easley, South Carolina
Date: June 30, 2016