

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2016-001178

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SC Court of Appeals

Linda Estrada, George Estrada, Tyrone Ruff, Khalilah Smith,
Carletta Williams, and Cristian Reyes,.....Respondents,

v.

Andrew Marshall and Linda Marshall,.....Appellants,

**RESPONDENTS TYRONE RUFF, KHALILAH SMITH AND CARLETTA
WILLIAMS' INITIAL BRIEF**

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STATEMENT OF ISSUE ON APPEAL

I. WAS THERE ANY EVIDENCE UPON WHICH THE JURY COULD HAVE DETERMINED THAT APPELLANTS BREACHED A DUTY TO RESPONDENTS?

STATEMENT OF THE CASE

Tyrone Ruff (“Respondent Ruff”), Khalilah Smith, (“Respondent Smith”) and Carletta Williams (“Respondent Williams”) (collectively “Respondents”) commenced this action against Appellants Andrew Marshall and Linda Marshall (“Appellants”) on or about August 19, 2014. (Complaint; R. ____.) Respondents’ Complaint alleged causes of action for Negligence and Gross Negligence. (Complaint; R. ____.) Respondents’ Complaint sought recovery of damages against Appellants for injuries they received when a deck attached to a home owned by Appellants collapsed. (Complaint; R. ____.) Appellants timely answered. (Answer, R. ____.) On March 13, 2015, an Order was entered consolidating the Respondents’ case with four (4) other cases brought against Appellants arising out of the same facts and circumstances. These cases were assigned Civil Action Number 2014-CP-40-04304 (Order of Consolidation, R. ____.)

The parties then engaged in written and oral discovery. The case was also unsuccessfully mediated. This case was tried before the Honorable Brian Gibbons and a jury on April 5-7, 2015. At the close of the Respondents’ case, Appellants moved for a directed verdict on the grounds that there was no evidence of any breach of a legal duty to Respondents. (Transcript of Record, Page 290, Line 24 – Page 301, Line 5; R. ____.) This motion was denied by the Court. (Transcript of Record, Page 301, Lines 6-9: R. ____.) Appellants renewed their motion for a directed verdict at the close of the evidence.

(Transcript of Record, Page 324, Lines 20-21; R. ____.) Again this motion was denied.

(Transcript of Record, Page 324, Lines 22-23; R. ____.)

The jury subsequently returned verdicts on behalf of all Respondents. (Jury Form 4; R. ____.) Specifically, the jury awarded Respondent Ruff \$17,104.00, Respondent Williams \$8,683.00 and Respondent Smith \$9,452.02. (Jury Form 4; R. ____.) The Appellants timely filed a Motion for JNOV. (Motion for JNOV, R. ____). Judge Gibbons issued his Order denying Appellants' Motion on May 10, 2016. (Order Denying Judgement notwithstanding the Verdict, R. ____). Appellants' appeal timely followed.

FACTS

On April 4, 2014, Respondents Tyrone Ruff, Carletta Williams, and Khalilah Williams and other family members gathered at a residence located at 108 Casbel Court, owned by Respondents Andrew Marshall and Linda Marshall and rented to Latasha White (Transcript of Record, Page 64, Lines 3-5; R. ____; (Transcript of Record, Page 65, Lines 13-16; R. ____.) Latasha White is Respondent Tyrone Ruff's sister (Transcript of Record, Page 187, Lines 7-12; R. ____). Respondents were there for a family birthday celebration for Respondent Tyrone Ruff's mother in law. (Transcript of Record, Page 187, Lines 15-18; R. ____; Plaintiffs' Exhibit 4; R. ____.)

At the time, Tyrone Ruff and Carletta Williams were married. (Transcript of Record, Page 186, Lines ____; R. ____.) Mr. Ruff was working two jobs, at McDonald's as a cook at night from 4 p.m. to midnight, and as a painter from 7 a.m. to 3 p.m. (Transcript of Record, Page 186, Lines 18-21; R. ____.) Respondent Carletta Williams was employed as a Certified Nursing Assistant (CNA) with Community Long Term Care providing home health care. (Transcript of Record, Page 13-21; R. ____.) Respondent Khalilah Smith is

Latasha White's sister. (Transcript of Record, Page 238, Lines 10-11; R. ____.) She was self-employed. She testified that at the time of the deck collapse she operated a cleaning service. (Transcript of Record, Page Lines 1-8; R. ____).

Respondents Ruff and Williams arrived around 9 p.m. and after greeting his mother walked out onto an attached deck and sat down. (Transcript of Record, Page 187, Line 19 – Page 188, Line 3; R. ____; Exhibit 3; R. ____; Plaintiffs' Exhibit 5; R. ____; Plaintiffs' Exhibit 6; R. ____; Transcript of Record, Page 207, Lines 3-18; R. ____.) Other friends and family members, including children, were sitting on the deck, cooking and playing games. (Transcript of Record, Page 188, Lines 1-9; R. ____; Transcript of Record, Page 120, Line 23 – Page 121, Line 8; R. ____; Plaintiffs' Exhibit 4; R. ____; Transcript of Record, Page 238, Line 22 – Page 239, Line 7; R. ____; Transcript of Record, Page 239, Line 17 – Page 240, Line 2; R. ____.) No one was doing anything on the deck to make it collapse. (Transcript of Record, Page 241, Lines 1-3; R. ____.) No one was jumping on the deck. No one was dancing on the deck. No one was wrestling or "horse playing" on the deck. (Transcript of Record, Page 189, Line 18 – Page 190, Line 1; R. ____)

Suddenly, and without any warning whatsoever, the deck collapsed. (Transcript of Record, Page 123, Line 12 – Page 124, Line 1; R. ____; Transcript of Record, Page 166, Lines 1-10; R. ____; Transcript of Record, Page 189, Lines 10-17; R. ____). No one knew what was happening. Witnesses described the ensuing scene as chaotic, as guests were thrown to the ground under other guests, and under two charcoal grills and their contents, which were being used at the party. (Transcript of Record, Page 124, Lines 10 – Page 125, Line 12; R. ____; Transcript of Record, Page 198, Lines 15-25; R. ____.) Hot charcoal and ashes were thrown onto the guests. Many of the guests were in a panic, crying and

screaming. (Transcript of Record, Page 166, Lines 1-10; R. ____; Transcript of Record, Page 190, Lines 5-22; R. ____; Transcript of Record, Page 208, Line 6 – Page 209, Line 3; R. ____; Transcript of Record, Page 241, Line 4 – Page 242, Line 4; R. ____.) Multiple ambulances and emergency vehicles were dispatched to take the injured guests to local hospitals for treatment.

Respondents Tyrone Ruff, Carletta Williams and Khalilah Smith were all treated that night at the Emergency Room. (Transcript of Record, Page 191, Line 15 – Page 192, Line 10; R. ____.) Tyrone Ruff immediately began experiencing pain in his wrist and back. (Transcript of Record, Page 191, Lines 4-14; R. ____.) At the hospital, he was given a brace for his wrist and prescribed medications for pain. He continued to experience pain after his discharge from the emergency room. (Transcript of Record, Page 192, Line 18 – Page 193, Line 3; R. ____.) In fact, he returned to Lexington Urgent Care on the day after the deck collapse due to pain. (Transcript of Record, Page 193, Lines 4-12; R. ____.) He subsequently underwent an MRI and was prescribed physical therapy. (Transcript of Record, Page 3-24; R. ____.) He testified that he continues to have problems with pain in his legs and back. (Transcript of Record, Page 195, Lines 9-19; R. ____.) He missed time from work and incurred substantial medical bills for his treatments. (Transcript of Record, Page 196, Lines 14-19; R. ____; Transcript of Record, Page 197, Line 2 – Page 198, Line 7; R. ____; Plaintiff's Exhibit 13; R. ____.)

Respondent Carletta Williams immediately experienced pain in her hip and lower back. She had significant bruising (Transcript of Record, Page 210, Line 24 – Page 211, Line 7; R. ____.) Respondent Williams was also transported to Palmetto Health Baptist Hospital Emergency Room. (Transcript of Record, Page 209, Line 19 – Page 210, Line 4;

R. ____.) She continued to have pain after her discharge. As a result, she was treated by a chiropractor. (Transcript of Record, Page 8-18; R. ____.) Like her then husband, Respondent Tyrone Ruff, she incurred significant medical bills. (Plaintiff's Exhibit 12; R. ____.) She also missed time from work. (Transcript of Record, Page 213, Lines 2-14; R. ____.)

Respondent Khalilah Smith experienced pain to her neck and back. (Transcript of Record, Page 242, Line 23 – Page 243, Line 18; R. ____). She attempted to address her pain by “over-the-counter” medications and she was treated for her injuries at the Lexington Medical Center. (Transcript of Record, Page 243, Line 15 – Page 244, Line 10; R. ____.) She was subsequently treated at Midlands Health Center. (Transcript of Record, Page 245, Lines 2-24; R. ____.) Like Respondents Ruff and Williams, she also incurred bills for medical treatment. (Plaintiff's Exhibit 15; R. ____.)

The house located at 108 Casbel Court in Richland County is owned by Appellants. It is located in the Hopkins areas off of Leesburg Road. (Transcript of Record, Page 64, Lines 3-6; R. ____; Transcript of Record Page 64, Lines 20-24: R. ____.) Appellants purchased this property in 1997 as an investment. (Transcript of Record, Page 64, Lines 6-8; R. ____.) In addition to the property at issue in this lawsuit, Appellants own six other rental properties in the Columbia area. (Transcript of Record, Page 65, Lines 4-10; R. ____.)

Appellant Andrew Marshall testified that he takes personal responsibility for the maintenance and upkeep of Appellants' rental homes. (Transcript of Record, Page 68, Lines 19-23; R. ____.) He testified that it is his responsibility as owner/landlord to ensure that the houses he rents out are soundly constructed and safe for the tenants who live there. (Transcript of Record, Page 75, Lines 9-13; R. ____.)

In addition to being a long time landlord, Appellant Andrew Marshall is also a licensed residential home builder. (Transcript of Record, Page 66, Lines 1-5; R. ____.) He has been licensed for 28 years. He builds and remodels homes. (Transcript of Record, Page 66, Lines 16-19; R. ____.) He testified at trial that while much of the work on his houses is performed by contractors, he is responsible for all of their work. He testified that every aspect of the homes he builds or remodels is his responsibility. (Transcript of Record, Page 67, Line 24 – Page 68, Line 1; R. ____.)

In the course of doing business he supervises the work of roofers, electricians, HVAC installers, plumbers, framers as well as a variety of other specialty licenses. (Transcript of Record, Page ____, Lines ____; R. ____.) He is responsible for structural integrity. (Transcript of Record, Page 68, Lines 8-13; R. ____.) He is responsible for inspecting their work and making sure that all of these subcontractors do their work correctly, that there are no defects in their work, that their work is structurally sound, and that it complies with the applicable building codes and regulations. (Transcript of Record, Page 68, Lines 14-18; R. ____; Transcript of Record, Page 68, Lines 2-18; R. ____.)

Appellant Andrew Marshall testified that he has subbed out the construction of attached decks such as the one at issue here. (Transcript of Record, Page 81; Lines 3-24; R. ____). Like the other work that he subs out, he testified that it is his responsibility to make sure that these decks are constructed properly. (Transcript of Record, Page 72, Lines 20-25; R. ____; Transcript of Record, Page 72, Lines 20-25; R. ____.) He testified that he is required to know the structural principals for decks such as the one at Casbel Court. (Transcript of Record, Page 71, Line 25 – Page 72, Line 3; R. ____.) This includes knowing how much weight a particular deck can handle. (Transcript of Record, Page 72, Lines 4-

12; R. ____.) He testified that it is his responsibility to make sure that decks are built in accordance to applicable code provisions. He testified that he would not have approved construction of a deck like the one involved in this lawsuit because it was not built using good construction principles. (Transcript of Record, Page 73, Lines 12-14; R. ____.) Specifically, he testified that the deck did not have supports. (Transcript of Record, Page 81, Lines 24 – Page 82, Line 6; R. ____.)

As set forth above, the Appellants purchased the house in question in 1997. (Transcript of Record, Page 64, Lines 6-8; R. ____; Plaintiff's Exhibit 4; R. ____.) The deck that failed, leading to Respondents' injuries was already attached to the house. (Transcript of Record, Page 78, Lines 12-13; R. ____.) Each time that Appellants had a change in tenants, Mr. Marshall does a walk-through of the property. (Transcript of Record, Page 69, Lines 10-20; R. ____.) He testified that in the course of owning the house he would have walked around it on multiple occasions. (Transcript of Record, Page 78, Lines 17-23; R. ____.) At the time he purchased the property it was being rented out through the Housing Authority. (Transcript of Record, Page 80, Lines 3-10; R. ____.) Shortly after purchase, the Housing Authority or someone acting on its behalf requested that he replace boards that were, according to Mr. Marshall, in a "weathered condition." (Transcript of Record, Page 79, Line 24 – Page 80, line 2; R. ____; Transcript of Record, Page 80, Line 7-23; R. ____.) Mr. Marshall replaced these boards. Photographs taken of the deck after the collapse revealed the presence of additional "weathered" boards. (Transcript of Record, Page 85, Lines 19-25; R. ____; Plaintiff's Exhibit 5; R. ____.) The jury saw photographs from which they could have determined that the boards in question were not "weathered" but actually appeared to be "rotted." (Plaintiffs' Exhibit 5; R. ____.)

The jury heard testimony from Appellant Andrew Marshall that at the time of the collapse the deck was only being held up (on the “front” end located away from the house) by two, two-inch support poles. (Transcript of Record, Page 82, Lines 11-16; R. ____.) The jury heard evidence that the two inch supports were splitting. (Transcript of Record, Page 82, Lines 17 – Page 83, Line 6; R. ____). The jury heard testimony that the two poles (or supports) were held to the deck with two screws each and that prior to the fall the deck was being held up with only four screws. (Transcript of Record, Page 83, Lines 17-24; R. ____; Transcript of Record Page 84, Lines 5-12; R. ____.)

Appellant Andrew Marshall acknowledged that the less he spends on upkeep on maintenance, the more money he makes off of his rental properties. (Transcript of Record, Page 65, Lines 20-25; R. ____.) The more rent he receives, the more income he gets. (Transcript of Record, Page 65, Lines 20-22; R. ____.) The fewer costs that he has, the more he makes. (Transcript of Record, Page 65, Lines 23-25; R. ____.) He estimated that during the time he owned this particular property, he cleared approximately Ninety-one Thousand (\$91,000.00) dollars from it. (Transcript of Record, Page 76, Lines 19-22; R. ____.) The Respondents called Alan Abbatta as their expert. (Transcript of Record, Page 256, Lines 1-2; R. ____.) He is employed as an engineer by the Warner Group, a forensic engineering firm. (Transcript of Record, Page 256, Lines 12-18; R. ____.) Mr. Abbatta is a Professional Engineer (PE) with an undergraduate degree in Civil Engineering. (Transcript of Record, Page 256, Lines 19-21; R. ____.) He has been practicing engineering for forty-five (45) years. (Transcript of Record Page 256, Lines 19-25; R. ____.) He is licensed in South Carolina. The Court qualified Mr. Abbatta as an expert in engineering. (Transcript of Record, Page 258, Line 25 – Page 259, Line 1; R. ____.)

Mr. Abbatta based his opinion solely on his observations taken off of photographs of the deck. (Transcript or Record, Page 258, Lines 6-11; R ____.) Mr. Abbatta testified that the deck was supported on the side away from the house by the “front” two posts, which were attached to the deck by “maybe one,” screw fastener. (Transcript of Record, Page 261, Line 16-21; R ____.) He testified that according to sound engineering practice and principals, there should have been at least four fasteners per post. (Transcript of Record, Page 261, Line 22 – Page 262, Line 4; R ____.) He further testified that the connection should have been bolted in order to prevent lateral movement of the deck. (Transcript of Record, Page 262, Line 1-6; R ____.) According to Mr. Abbatta, the method in which the posts were attached did not meet the applicable building code in place for at least thirty (30) years. (Transcript of Record, Page 262, Line 4-20; R ____.)

There was no flashing on the deck. Mr. Abbatta testified that the deck’s lack of flashing, to protect it from rot also did not meet code. (Transcript of Record, Page 262, Line 21-24; R ____.) He testified that the necessity of flashing should have been “obvious” to a licensed residential home builder such as Appellant Andrew Marshall. (Transcript of Record, Page 263, Line 18-23; R ____.) He testified that the lack of flashing should have been obvious to anyone simply walking on the deck. (Transcript of Record, Page 264, Line 1-9; R ____.)

Mr. Abbatta testified that in his opinion the deck collapsed due to wood rot. (Transcript of Record, Page 265, Lines 4 – 25; R ____.) Over time, the wood on the deck deteriorated and rotted, resulting in it separating from the house on the night of the collapse. (Transcript of Record, Page 266, Lines 1- 25; R. ____; Transcript of Record, Page 267, Lines 1-25; R. ____; Transcript of Record, Page 268, Lines 1-21; R. ____.)

Mr. Abbatta testified that in his opinion there were a number of factors which should have put Appellant Andrew Marshall on notice that the condition of the deck was changing and that the deck was rotting and/or deteriorating. (Transcript of Record, Page 268, Line 22 – Page 270, Line 22; R. ____.) These factors included the deterioration of the stairs. (Transcript of Record, Page 269, Lines 1-5; R. ____; Plaintiff’s Exhibit 5; R. ____.) Despite Appellant Andrew Marshall’s characterization of the photographs as depicting “weathering,” Mr. Abbatta testified that the wood was in fact rotting. (Transcript of Record, Page 269, Lines 6-18; R. ____; Plaintiff’s Exhibit 6; R. ____; Plaintiff’s Exhibit 11; R. ____.) Mr. Abbatta testified that in his opinion, visual inspection of the deck and the railing should have given Appellants the opportunity to realize that the deck was deteriorating. (Transcript of Record, Page 270, Lines 16-22; R. ____.)

Further, the open and obvious deficiencies in the deck support should have also put Appellants on notice that the deck was at a greater risk for falling. (Transcript of Record, Page 272, Lines 17-25; R. ____.) He agreed that, “almost anyone walking by there (the deck) without inspection, knowing that no two back poles existed, should know that that could lead to a greater danger to that deck.” (Transcript of Record, Page 273, Lines 1-10; R. ____.) He agreed that at no time was the deck and the manner in which it was attached to the house code compliant. (Transcript of Record, Page 273, Lines 6-20; R. ____.)

STANDARD OF REVIEW

“The standard of review for an appeal of an action at law tried by a jury is restricted to corrections of errors of law.” *Felder v. K-Mart Corp.*, 297 S.C. 446, 448, 377 S.E.2d 332, 333 (1989). A factual finding of the jury will not be disturbed unless there is no evidence which reasonably supports the finding. *Id.*

ARGUMENT

I. THERE WAS EVIDENCE UPON WHICH THE JURY COULD HAVE DETERMINED THAT APPELLANTS BREACHED A DUTY TO RESPONDENTS

As social guests of Appellants' tenants, the Respondents in this case were licensees. The Court correctly charged the jury as to the law regarding a property owner's duty to a licensee. The jury returned a verdict for Respondents and the trial court denied Appellants' post-trial motions. This Court should affirm.

Under South Carolina law, a licensee is defined as one who enters the premises of another with the owner's consent. The Respondents, as social guests of the Appellants' tenants, were licensees. Appellants owed Respondents as licensees a duty to use reasonable care to warn them of any concealed or dangerous conditions which were known to Appellants or of any change in the condition of the premises which Appellants should have been expected to discover. *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct.App.1997); *Landry v. Hilton Head Plantation Prop. Owners Ass'n*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct.App.1994); *Neil v. Byrum*, 288 S.C.472, 343 S.E.2d. 615 (1986). (Transcript of Record, Page 402, Lines 10-22; R. ____.) No exception was taken to the Judge's charge/instruction to the jury. (Transcript of Record, Page 410, Line 18 – Page 411, Line 12; R. ____.)

After careful deliberation, the jury returned verdicts for Respondents. (Transcript of Record, Page 414, Line 21 – Page 416, Line 10; R. ____.) Appellants' sole grounds for their appeal is that the trial court erred in denying their motions for directed verdict and JNOV because there was no evidence upon which a reasonable jury could find them liable for failing to warn Respondents of a change in the condition of the property which may be

dangerous to them. Contrary to Appellants' arguments, Respondents presented ample evidence from which the jury could have based its verdict.

Appellant Andrew Marshall has been a licensed residential home builder for 28 years. (Transcript of Record, Page 66, Lines 1-9; R. ____.) He builds and remodels homes identical to the one involved in this lawsuit. (Transcript of Record, Page 66, Lines 16-19; R. ____.) He is responsible for all of the work performed by subcontractors and contractors on Appellants' homes. Mr. Marshall testified that every aspect of the homes he builds or remodels is his responsibility. (Transcript of Record, Page 67, Line 24 – Page 68, Line 1; R. ____; Transcript of Record, Page 68, Lines 8-13; R. ____.)

In the course of doing his work, Mr. Marshall supervises the work of roofers, electricians, HVAC installers, plumbers, framers, as well as other specialty license holders. (Transcript of Record, Page 67, Lines 1-23; R. ____.) He is responsible for inspecting their work and making sure that all of these subcontractors do their work correctly, that there are no defects in their work, that their work is structurally sound, and that all work complies with the applicable building codes and regulations. (Transcript of Record, Page 68, Lines 14-18; R. ____; Transcript of Record, Page 68, Lines 2-18; R. ____.)

Appellant Andrew Marshall testified that he has subbed out the construction of attached decks like the one at Casbel Court. (Transcript of Record, Page 81, Lines 3-24; R. ____.) Like the other work that he subs out, Mr. Marshall testified that it is his responsibility to make sure that these decks are constructed properly and have structural integrity. (Transcript of Record, Page 72, Lines 20-25; R. ____; Transcript of Record, Page 72, Lines 20-25; R. ____.) Mr. Marshall testified that he is required to know the structural principles for decks such as the one involved in this action. (Transcript of Record, Page 71,

Line 25 – Page 72, Line 3; R. ____.) This includes knowing how much weight a particular deck can handle. (Transcript of Record, Page 72, Lines 4-12; R. ____.) Mr. Marshall testified that he would not have approved construction of a deck like the one involved in this lawsuit because it was not built using good construction principles. (Transcript of Record, Page 81, Lines 24 – Page 82, Line 6; R. ____.)

Respondents' expert, Allan Abbatta testified that there were obvious deficiencies with the deck at Casbel Court. There was no flashing. He testified that the lack of flashing on the deck led to wood rot, overtime causing the deck to pull away from the house. (Transcript of Record, Page 260, Lines 4-17; R. ____; Transcript of Record, Page 265, Lines 4-25; R. ____.) Mr. Abbatta testified that the lack of flashing on the deck was open and obvious and could have been discovered merely by visual inspection. (Transcript of Record, Page 263, Lines 18-23; R. ____; Transcript of Record, Page 264, Lines 1-10; R. ____.)

Further, Mr. Abbatta testified that there were other signs of deterioration of the deck which should have put Appellants, particularly Appellant Andrew Marshall, on notice that the deck was deteriorating due to wood rot caused by improper construction methods. The jury heard testimony that prior to the deck collapse, Appellant Marshall had been asked by the Housing Authority to replace "weathered" boards. Mr. Abbatta showed the jury photographs taken of the deck after the collapse depicting decaying or deteriorating wood. (Plaintiff's Exhibit 5; R. ____; Plaintiff's Exhibit 16; R. ____; Transcript of Record, Page 268, Lines 3-18; R. ____; Transcript of Record, Page 268, Line 22 – Page 269, Line 18; R. ____.) He testified that merely looking at the condition of the steps and railing of the deck should have put Appellants on notice that the deck was deteriorating. (Plaintiff's Exhibit

11; R. ____; Transcript of Record, Page 270, Lines 16-22; R. ____; Transcript of Record, Page 272, Lines 17-25; R. ____.)

In addition to the wood rot, Mr. Abbatta testified that the deck was being held up by an inadequate number of posts which were improperly attached to the deck. (Transcript of Record, Page 261, Line 2 – Page 262, Line 20; R. ____.) He testified that in his opinion the insufficient number of fasteners was an obvious building code violation. (Transcript of Record, Page 262, Lines 4-12; R. ____.) This also should have put Appellants on notice that the deck was in a deteriorating condition. (Transcript of Record, Page 272, Lines 17-25; R. ____; Transcript of Record, Page 273, Lines 1-10; R. ____.)


Contrary to the argument of Appellants, Respondents presented ample evidence both through the photographs admitted into evidence and in the testimony of their expert, Alan Abbatta that Appellants should have been on notice that the deck was in a deteriorating condition. Appellants chose to ignore these obvious signs of deterioration. It is uncontested that Appellants gave Respondents no warnings regarding the deteriorated and dangerous condition of the deck. Contrary to Appellants' arguments, the jury heard more than ample evidence upon which it could have based an award of negligence against Appellants.

CONCLUSION

For the reasons stated above and in the Brief of Respondents Linda and George Estrada which these Respondents incorporate by reference pursuant to Rule 208(b)(6), SCAR., the Court should affirm the trial court's denial of Appellants' motions for directed verdict and for JNOV.

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