THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235

Cedric E. Young, Appellant

v.

Valerie Poole, Respondent

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On June 1, 2015 Cedric Young brought this action alleging negligence against Valerie Poole. Poole answered denying negligence and alleging sole negligence, comparative negligence, failure to state facts sufficient to constitute a cause of action and denying punitive damages. By order filed October 2, 2016, the lower court granted Summary Judgment in favor of Poole. Young filed a Motion to Alter or Amend Judgment on November 18, 2016 which was denied on January 18, 2017. On January 26, 2017 Young served the Notice of Appeal on Poole.

FACTS

This case involves a dispute between a residential landlord and tenant. Cedric Young was leasing the residence from Valerie Poole. (Young Deposition p. 8, lines 9-10 and p. 17, lines 18-22). The residence included an attic that he was told he could use with the lease of the residence. (Young Deposition p. 23, lines 3-12). Cedric Young was seriously injured on August 17, 2012 when he fell through the ceiling of the attic. He was in the attic retrieving

personal property and as he proceeded to exit, he stepped into an area directly in front of the attic stairs that looked to be a walking surface but was not, and the area beneath him collapsed causing Young to fall through the ceiling down to the floor. (Young Deposition p. 40, line 13- p. 46, line 11). At the time that he took possession of the property, Valerie Poole knew that certain areas in the attic were "dangerous" but did not inform Young of the dangerous conditions. (Poole Deposition p. 28, line 18-p. 29, line 12).

ARGUMENTS

I. BECAUSE THE DANGEROUS CONDITION ON THE PREMISES WAS A LATENT DEFECT KNOWN BY RESPONDENT AT THE TIME THE APPELLANT TOOK POSSESSION OF THE PREMISES, APPELLANT WAS NOT REQUIRED TO NOTIFY RESPONDENT OF THE DANGEROUS CONDITION.

The Appellant brought this action for negligence alleging that Respondent was negligent for failing to warn him of a latent defect on the leased premises known by Respondent at the time Appellant took possession of the premises. The Trial Court granted Summary Judgement to Respondent and held that in order to prove negligence under the SC Residential Landlord Tenant Act "RLTA", Appellant was required to notify Respondent of the defect prior to the injury.

In this appeal, Appellant asserts that the lower court erred in holding that any common law remedy for negligence is abrogated in favor of an exclusive remedy under the RLTA and granted summary judgement on Appellant's common law negligence claim.

In essence, the court held that with the establishment of the RLTA, tenants in South Carolina, including Appellant cannot bring an action for negligence against its landlord for common law negligence. Appellant submits that this constitutes an error of law and the lower court's order should be reversed.

The lower court's holding on the common law claim is in direct conflict with the statutory frame work of RLTA. S.C. Code Ann. § 27-40-30 (1976 as amended) provides that the RLTA shall only supplement principles of law and equity unless displaced by a provision of the Act. This section provides as follows:

> Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement the provisions of this chapter . S.C. Code Ann. § 27-40-30 (1976).

As this court stated in Pryor v. Nw. Apartments, Ltd., 321 S.C. 524, 528, 469 S.E.2d 630, 633 (Ct. App. 1996), The RLTA creates a new cause of action not found at common law. However, we must look to the common law for guidance in analyzing new causes of action. citing Watson v. Sellers, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989).

Under common law principles, where the lessor knows or should know that a dangerous condition is not obvious to the lessee, the lessor must use due care to

discover and warn of that latent condition. Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 329 (1932).

Appellant submits that while tenant may be required to notify the landlord of the dangerous conditions on a claim for failure to maintain the premises in a safe condition under the RLTA during the term of the lease, but Appellant is not required to give notice of latent conditions that exist at the time Appellant takes possession of the premises under Appellant's traditional negligence claim independent of the RLTA. In other words, Appellant may not be able to prove negligence for violations under the RLTA, but Appellant has pleaded and put forth evidence of negligence under a traditional negligence claim.

An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. This duty arises from the owner's superior knowledge of conditions on the premises within his control. Dunbar v. Charleston & W.C. Ry. Co., 211 S.C. 209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on the Law of Torts* 434 (5th *444 ed. 1984). See also Young v.

Morrisey, 285 S.C. 236, 329 S.E.2d 426 (1985) (landlord owes no duty to maintain leased premises in a safe condition). Byerly v Connor, 307 S.C. 441, 415 S.E.2d 796 (1992).

However, where the dangerous condition is not obvious, the lessor has a duty to warn. 36 C. J. 204, § 874, and numerous authorities there cited. Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329, 330 (1932).

Professors Hubbard and Felix summarize the rule on concealed dangers as follows:

> Where the lessor knows or should know that a dangerous condition is not obvious to the lessee, then the lessor must use due care to discover and warn of that latent condition. Consequently, the lessor will be liable for personal injury resulting from the condition as if he were in control of the premises –i.e., as if there was no lease involved. F.P. Hubbard & R.L. Felix THE SOUTH CAROLINA LAW OF TORTS (4th Ed. 2011).

Appellant submits that RLTA does not completely abrogate common law negligence in landlord tenant matters, but only supplements existing principles of law and equity and provides additional remedies.

II. BECAUSE THERE WAS A GENUINE ISSUE OF MATERIAL FACT OF WHETHER RESPONDENT FAILED TO WARN APPELLANT OF THE LATENT DEFECT KNOWN BY RESPONDENT THAT EXISTED AT THE TIME APPELLANT TOOK POSSESSION OF THE PREMISES, THE LOWER COURT ERRED AS A MATTER OF LAW IN GRANTING RESPONDENT SUMMARY JUDGEMENT.

STANDARD OF REVIEW

Rule 56(c) SCRCP sets forth the standard for Summary Judgment and provides that "[t]he judgment sought should be rendered forthwith if 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.

When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Because it is a drastic remedy, summary judgment should be cautiously invoked so no persons would be improperly deprived of a trial of the disputed factual issues. Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009 Ct. App.)

Even where there is not dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Hill v. York County Sheriff's Dep't, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct.App.1993).

In determining whether any triable issue of fact exists, as required to survive summary judgment, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the non-moving party. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010).

Respondent submits there is a genuine issue of material fact of whether the Respondent knew or should have known that the dangerous conditions in the attic would not be obvious to the Appellant. The Respondent admits that while she has

never been into the attic, she did climb the stairs of the attic before Appellant's accident and looked around. It could be inferred that while Respondent stood at the top of the stairs and looked around she would have been directly in front of the area where Appellant fell. Respondent testified in her deposition that she looked around and saw plywood around the area. Respondent does not mention that there were any dangerous conditions obvious to her.

Respondent testified as follows:

> **Q. October 13th of 2015. Have you ever been in the attic at 16 Thornberry Court?**
>
> **A. Just went to the top of the stairway on the ground.**
>
> **Q. Okay. All right. So you've never stepped up there?**
>
> **A. Never stepped up there.**
>
> **Q. All right. And so you've never been up there before Mr. Young claims he fell or after?**
>
> **A. I went to the top of the stairwell. As far as I got and looked around. (Poole Deposition p. 16, lines 13-21)**
>
> **Q. You climbed up on the stairs. Is there any plyboard surfaces up there?**
>
> **A. Right around the stairwell I saw that there was some plywood right there. (Poole Deposition p. 23, lines 2-5)**

At some point prior to Appellant's accident, Respondent was told by repairmen who went into the attic that the attic was dangerous and that you "cannot step anywhere." Furthermore, Respondent testified that if she had known Appellant was going into the attic she would have told him that it was dangerous.

Respondent's deposition testimony was as follows :

Q. What he said. I mean, what that conversation was about.

A. What transpired. I asked him - - I mean, I just asked him why didn't he call me because I would have let him know that the attic you can only step in certain spaces. Well, certain areas within the attic because they are dangerous. (Poole Deposition p. 21, line 23- p. 22, line 4)

Q. Okay, Do you know of anything Mr. Young did wrong in causing his accident?

A. Well, as - - I'm not saying he was wrong when he walked on an insulated floor, but typically as an adult we look at things before we walk on it to make sure if it's going to hold our weight. I know there have been guys from SCE&G went up in the attic. One of the guys that I know went and repaired the air conditioner went in the attic, and neither one of those fell through it because they were stepping on beams. And I heard them tell me well, you know, you have to be careful when you go in the attic because you just can't step anywhere.

Q. Okay.

A. And one of them said they almost slipped and fell so I know it's not a safe place to be, just to be walking around up there.

Q. All right. But you never told Mr. Young that?

A. I didn't expect for it to - - no, I did not? (Poole Deposition p. 28, line 18-p. 29, line 12)

The evidence is clear that at the very least Respondent knew the attic was dangerous. Respondent admitted that she was told by repairmen before Appellant's accident that they almost slipped in the attic, and that you "cannot step anywhere." Respondent did not advise Appellant of the dangerous conditions even though she was aware of the conditions.

It could also be inferred that Respondent knew or should have known that the dangerous conditions would not be obvious to Appellant since the dangerous conditions were not obvious to Respondent when she looked around the attic.

Appellant testified that the area that he fell in the attic was "camouflaged" and looked to him that it was finished attic space and it was not, clearly creating a jury questions. Appellant testified as follows:

Q. Okay. Are you alleging that something was defective about the attic?

A. Yes.

Q. Explain that. What exactly?

A. I think that was -- it was unfinished work and it was camouflaged because I stepped there before many times so I'm thinking that -- you know, she didn't tell me not to go up there. She didn't tell me not to step. So it wasn't finished. So whoever did the work, they did it

and they camouflaged it like it was finished. (Young Deposition p. 47, lines 6-16)

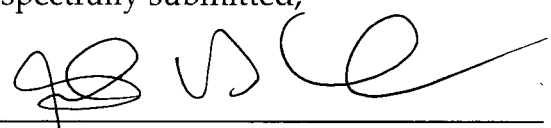
Considering all of the evidence and the inferences drawn therefrom in a light most favorable to Appellant, there is at least a scintilla of evidence warranting determination by a jury of whether Respondent knew or should have known that the dangerous condition would not be obvious to the Appellant and whether Respondent failed to use due care to discover and warn of the dangerous condition.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

February 27, 2017

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter to be included in the Record on Appeal on Defendant by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2017, addressed to their attorneys of record, Elliott B. Daniels, Esquire and John M. Grantland, Esquire, Post Office Box 6648, Columbia, South Carolina 29260.

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February 27, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: Cedric Young v. Valerie Poole
Appellate Case No. 2017-000167

Dear Ms. Kitchings:

Enclosed please find Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal in regards to the above referenced case along with Proof of Service of the same.

If you should have any questions or concerns regarding this matter, please feel free to contact me.

With kind regards, I am

Yours very truly,

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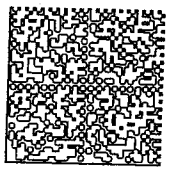

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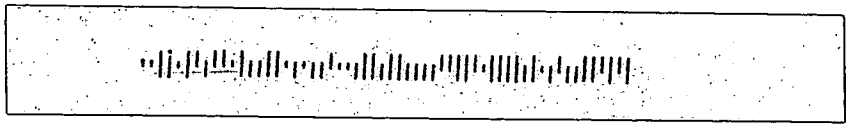

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