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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000067 JAN 27 2017

Earl Kinley

Waste Management of South Carolina Inc
Loveless and Loveless Inc
SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: T. Good

Attorney for : Plaintiff Defendant or 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.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. No. suit); 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 _____

2017 JAN 23 PM 12:50
RICHLAND COUNTY
FILED
CLERK OF COURT
COURT HOUSE
SPRING BRIDGE

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 :

Defendant Waste Management of South Carolina's Motion for Summary Judgment is denied. See attached order.

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
N/A		\$
		\$
		\$

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

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Circuit Court Judge [Signature] Judge Code 2758 Date 1-12-17

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of Jan, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of Jan, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Shane Morris Burroughs

Vincent Austin Sheheen

Duke Raleigh Highfield
R. Scott Wallinger Jr.

Christopher Michael Huber
William O. Sweeny III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Earl Kinley,)
)
Plaintiff,)
)
vs.)
)
Waste Management of South Carolina, Inc.)
and Chambers Richland County Landfill,)
Inc.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Case No.: 2016-CP-40-0067

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

2017 JAN 23 PM 12:59
JENNIFER L. HOBRIDGE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came before the Court upon the Defendants' motion for summary judgment. The Court heard oral argument from counsel on December 16, 2016 and has reviewed the submissions from all parties. For the reasons set forth herein, the Court denies Defendants' motion for summary judgment.

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JST

FACTUAL BACKGROUND

Plaintiff alleges he was injured on May 29, 2012 as he was operating a garbage truck at a landfill owned and operated by Defendants. Plaintiff alleges he was driving down the landfill sloped road toward the exit when his truck suddenly hit a hole or washout, causing him to be thrown about the cab of the truck and hit his head on the roof. Plaintiff filed this civil action against the Defendants alleging premises liability and other claims of negligence.

Defendants have denied liability and moved for summary judgment on the grounds that (1) Defendants owed no duty of care to Plaintiff, (2) there was no breach of duty, (3) proximate causation is lacking, and (4) Plaintiff assumed the risk of injury by entering Defendants' premises. Plaintiff opposes Defendants' motion for summary judgment. For the reasons set

forth herein, the Court denies Defendants' motion for summary judgment on all arguments set forth by Defendants.

LEGAL STANDARD

I. Summary Judgement

Summary judgment may be granted "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." Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the trial court "must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). In typical negligence cases, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

II. Premises Liability

To establish negligence in a premises liability action, the plaintiff must prove the following three elements: (1) a duty of care owed by the defendant to the plaintiff; (2) the defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *Hurst v. East Coast Hockey League, Inc.*, 271 S.C. 33, 37, 637 S.E.2d 560, 562 (2006). The nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury. *Sims v. Giles*, 343 S.C. 708, 715, 541 S.E.2d 857, 861 (Ct. App. 2001).

DISCUSSION

Based upon the record before the Court, and in accordance with the terms of Rule 56, SCRCF, the Court makes the following findings of law and/or fact:

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8/18/17

1. The Court finds as a matter of law and fact that the Defendants owed a duty of care to Plaintiff while he was on their premises. The Court finds that Plaintiff was a business invitee on the Defendants' property/landfill. A business invitee is a person "whose purpose for entering the property is either directly or indirectly connected with the purpose for which the property owner uses the land." *Singleton v. Sherer*, 377 S.C. 185, 199, 659 S.E.2d 196, 203 (Ct. App. 2008). Property owners owe the highest duty of care to business invitees or visitors on their property. Specifically, the Defendants owed Plaintiff in this case "the duty of exercising reasonable or ordinary care for his safety and [are] liable for injuries resulting from the breach of such duty." *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). Plaintiff, like any business invitee, entered the premises "with the implied assurance of preparation and reasonable care for his protection and safety while he is there." *Landry v. Hilton Head Plantation Prop. Owners Ass'n*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). The Defendants owed Plaintiff "the duty of due care to discover risks and take safety precautions to warn of or eliminate foreseeable unreasonable risks." *Id.* In this case, this duty exists as a matter of law and fact.

2. The Court finds that there is sufficient evidence in the record supporting Plaintiff's claim that he was injured on the Defendants' property/landfill. Plaintiff alleges in his Amended Complaint, and testified in his deposition, that he was injured as a result of a defective condition of the Defendants' property. See Amended Complaint at ¶ 4; Deposition at 68, 76-79.

No evidence was submitted by the Defendants refuting Plaintiff's allegations and testimony. Thus, there is sufficient factual evidence in the record supporting Plaintiff's claim of injury.

3. The Court finds that there is sufficient evidence in the record supporting Plaintiff's claim that the Defendants' breached their duty of care to Plaintiff, and that such breach proximately caused Plaintiff's injuries. The Court finds that the Defendants had the knowledge and expectation that garbage truck drivers like Plaintiff would travel the premises to dump loads at the landfill, and knew the routes that would be taken to accomplish this task. Thus, it was foreseeable to Defendants that Plaintiff herein would travel the road in which he alleges he was injured. As a business invitee, Plaintiff had the implied assurance that the property was safe for him to complete his business. The Court finds it was reasonably foreseeable to Defendants that if the roadway traveled by Plaintiff was defective or unfit for garbage trucks to traverse in the ordinary course of business, that such condition could result in injury to garbage truck drivers or other persons on the property, such as Plaintiff.

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4. The Court finds that Plaintiff's claim that Defendants breached their duty of care is supported by evidence of defects, washouts, and/or erosion in the roads, slopes, and other areas of the landfill as documented by the DHEC inspection reports submitted by Plaintiff. It is evident to the Court that there was a pattern known to the Defendants prior to Plaintiff's injury that such erosion or washouts routinely followed periods of heavy rain. It was therefore foreseeable to Defendants that such conditions were likely to develop following rain events. In making this finding, the Court relies on the inspection reports that pre-date Plaintiff's injury. Based on this evidence, the Defendants knew or should have known that erosion and washouts were likely to occur after rain events, and that such conditions could cause injury to persons on the property. With this knowledge, the Defendants had a duty to act reasonably, and there is

sufficient evidence in the record supporting Plaintiff's claim that Defendants breached their duty by either ignoring or not discovering the dangerous condition of the roadway, implementing precautions, or issuing warnings to visitors. This may be established by circumstantial evidence.

5. The Court finds that triable issues of fact exist as to the issues of breach of duty and proximate causation, and that Plaintiff has met his burden of presenting "a scintilla of evidence" in order to withstand Defendants' motion for summary judgment.

6. The Court finds that Defendants' argument concerning assumption of risk is subsumed by the general framework of negligence and comparative negligence. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008). To the extent Defendants seek summary judgment on this basis, the Court finds that the elements of assumption of risk are lacking, and that Plaintiff did not assume any risk of injury by simply operating his garbage truck on the premises.

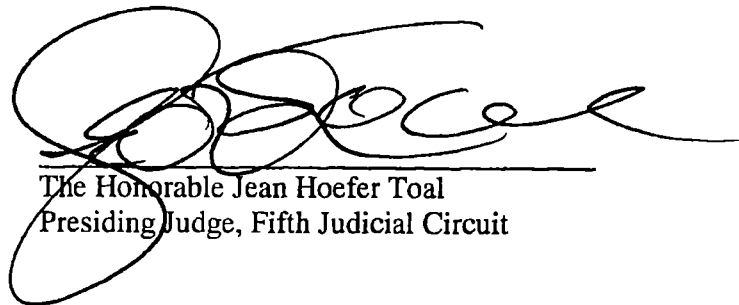
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CONCLUSION

For the reasons set forth herein, the Court denies the Defendants' motion for summary judgment.

IT IS SO ORDERED.

January 12, 2017
Columbia, SC



The Honorable Jean Hofer Toal
Presiding Judge, Fifth Judicial Circuit

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

JUDGMENT IN A CIVIL CASE

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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

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

Defendant's motion for summary judgment denied 7-12-17
motion to reconsider seen by me today to denied.

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

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Circuit Court Judge *[Signature]* Judge Code 2758 Date 6-13-17

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Shane Morris Burroughs
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Vincent Austin Sheheen

Duke Raleigh Highfield
R. Scott Wallinger Jr.

Christopher Michael Huber
William O. Sweeny III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McBride*