STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc., and Munlake Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-08-00334

ORDER

Before this Court came Defendant Pilot Travel Centers, LLC's (Pilot) Motion for Summary Judgment. A hearing was held at the Berkeley County Courthouse on April 10, 2017. For the reasons provided below, Pilot's Motion for Summary Judgment is GRANTED.

Factual Background

Defendant Pilot owns a Pilot Travel Center gas station and convenient store ("Pilot Travel Center") that abuts Highway U.S. 17A in Summerville, South Carolina. On October 6, 2012, Plaintiffs were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of U.S. 17A in front of the Pilot Travel Center. The accident occurred when a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Plaintiffs' motorcycle in the left lane of the highway. At the time of the accident, the driver of the pick-up truck had a blood alcohol level above the legal limit and was under the influence of cocaine. Plaintiffs contend that the accident would not have occurred had there been a solid raised median

in the highway preventing motorists from making a left-hand turn onto Pilot's premises, and that the absence of such a median created a dangerous condition on the highway. Plaintiffs also contend that the location and design of Pilot's driveways created a dangerous condition on the highway.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. The existing gas station, which was owned by Speedway SuperAmerica, LLC, already had three driveways with access to U.S. 17A. There was no solid raised median in the highway preventing left turns into the existing gas station. Moreover, there has never been a solid raised median in this section of the highway.

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of U.S. 17A in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. According to SCDOT, the design plans for the Widening Project never included a raised median.[1] The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr., who was the Program Manager for the Widening Project. This decision was made when the Widening Project design plans were prepared in 1998. SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was

[1] SCDOT testified that the initial design plans for the Interchange Project, which were prepared by an outside engineering firm, depicted a raised median in front of the Pilot Travel Center. However, the Interchange Project did not concern work performed to this section of U.S. 17A. SCDOT performed work to this section of U.S. 17A as part of the Widening Project. According to SCDOT, the presence of the raised median in the first iteration of the Interchange Project's design plans was simply a placeholder, representing the location of the highway in which the design plans for both projects would eventually be merged.

made in conformance with SCDOT's Highway Design Manual.[2] According to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT's Highway Design Manual.

In order to construct the driveways into the Pilot Travel Center, Pilot submitted an application for an encroachment permit to SCDOT on or about May 13. 2002.[3] SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveways conform to SCDOT's regulations and standards. SCDOT also considers highway safety and how the access to private property affects traffic and the general operation of the highway system. SCDOT testified that it has the ultimate authority to approve encroachment permits and never compromises the public's safety to accommodate a property owner's interests when evaluating such permits. SCDOT ultimately approved Pilot's encroachment permit application and issued Pilot a permit to construct the driveways to the Pilot Travel Center.

Plaintiffs filed a Complaint against Pilot and the South Carolina Department of Transportation on March 31, 2014.[4] Plaintiffs allege that Pilot owed the driving public a duty to construct its driveways in such a way as to prevent the existence of hazardous road conditions on the highway. Specifically, Plaintiffs allege Pilot was negligent for failing to construct its driveways

---

[2] Mr. Colvin served as one of SCDOT's Rule 30(b)(6) designees. Mr. Colvin metaphorically referred to SCDOT's Highway Design Manual as "the Bible" when it comes to designing highways in South Carolina.

[3] Although the existing gas station on the property had driveways allowing for ingress and egress directly from the highway, the driveways to the Pilot Travel Center were relocated as part of Pilot's rebuild.

[4] On February 9, 2016, Plaintiffs filed a separate action arising from the accident against Speedway LLC (successor in interest to Speedway SuperAmerica, LLC), Ashley Land Surveying, Inc. (engineering firm who performed work for Pilot in connection with the construction of the Pilot Travel Center), and Munlake Contractors, Inc. (general contractor of the Pilot Travel Center). The two actions have since been consolidated.

to prevent Plaintiffs from being stricken by other motorists attempting to turn left across traffic onto its premises. Plaintiffs further claim that Pilot is responsible for the absence of a solid raised median in the portion of the highway where Plaintiffs' accident occurred. Plaintiffs allege Pilot negotiated with SCDOT regarding the type of median to install on the highway.

Pilot moved for Summary Judgment on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot owed them any duty or breached any duty owed; or, that any alleged negligent act or omission on the part of Pilot proximately caused Plaintiffs' injuries.

Standard of Law

Summary judgment is appropriate when "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), SCRCP. When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). "To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010).

Analysis

Pilot maintains that it did not owe the Plaintiffs any duty to prevent them from getting in a motor vehicle accident on the highway in front of its property, and that therefore, it is entitled to judgment as a matter of law. This Court agrees.

In order for the Plaintiffs to recover on their negligence claim, they must first establish that Pilot owed them a duty of care.[5] Absent such a duty, Pilot is entitled to judgment as a matter of law. See Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law."). Under South Carolina law, a property owner whose land abuts a highway only owes a duty to motorists for highway conditions where the property owner "undertak[es] an activity that creates an artificial condition on the highway which is dangerous to travelers." Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). Here, Plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway.

Plaintiffs allege the painted flush median in the highway in front of the Pilot Travel Center was a dangerous condition on the highway because it enabled motorists to make a left hand turn onto Pilot's premises. However, even if the median was a dangerous condition on the highway,[6] it was not a condition created by Pilot. SCDOT admits that it, and not Pilot, made the decision to not add a raised median in front of the Pilot Travel Center as part of the Widening Project. While Plaintiffs allege that Pilot negotiated SCDOT's decision to continue to use a painted flush median

[5] It is undisputed that Plaintiffs were neither invitees nor licensees of Pilot immediately prior to or at the time of the motor vehicle accident.

[6] The Court need not determine whether the median was a dangerous condition as alleged by Plaintiffs because the Court finds that Plaintiffs have failed to establish that Pilot created any artificial condition on the highway.

in the highway, Plaintiffs have failed to provide any evidence that such a negotiation took place beyond mere speculation and conjecture.[7] In fact, SCDOT maintains that there was no "negotiation" of the median and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

Moreover, even if Pilot did negotiate with SCDOT concerning the median, this Court finds that such negotiation did not impose a duty on the part of Pilot to the Plaintiffs. Ultimately, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT, which owns and controls the highway. See Giannini v. S. Carolina Dep't of Transp., 378 S.C. 573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. § 57-3-110(1) ("The Department of Transportation shall . . . [have the power and duty to] lay out, build and maintain public highways . . . including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways . . .."); S.C. Code Ann. § 57-3-110(3) ("The Department of Transportation shall . . . [have the power and duty to] cause the state highways to be marked with

[7] Plaintiffs' allegation that Pilot negotiated with SCDOT to prevent SCDOT from installing a raised median in front of the Pilot Travel Center is based solely upon handwritten notes on a letter dated August 28, 2000, from an SCDOT official to an employee of the prior owner of the subject property. However, these handwritten notes do not evidence that Pilot negotiated with SCDOT regarding the type of median to be used in the portion of the highway in front of the Pilot Travel Center. First, these handwritten notes were not made by an employee or agent of Pilot. Second, this particular letter is dated after the date by which SCDOT testified it made the decision to use a painted flush median on the highway instead of a raised median. Third, SCDOT testified that there was never a "negotiation" of the median, and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

At the hearing on Pilot's Motion for Summary Judgment, Plaintiffs speculated that Pilot may have negotiated with SCDOT regarding the median as part of SCDOT's right-of-way acquisition of a portion of Pilot's property during the Interchange Project. However, the Title of Real Estate for this acquisition indicates that the right-of-way acquisition transaction was between SCDOT and the prior owner of Pilot's property. Moreover, Plaintiffs admitted it did not have any evidence that any such negotiation with Pilot took place. Therefore, even if a "negotiation" between Pilot and SCDOT could somehow create a duty on the part of Pilot with respect to the median, Plaintiffs cannot provide any evidence such a negotiation occurred beyond pure speculation, which is insufficient to survive summary judgment. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) ("To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture.").

appropriate directions for travel and *regulate the travel and traffic along such highways*, subject to the laws of the State[.]" (emphasis added)). This decision-making authority arises from SCDOT's police power and duty to plan, maintain, and operate the state's highway system. See South Carolina State Highway Dep't v. Wilson, 254 S.C. 360, 365-66, 175 S.E.2d 391, 394 (1970) (noting that "the clear weight of authority from other jurisdictions is . . . that the construction of a median . . . is an exercise of the police power"); South Carolina State Highway Dep't v. Carodale Assocs., 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) ("Re-routing and diversion of traffic are police power regulations."). Whether or not any negotiation of the median took place, the fact remains that only SCDOT has the authority to determine what type of median to install on the highway.

Furthermore, the median in question was part of the highway, and thus, under the exclusive control of SCDOT. Plaintiffs have failed to present any authority establishing that Pilot, as one of the property owners abutting the highway, has a duty to maintain, repair, or warn travelers of potentially dangerous conditions on the highway over which it has no control. The facts of this case are nearly identical to those in Allen v. Mellinger, 156 Pa. Commw. 113, 625 A.2d 1326 (1993). In that case, the plaintiffs attempted to make a left turn from the highway into the defendants' business premises when their vehicle was hit by a truck traveling in the opposite direction. Id. at 115. Relying on Restatement (Second) of Torts §349,[8] the Allen Court held that

[8] According to § 349:

> A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care
>
> (a) to maintain the highway or way in safe condition for their use, or
>
> (b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover.

the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition or to warn them of any alleged dangerous condition on the highway. Id. at 118-119. According to the Allen Court, the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." Allen at 118. The court further rejected the plaintiffs' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. Allen at 119 n.1, 625 A.2d at 1329 n.1 (1993).

Like the business owners in Allen, here, Pilot owed no duty to the Plaintiffs to keep the highway in a safe condition or to warn Plaintiffs of any alleged dangerous condition on the highway. Medians are part of the highway subject to the exclusive control and authority of SCDOT. The decision to install a painted flush median on the subject highway was within the exclusive province of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Pilot, has the duty to maintain medians. SCDOT, not Pilot, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, Pilot, as one of the landowners abutting U.S. 17A, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the highway over which it has no control.[9] See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). (noting that while "a contractor performing highway alterations owes a duty to travelers, . . . [there is] no analogous duty on the part of an owner of property abutting a highway who neither possesses nor controls

[9] SCDOT acknowledged during its Rule 30(b)(6) deposition that it owns and has control of US 17A, that it has the responsibility of maintaining highways in a safe condition and that it has the duty to investigate and determine whether changes need to be made to the highway.

the highway."); Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) ("one who has no control [over property] owes no duty.").

To the extent that Plaintiffs maintain that Pilot created a dangerous condition on the highway by virtue of constructing a driveway to the Pilot Travel Center that was accessible by motorists travelling on the opposite side of the highway, such argument lacks merit. See Skinner at 525 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition was insufficient to establish business owner "created" a defect on the highway).

This Court holds that having a driveway on the highway, in and of itself, is not an artificial condition as contemplated by South Carolina case law. In Skinner, the South Carolina Supreme Court noted that the types of artificial conditions on the highway that would impose potential liability on a property owner include hazards that result from the conduct of the property owner's business, such as material spilled on the road or smoke emitted from a plant that drifts over the highway. Id. Simply having a driveway on the highway allowing for the ingress to and egress from one's business does not impose liability on the business owner for motor vehicle accidents that occur in the highway.

Furthermore, like with medians, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT. As part of the permitting process, SCDOT reviews the permittees' design plans to ensure compliance with SCDOT's regulations and standards concerning the design and location of driveways. SCDOT also reviews a permittee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic

operations. SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . . may create a hazard to the traveling public." S.C. Code Ann. § 57-5-1090. Thus, Pilot could not have constructed the driveways to its property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public.

Finally, Plaintiffs argue that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property and failed to take any remedial action. Specifically, Plaintiffs allege Pilot was on notice of this danger by virtue of prior motor vehicle accidents that occurred in and around the Pilot Travel Centers' driveways. This Court finds that no such affirmative duty on the part of Pilot exists. "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. South Carolina Dep't of Corr., 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Pilot to affirmatively act. Even if Plaintiffs could establish Pilot was aware of other motor vehicle accidents in the highway, having notice of other accidents does not give rise to a duty to warn. See Restatement (Second) of Torts § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). The occurrence of other motor vehicle accidents on U.S. 17A does not create an affirmative duty on the part of Pilot as a property owner abutting the highway.

Conclusion

In light of the foregoing, this Court finds that Plaintiffs cannot establish that Pilot owed them any duty as a landowner abutting the portion of the highway where Plaintiffs were injured. Therefore, Pilot is entitled to judgment as a matter of law.

IT IS ORDERED that Pilot's Motion for Summary Judgment shall be GRANTED, and all of Plaintiffs' causes of action against Pilot are DISMISSED.

AND IT IS SO ORDERED!

Roger M. Young Sr.
Presiding Judge

May 4/26, 2017
In Chambers, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-08-0334

Cynthia Wright and Richard Wright,

PLAINTIFF(S)

South Carolina Dept. of Transportation, Pilot Travel Centers, LLC, Speedway LLC, Ashley Land Surveying, Inc., f/k/a Ashley Engineering and Consulting, Inc., and Munlake Contractors, Inc.

DEFENDANT(S)

Submitted by:	**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. ☐ 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.

FILED
JUN 26 PM 1:04
BERKELEY COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Speedway, LLC's Motion for Summary Judgment is granted pursuant to SCRCP 56. There is no genuine issue of material fact as to the issues of duty and proximate cause for the claim alleged by Plaintiffs against Speedway, LLC. Defendant Ashley Land Surveying, Inc.'s Motion for Summary Judgment is granted pursuant to SCRCP 56. There is no genuine issue of material fact as to the issues of duty and proximate cause for the claim alleged by Plaintiffs against Ashley Land Surveying, Inc. Defendant South Carolina Department of Transportation (SCDOT)'s Motion for Summary Judgment is granted pursuant to SCRCP 56, as Plaintiffs' claims against Def. SCDOT are barred by the State Tort Claims Act, S.C. Code § 15-78-60 et seq.

RECEIVED
JUL 19 2017
SC Court of Appeals

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2151 Judge Code	6/26/2017 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
) 2016-CP-08-0334
Cynthia Wright and Richard Wright,)
)
Plaintiffs,)
)
v.)
)
South Carolina Department of) **ORDER DENYING PLAINTIFF'S**
Transportation, Pilot Travel Centers, LLC,) **MOTION TO ALTER OR AMEND**
Speedway, LLC, Ashley Land Surveying,) **THIS COURT'S MAY 4, 2017 ORDER**
Inc. f/k/a Ashley Engineering & Consulting,)
Inc., and Munlake Contractors, Inc.,)
)
Defendants.)

BACKGROUND

On April 10, 2017, this Court heard oral arguments on Defendant Pilot Travel Centers, LLC's Motion for Summary Judgment. This Court's Order granting defendant's motion was filed on May 4, 2017. On May 9, 2017, Plaintiff filed a Motion to Alter or Amend this Court's May 4, 2017 order pursuant to Rules 52 and 59, SCRCP.

DISCUSSION

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or

prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (internal citations omitted). Rules 52(c) and 59(f) provide that "[t]he motion may in the discretion of the court be determined on briefs filed by the parties without oral argument." Rules 52(c) and 59(f), SCRCP.

CONCLUSION

Having thoroughly considered the supporting and opposing arguments of counsel, Plaintiff's Motion to Alter or Amend this Court's Order of May 4, 2017 has failed to satisfy the above requirements, and is therefore denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Alter or Amend this Court's Order of May 4, 2017 is DENIED.

IT IS SO ORDERED!

June 5, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge