

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

CASE NUMBER: 2016CP4005001

Tina Bessinger

LongCreek Development LLC

Fairways Development LLC

PLAINTIFF(S)

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.
- 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 _____
- STAYED DUE TO BANKRUPTCY**
- 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:

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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
		\$
		\$
		\$

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 _____ Judge Code 2126 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Sept, 2016 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:

Carl David Hiller

Karl Stephen Brehmer
Mark Steven Barrow

Anthony W. Livoti
Brandon Robert Gottschall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeannette W. McBride

SCANNED
mail

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Tina Bessinger,) Civil Action No.: 2016-CP-40-05001

Plaintiff,)

v.)

LongCreek Plantation Property)
Owners Association, Inc., LongCreek)
Development, LLC, Fairways)
Development, LLC, Advantage)
Services, Inc., and Halcyon Real)
Estate Services, LLC,)
Defendant.)

ORDER GRANTING DEFENDANT
FAIRWAYS DEVELOPMENT, LLC'S
MOTION FOR SUMMARY JUDGMENT

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SC Court of Appeals

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JEANETTE W. MCGRIDGES
CLERK, S.C.P. & C.S.

On June 9, 2017, Defendant Fairways Development, LLC (hereinafter "Fairways Development") filed a Motion for Summary Judgment in this matter as to the claims raised in the complaint filed by Plaintiff Tina Bessinger (hereinafter "Plaintiff"). As is further set forth below, summary judgment is appropriate in this matter because Fairways Development owed no duty to Plaintiff, and Plaintiff cannot demonstrate a genuine issue of material fact beyond the mere allegations in its pleadings as to whether Fairways Development breached any duty or proximately caused Plaintiff's alleged damages. As a result, Defendant is entitled to summary judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTUAL BACKGROUND

On November 1, 2013, the Plaintiff Tina Bessinger was driving a school bus for Richland County School District Two northbound on Longtown Road East in Blythewood, South Carolina. As Plaintiff neared the intersection of Longtown Road East and Hunting Path, another driver, Amber Edwards, failed to yield the right of way and was struck by Plaintiff's school bus. Plaintiff's

Amended Complaint alleges that Ms. Edwards failed to yield the right-of-way because the stop sign was obstructed from Ms. Edwards' view by an overgrown tree and/or shrubbery. Plaintiff further alleges she was injured in the collision.

Plaintiff's Amended Complaint alleges claims against LongCreek Plantation Property Owners Association, Inc., LongCreek Development, LLC, Fairways Development, LLC, Advantage Services, Inc., and Halcyon Real Estate Services (collectively "Defendants") for premises liability and negligence. Specifically, Plaintiff alleges that the Defendants voluntarily maintained the property, including trees and shrubbery, that they owed Plaintiff a duty of care to keep the property—including trees and shrubbery—in a reasonably safe condition, and that they violated the duty by permitting trees or shrubbery to obstruct the stop sign at the entrance to Hunting Path from Longtown Road East.

STANDARD OF REVIEW

According to the South Carolina Rules of Civil Procedure, summary judgment is proper 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 judgment as a matter of law." S.C. R. Civ. P. 56(c) (emphasis added). When a defendant properly supports a motion for summary judgment pursuant to this rule, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." S.C. R. Civ. P. 56(c) (emphasis added).

"A party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact." Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010). Thus, "a party 'may not rest upon the mere allegations or denials of his



pleading[s].” Id. at 549, 694 S.E.2d at 6 (2010) (citing S.C. R. Civ. P. 56(c)). Rather, “a party opposing summary judgment [must] come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial.” Hoard at 549, 694 S.E.2d at 6 (2010) (citing SSI Med. Servs. Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990)).

DISCUSSION

Defendant Fairways Development is entitled to summary judgment as to Plaintiff’s causes of action for Premises Liability and Negligence because Fairways Development owed no duty to Plaintiff and because Plaintiff has failed to establish that any negligence on the part of Fairways Development was the proximate cause of Plaintiff’s alleged injuries.

I. Under South Carolina Law, Landowners Owe No Duty to Ensure Trees do not Hinder Traffic Control Devices

In a negligence cause of action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered an injury or damages. See Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). Likewise, “[t]o establish negligence in a premises liability action, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” Roe v. Bibby, 410 S.C. 287, 296, 763 S.E.2d 645, 650 (Ct. App. 2014). To sustain a negligence cause of action, the Plaintiff must primarily establish that the defendant owed a duty of care to the plaintiff. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) (citations omitted). “The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no

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duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." Id. at 387, 520 S.E.2d at 149 (citations omitted).

The South Carolina Court of Appeals has explicitly held that private landowners owe no duty to "ensure that their trees do not hinder traffic control devises...." Underwood v. Coponen, 367 S.C. 214, 219, 625 S.E.2d 236, 239 (Ct. App. 2006). In Underwood, the plaintiff brought an action against a property owner's estate, alleging that the owner negligently failed to trim a tree on the property and allowed it to partially obscure a stop sign. Id. at 217-18, 625 S.E.2d at 238. As a result of the obstruction, plaintiff alleged that a motorist ran the stop sign and collided with the plaintiff. Id. The plaintiff further alleged that because the property owner had periodically trimmed the tree on his property, he undertook a duty to keep the tree from blocking the stop sign. Id. The circuit court granted the defendant summary judgment, and the court of appeals affirmed. Id. Specifically, the court of appeals found that although the landowner occasionally trimmed the tree to clear the stop sign, and even though his failure to trim the tree might have increased the risk that the sign would be obstructed, these actions did not create a duty for which the landowner could be held liable. Id. at 219, 625 S.E.2d at 239. In so holding, the court noted that the tree did not fall or injure anyone, and thus it did not constitute an "unsafe" or "defective" condition. Id. at 218, 625 S.E.2d at 238. Furthermore, the court stated that even had the landowner's actions created a duty, the landowner abandon the duty at any time, as long as he did not increase any risk that might have existed. Id. at 219, 625 S.E.2d at 239. Finally, the court noted that neither the plaintiff nor the other motorist knew the landowner trimmed the tree, and thus they could not rely on his doing so. Id. The court thus refused to extend "the duty to require private landowners to ensure that their trees do not hinder traffic control devises[.]" Id.



The court of appeals found that public policy supported its refusal to extend a duty to private landowners. Specifically, the court stated, “[i]f we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devices, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability.” Underwood, 367 S.C. at 219, fn. 3; 625 S.E.2d at 239, fn. 3. The court also cited outside authority stating that obstruction from overgrown vegetation was “no different from obstructions which are caused by houses and buildings encountered routinely in daily life.” Id., citing Nichols v. Sitko, 510 N.E.2d 971, 974 (Ill. 1987). As a result, in addition to the legal basis for its holding, the court noted that sound public policy considerations justified its findings.

Underwood’s rule—that a landowner owes no duty to trim trees to prevent them from obscuring traffic signals—controls the present case. As in Underwood, the Plaintiff here alleges that by planting and maintaining plants on its property, Fairways Development assumed a duty to prevent the plants from obscuring the stop sign at Hunting Path Road. However, pursuant to Underwood, the South Carolina Court of Appeals specifically declined to impose any duty on a private landowner to trim plants to prevent them from obscuring traffic control devices. In fact, pursuant to Underwood, even had Fairways Development trimmed plants in the past to prevent them from obscuring the stop sign, it still assumed no duty to the Plaintiff. However, Plaintiff has provided no evidence that Fairways Development trimmed the trees at the intersection of Hunting Path and Longtown Road East, and Plaintiff certainly has provided no evidence that the Plaintiff or Ms. Edwards knew and relied on Fairways Development’s trimming of those trees. Finally, the trees in the present case did not fall and injure the Plaintiff, and so pursuant to Underwood, they

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were not an “unsafe or defective” condition. As a result, Fairways Development owed Plaintiff no duty regarding trimming the trees at the intersection.

Plaintiff’s effort to distinguish Underwood as applying only to rural, individual landowners is unavailing. In deciding that a private landowner owes no duty to trim trees to prevent them from obscuring traffic devices, the Underwood court did *not* distinguish between rural and urban locations or individual and corporate landowners. In fact, the court did not even analyze whether the intersection at issue fell within a rural or urban area. Instead, without qualification or limitation, the court of appeals held that private landowners owe no duty to protect others from tree branches that may obscure traffic devices. See *id.* Furthermore, the Underwood court actually rejected application of what it called the “Israel” rule, a reference to Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 288, 356 S.E.2d 123, 127 (Ct.App.1987), which distinguished between urban and rural areas with regards to a landowners’ duty as to defective trees. Underwood, 367 S.C. at 218. Finally, the public policy considerations cited by the Underwood court apply to both rural and urban settings, and to all types of private landowners, whether individual or corporate. As a result, the court finds that Underwood governs the facts of the present case.

To the extent any entity owed a duty to maintain plant growth at the intersection in question, it is not Fairways Development. Notably, Richland County holds a fifty-foot right-of-way on Hunting Path where it approaches the stop sign in question. Clerk of Court Records, Deed Book 331, Page 399-400 (Richland County, South Carolina) (Jul. 30, 1999). Pursuant to the terms of that deed, Richland County Council is to “maintain and repair said streets or roads in a reasonably good and workmanlike manner thereafter.” In addition, the Code of Ordinances for Richland County provides that “[t]he department of public works shall maintain the devices after



acceptance of the streets.” RICHLAND, S.C., CODE OF ORDINANCES ch. 21, § 11 (1976) (emphasis added).

In addition, it is undisputed that Longtown Road East is a South Carolina state highway. The Department of Transportation is required to keep streets and highways within its control in a reasonably safe condition for public travel. See Ford v. S.C. Dep't of Transp., 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). This requirement has been construed to include a duty to guard against “objects overhanging the right of way, if their proximity to the improved portion of the roadway renders it probable such defects will result in injury to the users thereof, exercising due care.” Stanley v. S.C. State Highway Dep't, 249 S.C. 230, 234–35, 153 S.E.2d 687, 689 (1967) overruled on other grounds by McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). Thus, defects within Longtown Road East’s right-of-way, including objects overhanging the right-of-way, fall within the Department of Transportation’s duty to maintain.

In summary, Fairways Development owed no duty to Plaintiff as to the causes of action raised in her Amended Complaint and as a result, Fairways Development is entitled to summary judgment on Plaintiff’s causes of action.

II. Defendant Fairways Development Owes No Contractual Duty to Plaintiff

To the extent Plaintiff alleges that the defendants owe Plaintiff a duty based on a landscaping contract between Advantage Services and Halcyon Real Estate Services, LLC, this argument is without merit as to Defendant Fairways Development. Fairways Development is not a party to that contract. Furthermore, Plaintiff was neither a party nor third-party beneficiary of that contract. Because there is no contract involving Fairways Development, there can be no contractual duty, particularly one owed to another non-party. See Thompson v. Pruitt Corp., 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016), reh'g denied (Apr. 21, 2016), cert. denied (Dec.

2, 2016) (“there can be no third-party beneficiary unless a valid contract exists”). Therefore, the Court finds Defendant Fairways Development owed no contractual duty to the Plaintiff.

III. Plaintiff Cannot Establish a Genuine Issue for Trial as to Breach or Proximate Cause.

To establish a genuine issue of material fact as to a negligence cause of action, a plaintiff must establish a breach of a duty and show that the negligence is a proximate cause of the injury. See Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980). In establishing proximate cause, the Plaintiff has the burden of proving the injury would not have occurred "but for" the defendant's alleged negligence and that the plaintiff's injury was foreseeable. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d. 715, 721 (Ct. App. 1996). Furthermore, when a defendant properly supports a motion for summary judgment, “an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial.” S.C. R. Civ. P. 56(c) (emphasis added). When the evidence is susceptible of only one inference, proximate cause becomes a matter of law for the court. Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88-89 (1998).

In the present matter. Plaintiff has failed to set forth specific facts showing an issue of fact (1) that any alleged breach proximately caused Plaintiff's injuries, or even (2) that as to Ms. Edwards, Fairways Development breached a duty in the first place.

a. Plaintiff Has Established No Material Issue of Fact as to Proximate Cause

Plaintiff has failed to set forth evidence in this matter creating a genuine issue of material fact as to whether (1) Ms. Edwards failed to stop at the stop sign, or (2) that the reason she failed to stop was because the stop sign was obscured by tree branches. As a result, Plaintiff cannot establish proximate cause.

None of the witnesses deposed in this case can testify regarding the cause of the accident. First, Ms. Edwards, the driver who allegedly caused the accident, testified that she does not recall any portion of the accident or of the day leading up to the accident. Dep. of Amber Michelle Edwards, March 9, 2017, at 11:4-15. Second, the Plaintiff herself testified that she did not see Ms. Edwards' vehicle before the impact and that she cannot say whether tree limbs had anything to do with the accident. Dep. of Tina Bessinger, March 9, 2017, at 16:23-25, 29:1-15. Other deponents have testified likewise. See Dep. of Melissa Crook, March 21, 2017, at 50:11-51:13 (stating that she does not know how the accident occurred or what caused the other driver to pull out in front of Ms. Bessinger); Dep. of Jeannie Sharpe, March 9, 2017, 18:1-5, 49:16-50:2, 50:11-51:12 (stating that she did not see the accident or talk with anyone at the scene). As a result, Plaintiff can provide no specific facts to establish the proximate cause of the accident, and Plaintiff thus relies on unsupported allegations as to this element. Because Plaintiff cannot establish proximate cause, Fairways Development is entitled to summary judgment.

Plaintiff has presented testimony from a bus driver, Ms. Jeannie Sharpe, stating that tree limbs partially obscured *her* view of a stop sign at Hunting Path and Longtown Road East, and that limbs sometimes made it difficult to see down Longtown Road East. However, this testimony provides no evidence whatsoever as to whether Ms. Edward's view, from the perspective a Chevy Camaro sports car, was obstructed. Even Ms. Sharpe testified that her vantage point as a bus driver was three to five feet higher than other vehicles. Dep. of Jeannie Sharpe at 43. Perhaps more importantly, testimony that the stop sign was obstructed is only relevant if Ms. Edwards actually ran the stop sign in the first place, and Plaintiff has not provided even a scintilla of evidence that could prove Ms. Edwards even ran the stop sign. As a result, this testimony does not create a genuine issue of material fact as to proximate cause.

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Plaintiff's photos from Google Maps, which date from 2011, also fail to create a material question of fact. As an initial matter, these photos were taken approximately *two years* before the accident occurred. Furthermore, Plaintiff has failed to provide any evidence that the photos reflect the stop sign from the vantage point of Ms. Edwards. See Dep. of Jeannie Sharpe at 43. While Jeanie Sharpe testified that the photos reflected the stop sign on the date of the accident, Ms. Sharpe's testimony, proffered from the vantage point of a school bus driver, is not evidence of the condition of the intersection from Ms. Edwards' vantage point. In addition, by Ms. Sharpe's own admission, were trimmed at some point after the photos but before the accident. See id. at 56-57.

As a result, Fairways Development is entitled to summary judgment based on Plaintiff's failure to establish a genuine issue of material fact as to the element of proximate cause.

a. Plaintiff Has Established No Material Issue of Fact as to Proximate Cause

While Fairways Development did not owe any duty to the Plaintiff, even if it did, Plaintiff has also failed to establish a material issue of fact as to breach of that duty. As noted above, Plaintiff has failed to establish a genuine issue of material fact that the stop sign or Longtown Road East was obscured from Ms. Edwards' vantage point. As a result, Fairways Development is entitled to summary judgment on this ground as well.

In summary, this is not a case in which the Plaintiff offers competing evidence for a jury to evaluate; rather, the Plaintiff has failed to set forth specific issues of fact establishing proximate cause or breach, relying only on unsupported allegations in the Complaint. As a result, Fairways Development's motion for summary judgment must be granted.

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CONCLUSION

For the reasons stated above, the Court hereby **GRANTS** Defendant Fairways Development's Motion for Summary Judgment .



The Honorable G. Thomas Cooper
Circuit Court Judge

Columbia, South Carolina

September 22, 2017