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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005001

Tina Bessinger

LongCreek Plantation Property Owners Association Inc

LongCreek 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), 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 _____
- 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

RECEIVED

OCT 19 2017

ORDER INFORMATION

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

SC Court of Appeals

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 21 day of Sept, 2017 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

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 Tina Bessinger,)
)
 Plaintiff,)
)
 v.)
)
 LongCreek Plantation Property Owners)
 Association, Inc., LongCreek)
 Development, LLC, Fairways)
 Development, LLC, Advantage Services,)
 Inc., and Halcyon Real Estate Services,)
 LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT
 Civil Action No.: 2016-CP-40-05001

**ORDER GRANTING DEFENDANTS
 LONGCREEK PLANTATION
 PROPERTY OWNERS ASSOCIATION,
 INC.'S AND HALCYON REAL ESTATE
 SERVICES, LLC'S MOTION FOR
 SUMMARY JUDGMENT**

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 SC Court of Appeals

FILED
 SEP 25 AM 8:43
 JENNIFER W. MCBRIDE
 CLERK OF COURT

This matter comes before the Court pursuant to Defendants' LongCreek Plantation Property Owners Association, Inc. ("LongCreek POA") and Halcyon Real Estate Services, LLC ("Halcyon") ("Defendants") Motion for Summary Judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. A hearing was held on the Defendants' motion at the Richland County Courthouse on September 5, 2017. After considering the pleadings, submissions including legal memorandum, and hearing the arguments of counsel, this Court grants Defendants' Motion for Summary Judgment.

FACTUAL BACKGROUND

This lawsuit arises out of a school bus/automobile accident that occurred on November 1, 2013 in Blythewood, South Carolina when Plaintiff, driving her bus on the dominant road through the intersection of Longtown Road and Hunting Path Road, collided with a vehicle driven by Amber Edwards. Amber Edwards failed to yield the right of way to the Plaintiff at the intersection. The Plaintiff claims Edwards was unable to see a stop sign because of an overgrown tree limb, but

has no evidence that the limb obstructed Edwards' view of the stop sign. The tree that was allegedly obscuring the view of the stop sign was on the property owned by Defendants, and, as a result, the Plaintiff brought this lawsuit against the owners of the land for negligently maintaining the tree limb in question.

Plaintiff filed suit against several Defendants, including LongCreek POA and Halcyon in the Court of Common Pleas for the County of Richland, alleging a cause of action for personal injury resulting from the accident on November 1, 2013. Defendants filed an Answer denying liability and asserting affirmative defenses.

Specifically, Plaintiff alleges that she was traveling northbound on Longtown Road when another driver, Amber Edwards, attempted to cross Longtown Road from Huntington Path Road and pulled out directly in front of Plaintiff. Plaintiff alleges that the immediate cause of the accident was Ms. Edwards' failure to yield the right of way. Plaintiff further alleges that Ms. Edwards failed to yield the right of way because the stop sign at the intersection was obstructed from Ms. Edwards' view by overgrown trees or shrubbery. Plaintiff alleges that Defendants LongCreek POA and Halcyon planted and maintained trees or shrubbery on the property which obstructed Ms. Edwards' view and that Defendants, including LongCreek POA and Halcyon, owed and breached a duty to Plaintiff to keep the property in a reasonably safe condition.

Plaintiff testified in her deposition that she does not know whether the limb had anything to do with the accident, and she cannot say why Ms. Edwards' car pulled out in front of her school bus that day. Ms. Edwards has no recollection of the accident and testified that she does not recall whether she saw the school bus Plaintiff was driving, she does not recall how fast she was going prior to the accident, and she does not recall whether she saw a stop sign.

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STANDARD OF REVIEW

A court must grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits” show that there is no genuine issue of material fact, and, therefore, the moving party is entitled to judgment as a matter of law. *See* S.C.R.P. Rule 56(C). Further, in making the determination of whether a triable issue of fact exists, the evidence and all reasonable inferences that can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *See Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004).

DISCUSSION

For a plaintiff to establish a cause of action based on negligence, he or she must prove the following: (1) The defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty of care; (3) the breach of the duty by the defendant caused the plaintiff’s injury through proximate and actual causation; and (4) the plaintiff suffered damages as a result of the defendant’s breach. *See Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002).

In the present case, the Plaintiff has failed to present sufficient evidence to show the Defendants owed a duty of care to the Plaintiff. The intersection where the accident occurred is owned by Richland County. Notably, Richland County Council holds a fifty-foot right-of-way on the roads at the intersection in question. (Clerk of Court Records, Deed Book 331, Page 399). That deed specifically prescribes that that Richland County Council shall “maintain and repair said streets or roads in a reasonably good and workmanlike manner thereafter.” Even absent the deed, the Code of Ordinances for Richland County provides that “[t]he developer of any new subdivision constructed within the jurisdiction and authority of the county is responsible for the initial installation of all necessary traffic control devices in accordance with an approved signage plan.

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The department of public works shall maintain the devices after acceptance of the streets.”
RICHLAND, S.C., CODE OF ORDINANCES ch. 21, § 11 (1976).

In addition, Longtown Road is a state highway and falls within the Department of Transportation’s purview for maintenance. Specifically, the Department of Transportation is required to keep streets and highways within its control in a reasonably safe condition for public travel 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.” *Ford v. S.C. Dep’t of Transp.*, 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, defects within Longtown Road’s right-of-way, including objects overhanging the right-of-way, fall within the Department of Transportation’s duty to maintain.

Plaintiff has also incorrectly relied on case law to argue that the Defendants owed a duty to keep the trees and shrubbery outside the neighborhood in good repair.

Further, even if the Defendants breached a duty that they owed to the Plaintiff, the Plaintiff has failed to provide sufficient evidence that the breach was the actual and proximate cause of the accident.

I. The Defendants owe no duty to the Plaintiff for trees that obscure stop signs.

The Supreme Court of South Carolina has addressed the duty owed by governmental agencies to potential injured motorists in situations where the county or the State has control over the roadway:

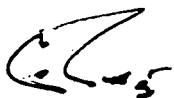
The liability for injury to a motorist from a defect in the highway has been construed to impose a duty on the Highway Department to guard against defects outside the traveled or improved portion of the roadway, ***including objects overhanging in the right of way***, if their proximity to the improved portion of the

roadway renders it probable such defects will result in injury to users thereof, exercising due care.

Stanley v. South Carolina State Highway Department, 249 S.C. 230, 235, 153 S.E.2d 687, 689 (1967) (emphasis added).

The facts of *Stanley* are very similar to those of the current case. There, the plaintiff alleged that the accident occurred because the overgrowth of underbrush at the intersection obstructed the plaintiff's view. *See Stanley*, 249 S.C. 230, 231, 153 S.E.2d 687, 688. Further, the plaintiff in *Stanley* failed to properly allege that the defect of the highway affected the normal use of the highway because the plaintiff admitted that he still stopped at the stop sign even though it was covered by the underbrush. *See Stanley*, 249 S.C. 230, 235, 153 S.E.2d 687, 689. As a result, the court held that the overhanging underbrush did not constitute a defect in the State highway. *See Stanley*, 249 S.C. 230, 235, 153 S.E.2d 687, 689.

Plaintiff has alleged that the overhanging tree limb at the intersection where the accident occurred was the cause of the accident, but she has failed to provide evidence to support this assertion. The Plaintiff and Ms. Edwards are the only two witnesses to the accident. Ms. Edwards has no recollection of the accident due to the memory loss she sustained during the accident, and the Plaintiff has no evidence that the tree limb caused Ms. Edwards to run the stop sign and cause the accident. In addition, the Plaintiff has failed to name Richland County Council or the South Carolina Department of Transportation as a defendant. Therefore, even if the Plaintiff had evidence that the overhanging tree limb was the actual and proximate cause of the accident, the Defendants owe no duty to the Plaintiff because the Richland County Council or the South Carolina Department of



Transportation are the entities responsible for the maintenance and upkeep of the intersection where the accident occurred.

In Plaintiff's Memorandum in Opposition of Summary Judgment, she correctly points out that *Underwood* stated, "urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe." See *Underwood v. Coponen*, 367 S.C. 214, 215, 625 S.E.2d 236, 238 (S.C. App. 2006). However, the Plaintiff incorrectly applied this rule to the facts of the current case. In *Underwood*, the court was citing a general rule from a case called *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (S.C. App. 1997).

In *Staples*, the plaintiff ran her car into a dead pine tree that had fallen from the defendant's rural property and into the middle of the road, and she brought suit against the defendant for the injuries she sustained. See *Staples*, 329 S.C. at 503, 494 S.E.2d at 640. The court explained that in urban areas, a landowner does have a duty of reasonable care to ensure that trees do not fall into roadways and hurt a driver or pedestrian. See *Staples*, 329 S.C. at 504, 494 S.E.2d at 642. As explained in the holding of *Underwood*, the "urban landowner" rule does not stretch to accidents that occur from an overgrown tree or underbrush that only blocks a traffic signal or sign. See *Underwood*, 367 S.C. at 215, 625 S.E.2d at 238.

In *Underwood*, the plaintiff was in a car accident when the defendant failed to stop at a stop sign. *Id.* at 214, 625 S.E.2d at 237. The defendant claimed that she could not see the stop sign because the limbs of a tree were blocking it from view. *Id.* However, the defendant testified that she mistakenly thought she was on another road and was not looking for stop signs at the time the accident occurred. *Id.* The court explained that the

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rule of *Staples* did not apply because no tree actually fell to cause the accident, and the only effect that the tree had was obscuring the stop sign, which defendant testified she was not looking for. *Id.* at 215, 625 S.E.2d at 238.


The facts of this case are very similar to those of *Underwood*. Plaintiff was in a car accident with Ms. Edwards when Ms. Edwards ran the stop sign that allegedly was partially obscured by an overhanging tree limb. However, Ms. Edwards has no knowledge of whether she saw the stop sign or if she was even looking for a stop sign at the time of the accident.

As a result, the rule of *Staples* does not apply to this case, and the Defendants owe no duty to the Plaintiff.

II. The Plaintiff has failed to provide any evidence to show that the Defendants were the actual and proximate cause of the accident.

To survive a summary judgment motion by the defendant, the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation. *See Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (S.C. Ct. App. 2011).

The Plaintiff argues that Defendants LongCreek POA and Halcyon breached the duty of care that was owed to her by failing to properly maintain the trees and shrubbery at the intersection where the accident occurred. However, Plaintiff has failed to produce evidence that the accident on November 1, 2013 was actually and proximately caused by the alleged breach of the Defendants' duty. Plaintiff and Ms. Edwards are the only two witnesses to the accident. Plaintiff testified during her deposition that she does not know if the overgrown tree limb had anything to do with the accident, and she does not know why Ms. Edwards pulled out in front of her school bus. In addition, Ms. Edwards suffered memory loss as a result of the accident, and has no



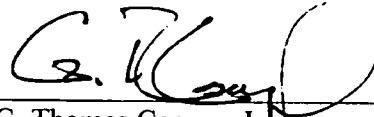
recollection of the accident whatsoever. While Plaintiff does have testimony from a fellow bus driver that there were limbs hanging into the roadway in front of the stop sign on the day of the accident, Plaintiff has no evidence that the limbs hanging into the roadway were the cause of the accident.

As a result, the Defendants' Motion for Summary Judgment is granted.

CONCLUSION

THEREFORE, IT IS ORDERED that Defendants, LongCreek Plantation Property Owners Association, Inc. and Halcyon Real Estate Services, LLC's Motion for Summary Judgment be GRANTED.

IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Judge Active/Retired
5th Judicial Circuit

September 22, 2017
Columbia, South Carolina