THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. THOMAS COOPER, JR., Circuit Court Judge

Case No. 2016-CP-40-05001

Appellate Case No.: 2017-002181

Tina Bessinger.....Appellant,

v.

Longcreek Plantation Property Owners Association, Inc., Halcyon Real Estate Services, LLC., Fairways Development, LLC, and Advantage Services, Inc., ...Respondents

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APPELLANT'S INITIAL BRIEF

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THE TRIAL COURT ERRED IN GRANTING THE RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT AND FOR THE FOLLOWING REASONS, THE TRIAL COURT'S ORDER SHOULD BE REVERSED AND REMANDED FOR A TRIAL BY A JURY:

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT ON THE BASIS THAT THEY DID NOT OWE APPELLANT A DUTY OF CARE IN MAINTAINING THE PRIVATELY OWNED AND CONTROLLED AREA NEAR THE STOP SIGN AT THE INTERSECTION OF LONGTOWN ROAD AND HUNTING PATH ROAD

II. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT BASED ON CAUSATION WHERE APPELLANT SUBMITTED AMPLE EVIDENCE FOR A JURY TO CONCLUDE THAT RESPONDENTS' FAILURES WERE THE PROXIMATE CAUSE OF THE COLLISION.

STATEMENT OF THE CASE

In November of 2013, Appellant Tina Bessinger ("Appellant" or "Ms. Bessinger") was seriously injured when she was involved in an automobile collision at the intersection of Longtown Road and Hunting Path Road in Blythewood, South Carolina. Appellant alleged that the improper landscaping at the neighborhood entrance which was owned, controlled, or maintained by Respondents caused the collision. Ms. Bessinger initiated this premises liability and negligence action by filing a Summons and Complaint on August 18, 2016 against LongCreek Plantation Property Owners Association, Inc. (hereinafter "Respondent LongCreek POA"), LongCreek Development, LLC, and Fairways Development, LLC (hereinafter "Respondent Fairways").[1] Ms. Bessinger filed an Amended Complaint on October 10, 2016 additionally naming Advantage Services, Inc. (hereinafter "Respondent Advantage") and Halcyon Real Estate Services, LLC (hereinafter "Respondent Halcyon") as defendants to this action.[2] Respondent LongCreek POA filed its Answer to the Amended Complaint on October 28, 2016.[3] Respondent Advantage filed its Answer to the Amended Complaint on November 7, 2016.[4] Respondent Halcyon filed its Answer to the Amended Complaint on November 14, 2016.[5] On November 28, 2016, after receiving no response from Respondent Fairways or LongCreek Development, LLC, the Appellant filed an Affidavit of Default against both parties.[6] After a conversation with opposing counsel, on December 9, 2016, the Appellant withdrew its Affidavit

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[1] *See* Complaint.
[2] *See* Amended Complaint.
[3] *See* Respondent LongCreek POA's Answer to Amended Complaint.
[4] *See* Respondent Advantage's Answer to Amended Complaint.
[5] *See* Respondent Halcyon's Answer to Amended Complaint.
[6] *See* Aff. of Default for Fairways Development, LLC; Aff. of Default for LongCreek Development, LLC. Defendant LongCreek Development, LLC made no appearance and is currently in default.

of Default against Respondent Fairways.[7] On January 1, 2017, Respondent Fairways filed its Answer to the Amended Complaint.[8] In their respective answers to the Amended Complaint, Respondents LongCreek POA, Halcyon, Fairways, and Advantage (hereinafter collectively referred to as "the Respondents") asserted the following defenses: (1) general denial; (2) acts or omissions of others; and (3) comparative negligence.[9] In Respondent Fairways' Answer to the Amended Complaint, it also asserted the following defenses: (1) assumption of the risk; (2) unavoidable accident; and (3) intervening or superseding negligence.[10] The parties then participated in discovery. On May 30, 2017, the Court issued a Consent Scheduling Order, in which it stated that mediation shall be completed no later than August 3, 2017 and that the case is subject to be called for trial on or after September 18, 2017.[11]

On May 22, 2017, Respondent Advantage filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment on the grounds that (1) Advantage generally did not owe a duty of care to the Appellant; (2) Advantage did not owe a duty of care to the Appellant because the scope of their agreement was defined solely by contractual relationships arising from their agreement with Respondent Halcyon, and (3) there was no evidence that an alleged breach of duty was the proximate cause of the accident.[12] On June 1, 2017, Respondent Longreek POA filed a Motion for Summary Judgment.[13] On June 8, 2017,

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[7] *See* Withdrawal of Affidavit of Default
[8] *See* Respondent Fairways' Answer to Amended Complaint.
[9] *See* Respondent LongCreek POA's Answer to Amended Complaint; Respondent Advantage's Answer to Amended Complaint; Respondent Halcyon's Answer to Amended Complaint; Respondent Fairways' Answer to Amended Complaint
[10] *See* Respondent Fairways' Answer to Amended Complaint.
[11] *See* Consent Scheduling Order.
[12] *See* Respondent Advantage's Motion for Summary Judgment and Memorandum in Support for Motion for Summary Judgment.
[13] *See* Respondent LongCreek POA's Motion for Summary Judgment.

Respondent Fairways filed a Motion for Summary Judgment.[14] On July 27, 2017, Respondents Halcyon and LongCreek POA filed a joint Amended Motion for Summary Judgment.[15] On the same day, Respondents Halcyon and LongCreek POA filed a joint Amended Memorandum in Support of Motion for Summary Judgment and a Supplemental Memorandum in Support of Amended Motion for Summary Judgment, in which they asserted summary judgment should be granted on the basis that (1) they do not own or maintain control over the property where the stop sign is located; (2) that they do not owe a duty of care to the Appellant to maintain the area around the stop sign; and (3) that there was no evidence that an alleged breach of duty was the proximate cause of the accident.[16] On August 1, 2017, Respondent Fairways filed its Memorandum of Law in Support of Motion for Summary Judgment, in which it asserted that summary judgment should be granted on the basis that (1) it did not owe a duty of care to the Appellant and (2) that there was no evidence that the alleged breach of duty was the proximate cause of the accident.[17] The Appellant filed her collective Memorandum in Opposition to Defendants' Motions for Summary Judgment on August 31, 2017.[18]

The Appellant and the Respondents appeared before the Honorable G. Thomas Cooper, Jr. in Richland County on September 5, 2017 on each of the Respondents' substantially similar

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[14] *See* Respondent Halcyon's Motion for Summary Judgment.
[15] *See* Respondent Halcyon and LongCreek POAs' Amended Motion for Summary Judgment.
[16] *See* Respondent Halcyon and LongCreek POA Amended Memorandum in Support of Motion for Summary Judgment and Respondent Halcyon and LongCreek POA Supplemental Memorandum in Support of Amended Motion for Summary Judgment.
[17] *See* Respondent Fairways Memorandum of Law in Support of Motion for Summary Judgment.
[18] *See* Appellant's Memorandum in Opposition to Defendant Longcreek Plantation Property Owners Association, Inc.'s, Halcyon Real Estate Services, LLC's, Fairways Development, LLC's, and Advantage Services, Inc.'s Motions for Summary Judgment.

Motions for Summary Judgment. The Trial Court heard arguments and requested that each party draft a proposed order within 10 days.[19] Each party submitted their proposed orders.

On September 22, 2017, the Trial Court issued the three proposed orders submitted by the Respondents as orders of the court.[20] In all three orders, the Trial Court held that the Respondents did not owe a duty to the Appellant based on the case law set forth in *Underwood v. Coponen*, and that the Appellant failed to provide any evidence to show that the Respondents were the actual and proximate cause of the accident.[21] In respect to Respondent Fairways, the Trial Court also held that Respondent Fairways did not owe a contractual duty to the Appellant because it is not a party to the contract between Respondent Advantage and Respondent Halcyon, therefore Respondent Fairways has no contractual duties, "particularly one owed to another non-party."[22] In respect to Respondent Advantage, the Trial Court also held that Respondent Advantage owed no duty of care to the Appellant because the scope of its duty was defined solely by its contractual relationship arising from its agreement with Respondent Halcyon.[23]

On October 19, 2017, Appellant filed her notice of appeal of the trial's court's September 22, 2017 Orders. This appeal followed.

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[19] *See* Trial Transcript p. 46.
[20] *See* Order Granting Advantage Services, Inc.'s Motion for Summary Judgment; Order Granting Defendants LongCreek Plantation Owners Association, Inc.'s and Halcyon Real Estate Services, LLC's Motion for Summary Judgment; Order Granting Defendant Fairways Development, LLC's Motion for Summary Judgment.
[21] *See* Order Granting Advantage Services, Inc.'s Motion for Summary Judgment; Order Granting Defendants LongCreek Plantation Owners Association, Inc.'s and Halcyon Real Estate Services, LLC's Motion for Summary Judgment; Order Granting Defendant Fairways Development, LLC's Motion for Summary Judgment
[22] *See* Order Granting Defendant Fairways Development, LLC's Motion for Summary Judgment
[23] *See* Order Granting Advantage Services, Inc.'s Motion for Summary Judgment

FACTS

On November 1, 2013, Appellant, a school bus driver for Richland School District Two, was driving her school bus northbound on Longtown Road in the direction of Blythewood Middle School to pick up children and drop them off at their respective bus stops.[24] As she approached the intersection of Longtown Road and Hunting Path Road[25] at the entrance of Fox Meadow, a subdivision of the LongCreek Plantation neighborhood, a vehicle driven by a young woman named Amber Edwards drove through the Fox Meadow entrance, without stopping at the stop sign at the intersection, and collided with Appellant's bus.[26] Due to the collision, Appellant lost control of the bus causing her to drive off the road and into a tree.[27] As a result of the collision, Appellant suffered painful and permanent injuries.[28]

Respondent LongCreek POA is the homeowners association for the LongCreek Plantation neighborhood, which includes the Fox Meadow subdivision. LongCreek Development and Respondent Fairways were responsible for the development of LongCreek Plantation and Fox Meadow. Respondent Fairways is the titled owner of the real property where the Fox Meadow entrance in question is located.[29] Respondent Halcyon is a property management company that was hired by Respondent LongCreek POA to manage LongCreek Plantation, including the Fox Meadow subdivision.[30] Respondent Halcyon has managed LongCreek POA

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[24] *See* Deposition of Tina Bessinger, March 9, 2017, 16:6-15.
[25] This intersection is a two way stop with motorists traveling on Hunting Path Road having a stop sign. Motorists traveling on Longtown Road do not have a stop sign.
[26] *See* Accident Report and Video of collision (depicting Appellant's statements of what occurred).
[27] *See id.*
[28] *See* Dep. of Bessinger, 37:1-24 & 41:1-25.
[29] *See* Deposition of David Peterson (Respondent Halcyon's President), March 21, 2017, 20:9-14.
[30] *See id.* at 6:15-25.

since 2002.[31] As part of its contract, Respondent Halcyon would regularly inspect and maintain the entrances to all LongCreek Plantation subdivisions, including Fox Meadow.[32] Respondent LongCreek POA, through Respondent Halcyon, had a contract with Respondent Advantage, whereby Respondent Advantage would provide landscaping and beautification services to the different common areas within the LongCreek Plantation neighborhood, including the Fox Meadow entrance.[33]

Appellant maintained that Ms. Edwards ran the stop sign, drove through the intersection of Hunting Path Road and Longtown Road, and collided into Appellant's school bus as a result of Ms. Edwards being unable to see the stop sign at the intersection because it was obscured by overgrown tree branches, as well as her being unable to see Appellant approach the intersection because of overgrown trees and underbrush obscuring visibility down Longtown Road.[34] The intersection is at a curve in Longtown Road, making it difficult and/or impossible for motorists to see approaching vehicles.[35] Trees and underbrush are planted and maintained by the Respondents in close proximity to the stop sign in question and directly in the sight lines looking down Longtown Road. Over time, these trees were allowed to grow to the point that they obscured the stop sign and worsened the already existing visibility problems down Longtown Road.[36] Branches from the trees frequently obscured the stop sign.[37] The entrance, which was to

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[31] *See id.*, at 9:3-5.
[32] *See id.* at 14:7-25; *see also* Halcyon Real Estate Services, LLC Management Agreement (hereinafter "Halcyon Agreement").
[33] *See* Dep. of Peterson at 12:18-25 & 13:1-17; *see also* Advantage Services, Inc. Landscaping & Irrigation Maintenance Agreement (hereinafter "Advantage Agreement").
[34] *See* Amended Complaint.
[35] *See* Deposition of Melissa Crook, March 21, 2017, 24:5-11 & 30:12-23; *see also* Photographs from Google Earth, Sept. 2011.
[36] *See* Dep. of Bessinger, 23:19-25, 24:1-25; *see also* Dep. of Crook, 24:1-11, 26:12-19; *see also* Deposition of Jeannie Sharpe, March 9, 2017, 12:11-18 & 15:6-14 ("It's hard—when you're at the intersection, we would have to pull our bus way almost into the road, and you'd have to lean

be maintained by the Respondents, had become such a hazard that parents living in the neighborhood warned their children to use a different entrance to Fox Meadow because of the poor visibility.[38]

Respondent Halcyon was admittedly obligated to make regular inspections of the Fox Meadow entrance to ensure there were no landscape issues or hazardous conditions, and in the past, had trimmed trees throughout LongCreek Plantation that impeded traffic.[39] Prior to the collision, landscapers were observed cutting tree branches and performing other maintenance tasks at the Fox Meadow entrance.[40] After the collision, Respondent Halcyon had the obstructive trees removed.[41] It is undisputed that Halcyon actually exercised control of the landscaping in the area in question.

As to the collision itself, Appellant submitted a video recording from the inside of the school bus which depicted the suddenness and severity of the collision and Appellant's radio call to dispatch stating "This is bus 65, someone just ran out in front of me - we are right here at Longtown East."[42] The events of the collision were also confirmed in the investigating officer's report of the collision.[43]

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way in to look down the road because [the trees] were covering so far. And so it's hard to see down the road in both directions. And I almost got hit on time on my because because I pulled out and there as a car coming. It was just so hard to see. So I'm very thankful they cut those branches down.").

[37] *See* Dep. of Sharpe, 12:9-19; *see also* Dep. of Bessinger, 25:10-17.

[38] *See* Dep. of Crook, 56:9-20 ("And when my children started driving I actually recommended... I told him that he had to go out the other entrance... And I was worried about him specifically trying to – you know, learning how to drive a stick shift. And if he got caught at that intersection he could very easily get T-boned. So there have been times that I have not taken that route.").

[39] *See* Dep. of Peterson, 15:17-23.

[40] *See* Dep. of Bessinger, 25:10-20.

[41] *See* Photographs from Google Earth, October 2014.

[42] *See* Video of the collision, November 1, 2013.

[43] *See* Accident Report.

Prior to November 1, 2013, Ms. Edwards had never been to Fox Meadow and was unfamiliar with the area.[44] She had never once driven through the intersection in question, and she was unaware of the visibility issues at the intersection and of the stop sign's existence.[45] As a result of the collision, Ms. Edwards sustained severe injuries, was in a coma for several days, and experienced slight memory loss.[46] When questioned in her deposition about why she did not stop at the stop sign, Ms. Edwards was unable to give a reason due to her memory loss, but testified that had she seen the stop sign, she would have stopped.[47] Ms. Edwards testified that she always stops at stop signs and that she valued her life and her car far too much not to stop.[48]

Further, the record is replete with testimony that the stop sign was obstructed on the day in question. On the morning of November 1, 2013, before the collision occurred, Jeanie Sharpe, a fellow bus driver, had driven through Fox Meadow and the stop sign in question on her regular school bus route. Ms. Sharpe testified that on the morning of the collision, tree branches were obstructing the view of the stop sign.[49] Ms. Sharpe also testified that there was no warning sign notifying drivers that there was an upcoming stop sign.[50] Melissa Crook, a resident of Fox Meadow, testified that she frequently noticed the stop sign was covered as a result of the overhanging branches from the River Birch and Bradford Pear trees.[51] Photographs of the intersection condition taken in the years leading up to the collision show an obstructed sign and

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[44] *See* Deposition of Amber Edwards, March 9, 2017, 6:14-21.
[45] *See id.*
[46] *See id,* at 10:19-25, 11:1-3.
[47] *See id.* at 10:4-10.
[48] *See id.* at 10:11-16.
[49] *See* Dep. of Sharpe, 17:23-25.
[50] *See id.* at 15:25 – 16:1-4.
[51] *See* Dep. of Crook, 26:12-25.

sight lines, which a witness has confirmed both were similarly obstructed on the day in question.[52]

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, this Court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). A Trial Court may properly grant a motion for summary judgement when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, demonstrate 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." Rule 56(c), SCRCP; *see also BPS, Inc. v. Worthy*, 362 S.C. 319, 325, 608 S.E.2d 155, 159 (Ct. App. 2005). Summary judgment is not proper "where further inquiry into the facts of the case is desirable to clarify the application of the law." *BPS, Inc.*, 362 S.C. at 325, 608 S.E.2d at 159. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from the facts." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000). In determining whether any triable issues of fact exist, the Court "must view all evidence and inferences in a light most favorable to the nonmoving party." *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." *BPS, Inc.*, 362 S.C. at 325, 608 S.E.2d at 159. Because summary judgment is drastic, it should only be invoked cautiously "to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Id.* at 326, 608 S.E.2d at 159.

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[52] *See* Photographs from Google Earth, Sept. 2011, *See also* Dep. of Sharpe, 24:15 – 31:10.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT ON THE BASIS THAT THEY DID NOT OWE THE APPELLANT A DUTY OF CARE IN MAINTAINING THE PRIVATELY OWNED AND CONTROLLED AREA NEAR THE STOP SIGN AT THE INTERSECTION OF LONGTOWN ROAD AND HUNTING PATH ROAD.

"A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty." *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002) (citing *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000)). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Bishop v. South Carolina Dep't. of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). "An affirmative duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Carson v. Adgar*, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (S.C. 1997). As stated by the South Carolina Court of Appeals:

> There is no formula for determining duty; a duty is not sacrosanct in itself but only an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection. Suffice it to say that a multiplicity of factors comes into play when courts contemplate the question of duty. These factors include the policy of deterring future tortfeasors, the moral culpability of the tortfeasor and numerous other conceivable factors; duty is seen in general terms as requiring a person or corporation to conform his or its conduct to a standard which is adequate to protect others from unreasonable risk of harm.

Araujo v. Southern Bell Tel. & Tel. Co., 291 S.C. 54, 57-58, 351 S.E.2d 908, 910, (Ct. App. 1986). Duties may arise in tort from applicable statutory or regulatory provisions, deviations from industry standards, or from common law duties to exercise care. See *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004); *Tommy L. Griffin Plumbing v. Jordan, Jordan, & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995); *Kennedy v. Columbia Lumbar Co.*, 299

S.C. 335, 384 S.E.2d 730 (1989). In determining the existence of a duty, "the key inquiry is foreseeability." *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980). This duty extends to foreseeable victims of the risks involved. *Id.; see also* HUBBARD AND FELIX, THE SOUTH CAROLINA LAW OF TORTS, 44 (3rd Ed. 2004).

In the Respondents' respective Motions for Summary Judgment, they maintained that the law imposes no duty of care to the Appellant.[53] Respondents each took the position that landowners do not owe a duty of care to motorists to maintain the visibility of traffic control devices. Further, they argued that the stop sign is located within the right-of-way controlled by Richland County, thus further absolving them of any duty of care to Appellant.[54] As explained herein, Respondents' positions are fundamentally flawed and, therefore, the Court erred in granting their Motions.

A. Urban landowners and commercial property managers/landscapers have a duty to prevent landscaping from becoming dangerous, particularly when they are contractually obligated and paid to safely maintain the property.

In South Carolina, *urban* landowners have a duty of reasonable care to inspect trees on their property and make certain they are safe for travelers of streets adjoining their land. *Staples v. Duell*, 329 S.C. 503, 509, 494 S.E.2d 639, 642 (Ct. App. 1997) (emphasis added). In *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 288, 356 S.E.2d 123, 127 (Ct. App. 1987), the Court imposed a duty of care for landowners as it relates to their trees: "[A] landowner in a residential or urban area has a duty to others outside of his land to exercise reasonable care to prevent an

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[53] *See* Respondent Halcyon and LongCreek POA Amended Memorandum in Support of Motion for Summary Judgment and Respondent Halcyon and LongCreek POA Supplemental Memorandum in Support of Amended Motion for Summary Judgment; Respondent Fairways Memorandum of Law in Support of Motion for Summary Judgment; Respondent Advantage Memorandum in Support for Motion for Summary Judgment.

[54] *See* Respondent Fairways' Memorandum of Law in Support of Motion for Summary Judgment.

unreasonable risk of harm arising from defective or unsound trees on his premises, including trees of purely natural origin."

i. *Underwood v. Coponen* does not apply to the case at hand.

The Trial Court erred in applying the holding of *Underwood v. Coponen* to the facts at hand because the sum total of the policy considerations are fundamentally different. In their memorandums and at oral argument before the Trial Court, the Respondents argued that the holding of *Underwood v. Coponen,* 367 S.C. 214, 625 S.E.2d. 236 (Ct. App. 2006) created a blanket rule of law that property owners do not have a duty to prevent trees from obscuring stop signs or otherwise creating a dangerous condition to individuals on adjacent highways.[55] However, the facts of *Underwood* are plainly distinguishable from the facts of this case. *Underwood* involved rural property[56] and an individual property owner who had not contracted with any business to maintain the property. In *Underwood,* the plaintiff was driving on a back road in Greenville County when the defendant ran a stop sign and struck plaintiff's car. *Id.* at 216, 625 S.E.2d at 237. At trial, the defendant testified that he could not see the stop sign because limbs from a tree on an adjacent property were obscuring the stop sign and that the owner of the adjacent property, a private individual owner of the rural land, owed motorists a duty and breached that duty by failing to trim the tree located on his property. *Id.* This was a

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[55] *See* Respondent Halcyon and LongCreek POA Amended Memorandum in Support of Motion for Summary Judgment and Respondent Halcyon and LongCreek POA Supplemental Memorandum in Support of Amended Motion for Summary Judgment; Respondent Fairways Memorandum of Law in Support of Motion for Summary Judgment; Respondent Advantage Memorandum in Support for Motion for Summary Judgment.

[56] At the hearing, Respondents disputed that the intersection in *Underwood* was rural and presented a GIS image of this intersection as evidence. The trial court erred in giving any weight to this image, as it appears to be dated fifteen (15) years after the collision in *Underwood* occurred. On its face, the photo appears to be a 2017 GIS image and the accident in *Underwood* occurred on May 4, 2002. *See* 2017 Google Maps Image of Ansel School Road. In addition, there is no question that the intersection in *Underwood* is **not** part of a planned unit development.

novel issue, but the Court of Appeals ultimately determined under these facts, the property owner did not owe the defendant a duty. *Id.* at 219, 625 S.E.2d at 239. The court feared that if a duty was imposed on individual rural landowners, it would be a deterrent to landowners from planting trees or other plants and flowers. *Id.* at 219 n. 3, 625 S.E.2d at 239 n. 3. There was also a concern that it would jeopardize the livelihood of private landowners by exposing them to the high costs of litigation and court fees. *Id.* Under those facts, the sum total of policy considerations did not warrant the imposition of a legal duty.

The facts and policy considerations in the present case are fundamentally different. Initially, the entrance in question is not owned by a private individual nor is it situated in a rural area. LongCreek Plantation is a planned unit development in a suburban area, marketed towards families, particularly families with children.[57] LongCreek Plantation, including Fox Meadow, is controlled by a property owner's association, Respondent LongCreek POA, which is responsible for maintaining the entrance, a common area.[58] Respondent LongCreek POA has contracted with a professional management company, Respondent Halcyon, whereby Halcyon agreed to maintain the entrances on LongCreek POA's behalf.[59] Respondent Halcyon facilitated a contract with Respondent Advantage, professional landscapers, to regularly inspect and maintain the entrance.[60] David Peterson, president of Halcyon, testified that his job was to inspect the many neighborhoods in LongCreek Plantation, such as Fox Meadow, and to ensure there were no

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[57] The LongCreek Plantation website markets its homes for families and emphasizes that is located in an "award-winning school district." "Whether you're looking for the perfect place to raise a family, ready for a new phase of life, or finally building the house of your dreams, LongCreek Plantation is the perfect place to call home." LONGCREEK PLANTATION, http://LongCreekplantation.com/ (last visited Aug. 25, 2017).

[58] *See* Declaration of Covenants and Restrictions of LongCreek Plantation Property Owners' Association, Inc. and Fairways Development General Partnership, 60-62.

[59] *See* Halcyon Agreement.

[60] *See* Advantage Agreement.

complaints or safety hazards resulting from the landscaping.[61] The facts surrounding the location, layout, and duties of general maintenance of LongCreek Plantation, specifically the entrance of Fox Meadow, are entirely different from the area in question in *Underwood,* and thus the fact specific holding of *Underwood* does not apply.

The Trial Court also erred in concluding that the public policy considerations set forth in *Underwood* apply to all scenarios, regardless of whether it is an urban or rural area, or whether the landowner is a commercial owner or private individual.[62] Contrary to the Respondents' argument, the *Underwood* opinion did not discuss the differences in rural versus urban areas and private versus commercial landowners because the area in which the accident occurred was clearly a rural area, involving private individuals. South Carolina law clearly draws a distinction. *See Staples* and *Israel, supra.* The fact that this was not discussed by the Trial Court is not dispositive to the issue, but demonstrates that the policy considerations discussed in the *Underwood* opinion were only in consideration of rural areas involving private landowners. Here, Respondents not only planted and maintained the trees in question, but some of them even designed and built the intersection in question.[63] Simply put, this is not a case of a rogue tree on a large tract of rural property owned by an individual. To the contrary, this incident occurred in an urban setting where the commercial Respondents owned/controlled, and contractually obligated themselves to safely maintain a planned unit development and have failed to do so.[64] Several Respondents contractually obligated themselves to maintain this entrance and profited as a result of these contracts. Thus, the public policy concerns discussing in the *Underwood* holding

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[61] *See* Dep. of Peterson, 15:19-25.
[62] *See* Order Granting Defendant Fairways Development, LLC's Motion for Summary Judgment.
[63] Hunting Path road was originally a private road constructed as part of the LongCreek Plantation neighborhood.
[64] *See also* the argument in Subsection B regarding a duty of due care arising from contract.

are not applicable to commercial Respondents, who created the hazard by planting and failing to maintain the trees causing the obstruction when they had a contractual and legal obligation to do so.

Many of our sister jurisdictions impose such a duty of care especially in urban/suburban areas. In Florida, a private person may incur liability for damages caused by an obstruction upon a public way. *Morales v. Costa,* 427 So.2d 297, 298 (Fla. Dist. Ct. App. 1983). In California, "[A] landowner may face liability for injury to another, incurred outside of the former's property (on an adjacent street), if the injury is found to be caused by a traffic obstruction in the form of shrubbery growing from the property." *Swanberg v. O'Mectin,* 157 Ca.App.3d 325, 330, 203 Cal.Rptr. 701, 704 (Ca. Dist. Ct. App. 1984); *see also Sprecher v. Adamson Companies*, 30 Cal.3d 358, 369-70, 636 P.2d 1121, 1127 (Cal. 1981) ("Thus, these cases confirm that mere possession with its attendant right to control conditions on the premises is a sufficient basis for the imposition of an affirmative duty to act. In sum, the historical justification for the rule of nonliability for natural conditions has lost whatever validity it may once have had."); *Harvey v. Hansen,* 299 Pa.Super. 474, 487, 445 A.2d 1228, 1234-35 (Pa. Super. Ct. 1982) (internal citations omitted) ("It is the duty of the owner of real property to remove from the property any tree, shrub, or other similar obstructions, or part thereof, which by obstructing the view of any driver constitutes a traffic hazard. Thus, property owners are now on notice that they should remove or cut back foliage which obstructs the vision of passing motorists at an intersection."). *See also Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.,* 246 Wis.2d 933 (Wis. 2002) ("[a] tree may become a nuisance which will render the owner of the adjoining lot liable for injuries which may be caused to those who lawfully use the streets."). Likewise, South Carolina courts

have drawn the distinction between urban and rural areas. *See Staples* and *Israel v. Carolina Bar-B-Que, Inc.*

ii. Injury at the intersection of Longtown Road and Hunting Path Road was foreseeable.

South Carolina courts have universally held that the "key inquiry" in determining whether to impose liability is foreseeability. *Terlinde v. J.F. Neely, Sr.* 275 S.C. 295, 271 S.E.2d 768 (1980); *see also Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004) ("the common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiffs"). The risk of injury to motorists at this intersection was plainly foreseeable and reported as dangerous by several persons. South Carolina courts have repeatedly held that defendants conducting activities adjacent to the roadway owe a duty to exercise due care for those passing motorists. *Dorrell* at 318, 605 S.E.2d at 14-15 (holding that the paving company performing work on the property ***adjoining*** the roadway owed a duty of care to passing motorists); *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 448-49, 772 S.E.2d 544, 552 (Ct. App. 2015)(same). Similarly, several Respondents were under contract to provide services in this area adjacent to the roadway.

There is evidence for a jury to find that Respondents were on actual or constructive notice of the danger posed to motorists by the overgrown tree branches and underbrush at the entrance. On behalf of Respondent Halcyon, Mr. Peterson testified that he inspected LongCreek Plantation on a weekly basis for landscaping issues and safety hazards and on occasion, had employees trim tree branches that had become overgrown and impeded traffic.[65] In light of the testimony of the obstruction on the day in question and prior, there exists evidence for a jury to conclude that Respondents had, or should have had, notice of the threat posed by the trees to the

[65] *See* Dep. of Peterson, 15:17-23.

visibility to motorists. In addition, the Appellant testified that she saw landscapers trimming branches at the entrance to Fox Meadow on several occasions. Due to the safety concerns posed by the low hanging branches, she asked these individuals if they could also trim back the branches by the stop sign.[66] A jury could reasonably infer this warning was given to employees of Respondent Advantage who were under contract to provide landscaping services at that exact location every week.

iii. Respondents maintained control over the area surrounding the stop sign near the roadway.

The Trial Court erred in holding that the Respondents do not maintain control of the adjoining area near the stop sign. The Respondents argued that the real property where the stop sign is located is owned by Richland County by way of a deed conveying Hunting Path Road (50 feet in width) to Richland County in 1999.[67] The Respondents also argued, and the Trial Court agreed, that the Respondents lacked the ability to control the conditions surrounding the stop sign and that if there is any duty of due care owed to the Appellant, it was owed by Richland County and/or the South Carolina Department of Transportation.[68] However, the trees and shrubbery that obscured the stop sign and visibility at the intersection were not located within the right-of-way, but rather within the neighborhood entrance owned, controlled and/or maintained by the Respondents.[69] Prior to the collision, Respondents had planted the trees in question and/or maintained the entrance, including the area around the stop sign, which included several

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[66] *See* Dep. of Bessinger, 25:13-24.

[67] *See* Deeds to Streets and Roadways Easements – LongCreek Plantation Phase IV, Blocks 4-A, 4-C, & 4-D.

[68] *See* Order Granting Defendants LongCreek Plantation Property Owners Association, Inc.'s and Halcyon Real Estate Services, LLC's Motion for Summary Judgment.

[69] *See* Respondents Longcreek POA and Halcyon's Amended Memorandum in Support of Summary Judgment; *see also* Deed to Fairways Partnership, Agreement of Conversion, and LongCreek Plantation Plats (see specifically areas referenced on plats as "Buffer – Fairways Development" which contain the entrance in question).

ornamental flower beds and trees in the vicinity of the stop sign.[70] Following the collision, Respondents removed the trees in question.[71] There is no question that the Respondents either owned or asserted control of the real property where these trees were located. South Carolina law is well settled that duties regarding the maintenance of real property follow those who control the property. *See Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997).

B. Respondents Halcyon and Advantage contractually undertook a duty to trim the trees in question and that duty extends to foreseeable third parties, like the Appellant.

The Court erred by establishing that "there is no independent duty that Advantages services owed to the Appellant in this situation."[72] In its Memorandum and in court, Respondent Advantage maintained its only legal obligations arise solely from its contractual relationship with Halcyon/LongCreek POA and that this contractual relationship creates no legal duty that extends to the Appellant.[73]

It is well settled that "[a] tortfeasor may be liable for injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party." *Dorrell* at 318, 605 S.E.2d at 14-15 (2004); *see also Barker v. Sauls,* 289 S.C. 121, 345 S.E.2d 244 (1986), *Edwards of Byrnes Downes v. Charleston Sheet Metal Co., Inc.,* 253 S.C. 537, 172 S.E.2d 120 (1970); *Terlinde v. Neel*, 275 S.C. 395, 271 S.E.2d 768 (1980) (stating that the "key inquiry" in determining whether to impose liability is "foreseeability, not privity"). In all of these cases, the contract created a duty to perform, and the failure to perform injured a foreseeable party. More importantly, while the contract created the

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[70] *See* Trial Transcript, p. 26.
[71] *See* Photographs from Google Earth, October 2014; *see also* Dep. of Peterson, 31: 24-25, 32: 1-23.
[72] *See* Order Granting Advantage Services, Inc.'s Motion for Summary Judgment.
[73] *See* Respondent Advantage's Memorandum in Support of Motion for Summary Judgment.

duty, the "liability of defendant to plaintiff exists independently of the contract and rests upon the common law duty to exercise due care avoid injury or damage to others." *Edwards of Byrnes Down* at 542, 172 S.E.2d at 122.

In his deposition, David Peterson, Halcyon's representative, testified that Respondent Advantage had no specific requirement to trim the trees and underbrush surrounding the stop sign in question and that Advantage had no obligation to trim the trees unless instructed to do so by Respondent Halcyon.[74] This testimony directly contradicts the express terms of the contract. The written contract between Respondent Halcyon and Respondent Advantage expressly states that Advantage had a specific duty to maintain the trees located "upon the premises of the LongCreek Plantation's entranceways and common areas,"[75] which would include the entranceway to Fox Meadow. In terms of pruning, the contract states:

> Plants should be shaped to enhance their appearance and preserve their natural appearance. Major pruning needs to be accomplished during the dormant (winter) season. Light pruning is required during the growing season to maintain proper growth...*Prune trees* in a manner appropriate to their nature and individual growth characteristics. [76]

Additionally, per the Agreement, Respondent Advantage was required to conduct weekly walk-throughs with a representative of Respondent Halcyon and to discuss with Respondent Halcyon any problems that were noticed during the inspection or any complaints that were received.[77] Further, Appellant testified that she saw landscapers trimming tree branches in the area near Fox Meadow's entrance on prior occasions.[78]

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[74] *See* Dep of Peterson, 15:1-7.
[75] *See* Advantage Services, Inc. Landscaping & Irrigation Maintenance Agreement.
[76] *See id.*
[77] *See id.*
[78] *See* Dep. of Bessinger, 25:13-24; *see also* Dep. of Sharpe, 13:15-22.

In the Order Granting Summary Judgment to Respondent Advantage, the Trial Court applied *Dorrell v. South Carolina Department of Transportation* to set forth why Respondent Advantage does not owe a duty of care to the Appellant.[79] The Court relied on the fact that *Dorrell* involved a contract, which specifically stated that the obligations of the contractor were for safety concerns, therefore making it foreseeable that violation of the contract would result in harm to third parties. Respondent Advantage argued, and the Trial Court agreed, that the contract between Respondent Advantage and Respondent Halcyon was for landscaping and beautification services, not safety, therefore absolving Respondent Advantage of any liability to third parties. The Trial Court erred in its interpretation and application of *Dorrell.*

The court in *Dorrell* held that APAC-Carolina, a contractor for the South Carolina Department of Transportation (SCDOT), owed a duty of care to the plaintiff because of the contract between the SCDOT and the common law duty of care. *Dorrell,* 361 S.C. 318, 605 S.E.2d at 15. By mentioning specific safety concerns in the contract between APAC and the SCDOT, the Court found that injury to a third party was foreseeable, thereby creating a duty of care; however, a specific reference to safety concerns, as the Respondents argued, is not the only way in which a foreseeable plaintiff can be established. The key inquiry to the application of this common law is whether injury to a third party is foreseeable. *See Terlinde,* 275 S.C. at 399, 271 S.E.2d at 770. The finding of a duty of care in *Dorrell* does not establish the only way in which a duty to a third party is created, but sets forth an example of when the Court can find that injury to a third party is foreseeable. The fact that the contract between Respondent Advantage and Respondent Halcyon does not mention safety is not dispositive to the issue of a legal duty. The Respondents were on notice, direct and constructive, that the low hanging branches around

[79]*See* Order Granting Advantage Services, Inc.'s Motion for Summary Judgment.

streets and signs created a risk of harm for drivers, which was evidenced through Mr. Petersen's testimony.[80] Further, Respondents Halycon and Advantage would have had constructive notice of the risk posed by the low hanging branches and overgrown shrubbery as a result of their weekly inspections of LongCreek Plantation, including the entrance to Fox Meadow. It was foreseeable that low hanging branches and overgrown shrubbery created a risk of harm to third parties, including the Appellant and the Trial Court erred by holding otherwise. It was readily observed by other witness that this presented a danger.[81]The contract between Respondents Advantage and Halcyon created a duty for Advantage to maintain the trees in the entrance and the failure to perform that duty resulted in injury to a foreseeable party, the Appellant.[82]

Finally, an entity may attempt to delegate certain duties (contractual or otherwise) to a third party or independent contractor. Such is the case for a property management company like Halcyon and LongCreek POA who attempted to contract out to Advantage their contractual duties owed to the property owners in LongCreek Plantation and the general public. With a duty of due care being owed to the Appellant by the Respondents Fairways, LongCreek POA, and Halcyon as set forth above, there is no question that these Respondents attempted to contractually delegate this duty to Respondent Advantage and therefore Respondent Advantage

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[80] *See* Dep. of Peterson, 15:17-25 & 16:1-3.

[81] *See* Dep. of Crook, 56:9-20 ("And when my children started driving I actually recommended... I told him that he had to go out the other entrance... And I was worried about him specifically trying to – you know, learning how to drive a stick shift. And if he got caught at that intersection he could very easily get T-boned. So there have been times that I have not taken that route.").

[82] Likewise, LongCreek POA (Declaration of Covenants and Restrictions) and Halcyon (Halcyon Agreement) contractually obligated themselves to maintain the entrance thereby creating a duty to motorists like the Plaintiff.

maintains the same duty of due care.[83] The Appellant, or any other motorist, is a foreseeable party and entitled to the protection of our laws. See *Staples* and *Israel.*

II. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS MOTIONS FOR SUMMARY JUDGMENT BASED ON CAUSATION WHERE APPELLANT SUBMITTED AMPLE EVIDENCE FOR A JURY TO CONCLUDE THAT RESPONDENTS' FAILURES WERE THE PROXIMATE CAUSE OF THE COLLISION

The Court erred by holding that the Appellant failed to set forth facts specific to establish an issue of fact that the alleged breach by the Respondents proximately caused the Appellant's injuries.[84]

"In a negligence action, the plaintiff must prove proximate cause. Negligence is not actionable unless it is the proximate cause of the injury. Proof of proximate cause requires proof of both cause in fact and legal cause." *Vinson v. Hartley,* 324 S.C. 389, 400, 477 S.E.2d 715, 720 (Ct. App. 1996) (internal citations omitted). "The touchstone of proximate cause in South Carolina is foreseeability. Foreseeability is determined by looking to the natural and probable consequences of the act complained of. A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence." *Id.*at 400, 477 S.E.2d at 721. **"Proximate cause is normally a question of fact for determination by the jury, and may be proved by direct or circumstantial evidence."** *The*

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[83] Appellant does not concede that by attempting to contractually delegate this duty, LongCreek POA and Halcyon are relieved from their absolute duty of due care owed to the Appellant. Appellant contends that this is an absolute duty and anyone who delegates to an independent contractor an absolute duty owned to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee. *See Durkin v. Hansen,* 313 S.C. 343, 437 S.E.2d 550 (Ct. App. 1993). Further, Respondents Halcyon and LongCreek POA were independently negligent outside of Advantage Services, as they regularly inspected the entrance and were aware of the dangerous condition, yet did nothing.

[84] *See* Order Granting Defendant Fairways Development, LLC's Motion for Summary Judgment; Order Granting Defendants Longcreek Plantation Property Owners Association, Inc.'s and Halycon' Real Estate Services, LLC's Motion for Summary Judgment; Order Granting Defendant Advantage Services, Inc.'s Motion for Summary Judgment.

Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 162, 791 S.E.2d 152, 163 (Ct. App. 2016) (emphasis added) (citing *Player v. Thompson,* 259 S.C. 600, 606, 193 S.E.2d 531, 533 (1972)). "[T]he trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." *Hurd v. Williamsburg County,* 353 S.C. 596, 613, 597 S.E.2d 136, 145 (Ct. App. 2003) "Only in **rare or exceptional cases** may the question of proximate cause be decided as a matter of law. *Id.* at 613-14, 597 S.E.2d at 145. "Where circumstantial evidence is relied upon to establish liability, the plaintiff must show circumstances as would justify the inference that his injuries were due to the negligent act of the defendant, and not leave the question to mere conjuncture or speculation." *Id.* (citing *McQuillen v. Dobbs,* 262 S.C. 386, 392, 204 S.E.2d 732, 735 (1974)).

The Trial Court erred by concluding that the Appellant cannot prove that the collision was proximately caused by the Respondents' failures. Appellant submitted a video recording from the inside of the school bus which depicted the suddenness and severity of the collision and Appellant's radio call to dispatch stating "This is bus 65, someone just ran out in front of me - we are right here at Longtown East."[85] The events of the collision were also confirmed in the investigating officer's report of the collision.[86]

The Respondents argued that because Ms. Edwards cannot affirmatively say that she did not see the stop sign, the Appellant cannot prove that collision was proximately caused by the Respondents' actions/inactions. The Respondents' argument creates an absurd burden of proof. By the same logic, if Ms. Edwards had died in the collision, Appellant would not have the ability to prove her case because Ms. Edwards would not be able to testify as to whether or not she saw

[85] *See* Video of the collision, November 1, 2013.
[86] *See* Accident Report.

the stop sign. It is also nonsensical as it essentially requires that Ms. Edwards testify that she saw a sign, but that she did not stop because she could not see it. Nevertheless, the Respondents stressed the fact that Ms. Edwards did not recall whether or not she saw the stop sign and even stated that "Ms. Edwards doesn't know if she disregarded the stop sign."[87]

The Trial Court, however, failed to recognize that Ms. Edwards was adamant in her deposition that had she seen the stop sign, she would have stopped. Ms. Edwards testified she valued her life and her car far too much to jeopardize by failing to stop at a stop sign.[88] When asked if it was possible that she saw that sign and just drove through it, Ms. Edwards testified, "I mean, I wouldn't have. **Anybody who knows me knows that I wouldn't have**, so..."[89] Additionally, Appellant submitted testimony of the dangerous condition at the intersection that morning, and while Ms. Edwards may not recall the condition of the stop sign on November 1, 2013, Jeannie Sharpe, a school bus driver, had already driven through the intersection of Longtown Road and Hunting Path Road in her school bus twice on the morning of the collision, and testified that the stop sign was in fact obstructed by the tree branches and visibility up Longtown Road was obstructed, making it very difficult to see oncoming traffic on Longtown Road.[90] The Appellant also had driven through the intersection of Longtown Road and Hunting Path Road earlier in the day and testified about the obstruction of the stop sign and restricted visibility.[91] Further, there was no warning sign notifying drivers of an upcoming stop sign at the intersection of Longtown Road and Hunting Path Road.[92] Unlike other drivers, such as the Appellant or Ms. Sharpe, Ms. Edwards did not drive through this intersection every day and had

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[87] *See* Trial Transcript, p. 7.
[88] *See* Dep. of Edwards, 10:7-18.
[89] *Id.* at 40:7-8.
[90] *See* Dep. of Sharpe, 17:25, 80: 2-13.
[91] *See* Dep. of Bessinger, 24:1-6, 25-25, 25:1-17
[92] *See* Dep. of Sharpe, 15:25 – 16:1-4.

never been to Fox Meadow until November 1, 2013. She had never approached the intersection of Longtown Road and Hunting Path Road in the direction she was traveling until the time of incident, meaning that she would not have known there was a stop sign at the intersection, unless it was clearly visible.[93]

The absence of specific recollections by Ms. Edwards is not fatal to this case. Based on the testimony presented by Ms. Edwards, Ms. Crook, Ms. Sharpe, and Appellant, there is sufficient direct and circumstantial evidence for a jury to conclude more likely than not, the reason Ms. Edwards drove through the stop sign and into the intersection was because the stop sign and her view of the Appellant were obstructed by the River Birch and Bradford Pear trees. It is foreseeable that collisions are a natural and probable consequence of trees obstructing vision and traffic control signals. Put simply, this is not the care or exceptional case where the causation determination can be made as a matter of law. The Trial Court erred in holding that there was no causation as matter of the law because, at minimum, there remains genuine issues of material fact to be determined by a jury.

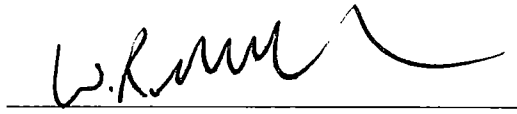
CONCLUSION

In sum, the Trial Court erred by granting Respondents' LongCreek POA, Fairways, Advantage, and Halcyon Motions for Summary Judgment, as there are many issues of material fact that must be determined by a jury. Each Respondent directly owed a duty of care to the Appellant to maintain the trees and shrubbery near the stop sign, so as to not cause a visibility hazard to incoming motorists. Further, from the affidavits and testimony provided, there is ample evidence and issues of material fact which support the assertion that the Respondents' breach of their respective duties of care was the direct and proximate cause of the injuries sustained by the

[93] *See* Dep. of Edwards, 6:14-21.

Appellant. For all of these reasons, Appellant respectfully requests reversal of the Trial Court order and that this case be remanded for a trial by jury.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-40-05001

Tina Bessinger.....Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Appellant's Designation of Matter to Be Included in the Record on the Defendants by depositing a copy of it in the United States Mail, postage prepaid, on March 7, 2018, addressed to their attorney of record, listed below to the following addresses:

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