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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 26 2018
SC Court of Appeals

Appeal from Richland County
In the Court of Common Pleas
Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235
Court of Appeals No. 2017-000167

Cedric E. YoungAppellant,
v.
Valerie Poole,.....Respondent,

PETITION FOR REHEARING

The appellant requests rehearing of the decision in this appeal on the following grounds.

- I. The decision overlooks the critical issue of whether a landlord has a duty to warn tenants of a latent hazardous conditions on the leased premises of which the landlord has knowledge. The opinion focuses on the landlord’s duty under the South Carolina Landlord Tenant Act “SCLTA.” However, this action was brought under a negligence theory without regard to the SCLTA. This court applied the incorrect analysis under the SC Landlord Tenant Act when the proper analysis is under common law negligence.**

At issue in this case is whether a Landlord has a duty to warn tenants of a latent hazardous condition of which the landlord has knowledge on the leased premises. The opinion filed by this court analyzes the landlord’s duty under the SC Residential Landlord Tenant Act but

this analysis is erroneous because common law negligence applies in this case and was the basis of Appellant's claim.

In this case, Appellant contends that a latent hazardous condition existed in the attic of the leased premises at the time the lease was entered. At the summary judgment hearing below, Appellant presented evidence that the landlord was aware of the latent hazard at the time the lease was entered but did not warn Appellant of the condition and as a result, he was seriously injured.

While Appellant agrees with this court that under the SCLTA that "Rights of the tenant do not arise until he has given notice as required by the Act", this claim was under common law negligence and not the SCLTA and under common law negligence an owner of land possesses a general duty to warn others of latent hazardous conditions on his land. This duty arises from the owner's superior knowledge of conditions on the premises within his control. Dunbar v. Charleston & W.C. Ry. Co., 211 S.C. 209, 44 S.E.2d 314 (1947). Furthermore, where the dangerous condition is not obvious, the lessor has a duty to warn. 36 C. J. 204, § 874, and numerous authorities there cited. Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329, 330 (1932).

Professors Hubbard and Felix summarize the rule on concealed dangers as follows:

Where the lessor knows or should know that a dangerous condition is not obvious to the lessee, then the lessor must use due care to discover and warn of that latent condition. Consequently, the lessor will be liable for personal injury resulting from the condition as if he were in control of the premises –i.e., as if there was no lease involved. F.P. Hubbard & R.L. Felix THE SOUTH CAROLINA LAW OF TORTS (4th Ed. 2011).

Appellant submits that to conclude that a landlord does not have to ever advise a tenant of latent hazards that the landlord is aware of and tenant is not aware of is against

public policy and would lead to absurd results and was clearly not the intention of the legislature in enacting the SCLTA.

Appellant submits that the SCRLTA does not completely abrogate common law negligence in landlord tenant matters, but only supplements existing principles of law and equity and provides additional remedies.

Appellant concedes that the heading on its first cause of action did say "Negligence SC Code Ann. Section 27-40-440", the numbered averments in the complaint alleged common law negligence as required under SCRCP 10(b) thus informing Defendant of the legal and factual position which it will be required to meet on trial.

CONCLUSION

The appellant therefore respectfully requests rehearing in this case on the grounds raised above.

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BY: 

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Sumter, South Carolina

April 26th, 2018

THE STATE OF SOUTH CAROLINA

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Cedric Young Appellant

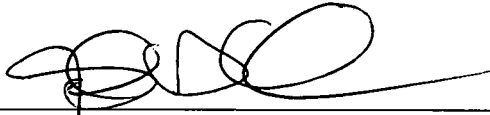
v.

Valerie Poole..... Respondent.

PROOF OF SERVICE

I certify that I have served the Petition for Re-Hearing on Circuit Court Judge Clifton B. Newman and Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 26, 2018, addressed to the Honorable Clifton B. Newman, Post Office Box 516, Kingstree, South Carolina 29556 and her attorney of record, Elliott B. Daniels, Esquire, 4406-B Forest Drive, Columbia, South Carolina 29206.

April 26, 2018



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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Cedric Young, Appellant vs. Valerie Poole, Respondent*
Appellant Case No. 2017-000167

Dear Ms. Kitchings:

Enclosed for filing is the original and six (6) copies of a Motion for Re-Hearing in the above matter. Also enclosed are the following:

- (1) Proof of Service of the Petition for Re-Hearing on the Respondent;
- (2) A filing fee of \$25.00.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

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