THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2018-UP-150
Submitted March 1, 2018 – Filed April 11, 2018

Cedric E. Young, Petitioner,

v.

Valerie Poole, Respondent.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 24, 2018.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the trial court's decision granting summary judgment to Respondent when there was a genuine issue of material fact on the issue of Respondent's negligence for failure to give notice to Petitioner of a latent defect of which Respondent had knowledge of under a common law negligence theory?

STATEMENT OF THE CASE

This is a case involving a claim for negligence under premises liability involving a residential landlord and tenant. On June 1, 2015, Petitioner Cedric Young, as residential tenant of Respondent landlord Valerie Poole, brought this action alleging negligence against Valerie Poole for injuries he sustained in the leasehold property as a result of a latent condition of which he was not warned or given notice of by Respondent. [1] Poole answered denying negligence and alleging sole negligence, comparative negligence, failure to state facts sufficient to constitute a cause of action and denying punitive damages. By order filed October 2, 2016, the lower court granted

[1] The heading on the First Cause of Action of Petitioner's Complaint states "Negligence S.C. Code Ann. § 27-40-440 SC Landlord Tenant Act." However, the averments of facts of the Cause of Action and demand for relief alleges common law negligence and state a claim of common law negligence.

Summary Judgment in favor of Poole holding that Plaintiff's claim was barred because Petitioner did not give notice of the defective condition and give landlord a reasonable opportunity to repair the condition under the South Carolina Residential Landlord Tenant Act. The lower court also held that Petitioner's claim for common law negligence in this context was abrogated by the South Carolina Residential Landlord Tenant Act as the exclusive remedy. Stated otherwise, the lower court held that with the adoption of the South Carolina Residential Tenant Act, Petitioner could not base his claim against his landlord on common law negligence.

Petitioner filed a Motion to Alter or Amend Judgment on November 18, 2016 which was denied on January 18, 2017. On January 26, 2017 Petitioner served the Notice of Appeal on Respondent. By order filed April 11, 2018, the lower court's order was affirmed by The Court of Appeals Cedric E. Young v. Valerie Poole, Unpublished Op. NO. 2018-UP-150. On April 26, 2018, Petitioner filed a Petition for Rehearing which was denied by The Court of Appeals in an order filed May 24, 2018.

Petitioner seeks a writ of certiorari to review that decision of the Court of Appeals on the basis that it is in direct conflict with a prior decision of the Supreme Court, specifically Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 329 (1932).

ARGUMENT

1. THE COURT OF APPEALS SHOULD HAVE HELD THAT THE TRIAL JUDGE ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT LANDLORD WHEN THERE WAS A GENUINE ISSUE OF MATERIAL FACT ON THE ISSUE OF RESPONDENT LANDLORD'S

FAILURE TO GIVE NOTICE OF A LATENT DEFECT ON THE PREMISES OF WHICH HE HAD KNOWLEDGE UNDER A COMMON LAW NEGLIGENCE THEORY

The Petitioner brought this action for common law negligence alleging that Respondent was negligent for failing to warn him of a latent defect on the leased premises known by Respondent at the time Petitioner took possession of the premises. The Trial Court erroneously granted Summary Judgement to Respondent and held that in order to prove negligence under the SC Residential Landlord Tenant Act "RLTA", Petitioner was required to notify Respondent of the defect prior to the accident. Petitioner submits the lower erroneously analyzed Respondent's Motion for Summary Judgment and Petitioner's claim under the RLTA and not under a common law theory of negligence. And, if the lower court had directly done so it would have concluded that there was a genuine issue of material fact regarding Respondent's negligence and denied Summary Judgment. Therefore, the decision should be reversed.

In this appeal, Petitioner asserts that the lower court erred in holding that any common law remedy for negligence is abrogated in favor of an exclusive remedy under the RLTA granting Summary Judgement on Petitioner's common law negligence claim. In essence, the court held that with the establishment of the RLTA, tenants in South Carolina, including Petitioner, cannot bring an action against its landlord for common law negligence. Petitioner submits that this constitutes an error of law and is in direct conflict with prior decisions of this court, Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 329 (1932), and the statutory framework of RLTA. Petitioner submits that contrary to the lower court and Court of Appeals' decisions, common law

negligence remains a viable theory in this landlord-tenant context in South Carolina and that the lower court's order as well as that of the Court of Appeals should be reversed.

Petitioner asserts that not only are the decisions erroneous, and not in conformity with existing law, but such interpretation of South Carolina law would lead to absurd results. It is important to consider that under the lower court's analysis, a tenant could never pursue a claim for negligence against a landlord for a latent defect in leasehold premises even when the landlord knew about the defect prior to an injury. This is clearly not the intent of the legislature.

S.C. Code Ann. § 27-40-30 (1976 as amended) provides that the RLTA shall only supplement principles of law and equity unless displaced by a provision of the Act. This section provides as follows:

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement the provisions of this chapter .S.C. Code Ann. § 27-40-30 (1976).

As stated in Pryor v. Nw. Apartments, Ltd., 321 S.C. 524, 528, 469 S.E.2d 630, 633 (Ct. App. 1996), The RLTA creates a new cause of action not found at common law. However, we must look to the common law for guidance in analyzing new causes of action. citing Watson v. Sellers, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989).

However, this court has long held that under common law principles, where the lessor knows or should know that a dangerous condition is not obvious to the lessee,

the lessor must use due care to discover and warn of that latent condition. Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 329 (1932).

Petitioner submits that while tenant may be required to notify the landlord of the dangerous conditions on a claim for failure to maintain the premises in a safe condition under the RLTA during the term of the lease, but Tenant is not required to give notice of latent conditions that exist at the time Plaintiff takes possession of the premises under traditional negligence claims independent of the Landlord-Tenant Act. To require Tenant to give notice of a latent condition would put the Tenant in an impossible position because he has no way of knowing about the latent defect upon taking possession of the leasehold. In other words, Petitioner may not be able to prove negligence for violations under the Landlord-Tenant Act, but Petitioner has pleaded and put forth evidence of negligence under a traditional negligence theory.

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. See Dunbar v. Charleston & W.C. Ry. Co., 211 S.C. 209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. W. Keeton, D. Dobbs, R. Keeton & D.

Owen, *Prosser and Keeton on the Law of Torts* 434 (5th *444 ed. 1984). See also Young v. Morrisey, 285 S.C. 236, 329 S.E.2d 426 (1985) (landlord owes no duty to maintain leased premises in a safe condition).[1] Byerly v Connor, 307 S.C. 441, 415 S.E.2d 796 (1992).

However, where the dangerous condition is not obvious, the lessor has a duty to warn when he is aware of the condition. 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)***

In this case, Petitioner contends he was injured as a result a latent condition in the attic of the leasehold premises and contends that there is a genuine issue of material fact of whether the Respondent knew or should have known that the dangerous conditions in the attic would not be obvious to the Petitioner.

Petitioner testified that the area that he fell in the attic was "camouflaged" and looked to him that it was finished attic space and it was not, clearly creating a jury questions. Petitioner testified as follows:

Q. Okay. Are you alleging that something was defective about the attic?

A. Yes.

Q. Explain that. What exactly?

A. I think that was -- it was unfinished work and it was camouflaged because I stepped there before many times so I'm thinking that -- you know, she didn't tell me not to go up there. She didn't tell me not to step. So it wasn't finished. So whoever did the work, they did it and they camouflaged it like it was finished. (App 226)

The Respondent admits that while she has never been into the attic, she did climb the stairs of the attic before Petitioner's accident and looked around. It can be inferred that while Respondent stood at the top of the stairs and looked around she would have been directly in front of the area where Petitioner fell. Respondent testified in her deposition that she looked around and saw plywood around the area. Respondent does not mention that there were any dangerous conditions obvious to her. Respondent further testified as follows:

Q. October 13th of 2015. Have you ever been in the attic at 16 Thornberry Court?

A. Just went to the top of the stairway on the ground.

Q. Okay. All right. So you've never stepped up there?

A. Never stepped up there.

Q. All right. And so you've never been up there before Mr. Young claims he fell or after?

A. I went to the top of the stairwell. As far as I got and looked around. (App 129 L13-25)

Q. You climbed up on the stairs. Is there any plyboard surfaces up there?

A. Right around the stairwell I saw that there was some plywood right there. (App 136 L2-5)

At some point prior to Petitioner's accident, Defendant was told by repairmen who went into the attic that the attic was dangerous and that you "cannot step

anywhere." Furthermore, Respondent testified that if she had known Petitioner was going into the attic she would have told him that it was dangerous.

Respondant's deposition testimony was as follows :

Q. **What he said. I mean, what that conversation was about.**

A. **What transpired. I asked him - - I mean, I just asked him why didn't he call me because I would have let him know that the attic you can only step in certain spaces. Well, certain areas within the attic because they are dangerous. (App 134 L23-25, 135 L 1-4))**

Q. **Okay, Do you know of anything Mr. Young did wrong in causing his accident?**

A. **Well, as - - I'm not saying he was wrong when he walked on an insulated floor, but typically as an adult we look at things before we walk on it to make sure if it's going to hold our weight. I know there have been guys from SCE&G went up in the attic. One of the guys that I know went and repaired the air conditioner went in the attic, and neither one of those fell through it because they were stepping on beams. And I heard them tell me well, you know, you have to be careful when you go in the attic because you just can't step anywhere.**

Q. **Okay.**

A. **And one of them said they almost slipped and fell so I know it's not a safe place to be, just to be walking around up there.**

Q. **All right. But you never told Mr. Young that?**

A. **I didn't expect for it to - - no, I did not? (App 141 L 18-25, 142 L1-12)**

The evidence is clear that at the very least Respondent knew the attic was dangerous. Respondent admitted that she was told by repairmen before Petitioner's accident that they almost slipped in the attic, and that you "cannot step anywhere." Respondent did not advise Petitioner of the dangerous conditions even though she was aware of the conditions.

It could also be inferred that Respondent knew or should have known that the dangerous conditions would not be obvious to Petitioner since the dangerous conditions were not obvious to Respondent when she looked around the attic.

Rule 56(c) SCRCP sets forth the standard for Summary Judgment and provides that "[t]he judgment sought should be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Because it is a drastic remedy, summary judgment should be cautiously invoked so no persons would be improperly deprived of a trial of the disputed factual issues. Murphy v. Tyndall, 384 S.C. 50, 681 S.E.2d 28 (2009 Ct. App.)

Even where there is not dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury

for summary judgment to be denied. Hill v. York County Sheriff's Dep't, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct.App.1993).

In determining whether any trialable issue of fact exists, as required to survive summary judgment, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the non-moving party. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010).

Questions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of an agency relationship. Jamison v. Howard, 271 S.C. 385, 247 S.E.2d 450 (1978). Also, credibility determinations and the drawing of legitimate inferences from the facts are jury functions. Anderson v. The Augusta Chronicle, 355 S.C. 461, 475, 585 S.E.2d 506, 513 (Ct.App.2003).

Considering all of the evidence and the inferences drawn therefrom in a light most favorable to Plaintiff, there is at least a scintilla of evidence warranting determination by a jury of whether Respondent knew or should have known that the dangerous condition would not be obvious to the Petitioner and whether Respondent failed to use due care to discover and warn of the dangerous condition.

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

June 25, 2018

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PROOF OF SERVICE

I certify that I have served a Petition for Writ of Certiorari and Appendix on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 25 2018, addressed to his attorneys of record, Elliott B. Daniels, Esquire and John M. Grantland, Esquire, Post Office Box 6648, Columbia, South Carolina 29260.

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June 25, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
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Re: Cedric Young v. Valerie Poole
Appellate Case No. 2017-000167

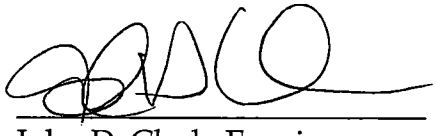
Dear Ms. Kitchings:

Enclosed for filing please find a Writ of Certiorari along with Proof of Service in the above matter.

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

With kind regards, I am

Yours very truly,



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