

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

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JUL 11 2018

SC Court of Appeals

Case No. 2016-001178

Linda Estrada, George Estrada, Tyrone Ruff, Khalilah Smith,
Carletta Williams, and Cristian Reyes,..... Respondents,

v.

Andrew Marshall and Linda Marshall,..... Appellants,

**RESPONDENTS TYRONE RUFF, KHALILAH SMITH AND
CARLETTA WILLIAMS' RETURN TO APPELLANT'S PETITION
FOR REHEARING**

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I. INTRODUCTION

The Court affirmed the Trial Court's denial of Appellants' motions for directed verdict and for JNOV in its decision dated June 13, 2018. Appellants filed a Petition for Rehearing on or about June 27, 2018. For the reasons set forth herein, as well as the arguments set forth by Respondents in their brief, Respondents above-named submit that the Court's well-reasoned opinion reached the correct result and that Appellants' Petition for Rehearing should be denied.

II. ARGUMENT

A. **THERE WAS EVIDENCE UPON WHICH THE JURY COULD HAVE DETERMINED THAT APPELLANTS BREACHED A DUTY TO RESPONDENTS**

As social guests of Appellants' tenants, the Respondents in this case were licensees. Under South Carolina law, a licensee is defined as one who enters the premises of another with the owner's consent. The Respondents, as social guests of the Appellants' tenants, were licensees. Appellants owed Respondents as licensees a duty to use reasonable care to warn them of any concealed or dangerous conditions which were known to Appellants or of any change in the condition of the premises which Appellants should have reasonably been expected to discover. *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct.App.1997); *Landry v. Hilton Head Plantation Prop. Owners Ass'n*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct.App.1994); *Neil v. Byrum*, 288 S.C.472, 343 S.E.2d. 615 (1986). (R. p. 510, ll. 10-22).

The jury heard ample evidence that the deficiencies in the deck were such that the Appellants should have reasonably been expected to discover them. Respondents' expert, Allan Abbatta testified that there were obvious deficiencies with the deck at Casbel Court.

There was no flashing. He testified that the lack of flashing on the deck led to wood rot, over time causing the deck to pull away from the house. (R. p. 368, ll. 4-17; p. 373, ll. 4-25). Mr. Abbatta testified that the lack of flashing on the deck was open and obvious and could have been discovered merely by visual inspection. (R. p. 371, ll. 18-23; p. 372, ll. 1-10).

Further, Mr. Abbatta testified that there were other signs of deterioration of the deck which should have put Appellants on notice that the deck was deteriorating due to wood rot caused by improper construction methods. The jury heard testimony that prior to the deck collapse, Appellant Marshall had been asked by the Housing Authority to replace “weathered” boards. Mr. Abbatta showed the jury photographs taken of the deck after the collapse depicting decaying or deteriorating wood. (Pl. Exh. 5; pp. 584-589; p. 376, ll. 3-18; p. 376, l. 22 – p. 377, l. 18). He testified that merely looking at the condition of the steps and railing of the deck should have put Appellants on notice that the deck was deteriorating. (Pl. Exh. 11; p. 378, ll. 16-22; p. 380, ll. 17-25).

In addition to the wood rot, Mr. Abbatta testified that the deck was being held up by an inadequate number of posts which were improperly attached to the deck. (R. p. 369, l. 2 – p. 370, l. 20). He testified that in his opinion the insufficient number of fasteners was an obvious building code violation. (R. p. 370, ll. 4-12). This also should have put Appellants on notice that the deck was in a deteriorating condition. (R. p. 380, l. 17- p. 381, l. 10).

Contrary to the argument of Appellants, Respondents presented ample evidence both through the photographs admitted into evidence and in the testimony of their expert, Alan Abbatta that Appellants should have been on notice that the deck was in a

deteriorating condition. Appellants chose to ignore these obvious signs of deterioration. It is uncontested that Appellants gave Respondents no warnings regarding the deteriorated and dangerous condition of the deck. Contrary to Appellants' arguments, the jury heard more than ample evidence upon which it could have based an award of negligence against Appellants. The Court's Order affirming the jury verdict in this case was correctly affirmed by this Court.

III. CONCLUSION

The Court's opinion affirming the Trial Court's Order is correct. This Court's decision correctly addressed and decided the issues on appeal. Appellants' Petition for Rehearing does not demonstrate otherwise and there is no reason for the Court to revisit its decision. For these Reasons, Appellants' Petition for Rehearing should be denied.

Respectfully submitted,

By:



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PROOF OF SERVICE

I certify that I have served Respondents Tyrone Rudd, Khalilah Smith and Carletta Williams' Return to Petition for Rehearing by U. S. Mail on July 11, 2018, to the following counsel of record addressed as follows:

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Lynn G. Ivey

West Columbia, South Carolina
July 11, 2018

July 11, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Linda Estrada, George Estrada, Tyrone Ruff, Khalilah Smith,
Carletta Williams, and Cristian Reyes v. Andrew Marshall and
Linda Marshall
Case No.: 2016-001178

Dear Ms. Kitchings:

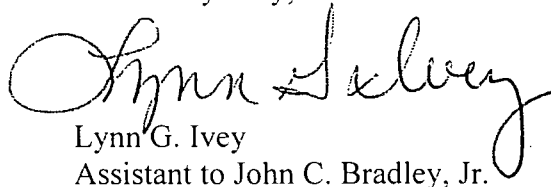
You will please find enclosed the original and eleven (11) copies of Respondents Tyrone Ruff, Khalilah Smith and Carletta Williams' Return to Petition for Rehearing.

I would appreciate your filing the original in your office and returning the filed copies to my courier. Under cover of this letter, I am serving opposing counsel with copies of same.

Thank you for your assistance in this matter.

With kindest regards, I am,

Yours very truly,


Lynn G. Ivey
Assistant to John C. Bradley, Jr.

Enclosures

cc: Damon C. Wlodarczyk, Esquire (w/enclosures)
Blake A. Hewitt, Esquire (w/enclosures)
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