THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable 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., LongCreek Development, LLC, Fairways Development, LLC, Advantage Services, Inc., and Halcyon Real Estate Services, LLC, Respondents

FINAL BRIEF OF RESPONDENT FAIRWAYS DEVELOPMENT, LLC

Mark S. Barrow
Brandon R. Gottschall
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant Fairways Development, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable 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.

FINAL BRIEF OF RESPONDENT FAIRWAYS DEVELOPMENT, LLC

Mark S. Barrow
Brandon R. Gottschall
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant Fairways Development, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENT FAIRWAYS DEVELOPMENT, LLC'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT FAILED TO PRESENT A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER RESPONDENT FAIRWAYS DEVELOPMENT, LLC OWED A DUTY TO APPELLANT.

2. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENT FAIRWAYS DEVELOPMENT, LLC'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT FAILED TO PRESENT A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER ANY BREACH BY RESPONDENT FAIRWAYS DEVELOPMENT, LLC PROXIMATELY CAUSED DAMAGES TO APPELLANT.

STATEMENT OF THE CASE

This appeal follows the Circuit Court's grant of summary judgment to Respondent Fairways Development, LLC as to Appellant's Amended Complaint, which comprised of a negligence claim and premises liability claim. See Am. Compl., R. pp. 0058-0064. Respondent's claims arose out of a motor vehicle accident on November 1, 2013. Id. On that date, Appellant Tina Bessinger was driving a school bus for Richland County School District Two northbound on Longtown Road in Blythewood, South Carolina. Id. As Appellant neared the intersection of Longtown Road and Hunting Path Road, another driver, Amber Edwards, allegedly pulled in front of the Appellant and caused a collision. Id. Appellant's alleges that Ms. Edwards caused the accident by failing to yield the right-of-way, and that Ms. Edwards failed to yield the right-of-way because her view of the stop sign was obstructed by an overgrown tree and/or shrubbery. Id. Appellant further alleges she was injured in the collision. Id.

It is undisputed that Appellant does not know why Ms. Edwards pulled out in front of her and that Appellant did not see Ms. Edwards until the moment of the collision. Dep. of Tina Bessinger, March 9, 2017, at 16:23-25, 29:1-15, R. p. 0373, lines 23-25, 0377, lines 1-15. In addition, Ms. Edwards testified that she has no memory of the accident and that she cannot say whether she disregarded the stop sign. Dep. of Amber Michelle Edwards, March 9, 2017, at 10:4-6, 10:19-11:15; 12:24-13:6, R. p. 0363, lines 4-6, R. p. 0363, line 19-p. 0364, line 15; R. p. 0473, line 24 –p. 0365, line 6. As a result, neither Appellant nor Ms. Edwards could say whether Ms. Edwards did or did not disregard the stop sign, or, if Ms. Edwards did disregard the stop sign, that it was because the sign was obstructed by plant growth. Appellant has produced no other witnesses to the accident.

Appellant's statement in the Initial Brief that "a young woman named Amber Edwards drove through the Fox Meadow entrance, without stopping at the stop sign at the intersection" is unsupported by the evidence. See Appellant's Initial Brief at 5. While the Initial Brief cites the Accident Report and Video of the collision in support, neither the Accident Report nor the video provide any evidence that Ms. Edwards ran the stop sign. The Accident Report states simply that Ms. Edwards' vehicle "failed to yield the right of way" and provides no information regarding whether she stopped at the stop sign first. See Accident Report dated November 1, 2013, R. pp. 0223-0225. Likewise, the video shows only the moment of impact, not whether the vehicle stopped at the stop sign. See Interior Video Footage of Accident. Furthermore, regarding the cause of the accident, the Appellant can be heard stating only that "someone just ran out in front of me." Id. As a result, neither the accident report nor the video provide any evidence as to whether Ms. Edwards stopped at the stop sign.

Following the collision, Appellant filed the present suit. The driver who allegedly caused the collision, Ms. Edwards, was not named as a defendant; rather, Appellant's Amended Complaint alleges claims against LongCreek Plantation Property Owners Association, Inc., LongCreek Development, LLC, Fairways Development, LLC, Advantage Services, Inc., and Halcyon Real Estate Services (collectively "Respondents"). See Am. Compl., R. p. 0058-0064. Appellant's complaint alleges causes of action against the Respondents for premises liability and negligence, specifically alleging that the Respondents voluntarily maintained the property, including trees and shrubbery; that they owed Appellant a duty of care to keep the property—

including trees and shrubbery—in a reasonably safe condition; and that they violated the duty by permitting trees or shrubbery to obstruct the stop sign at the entrance to Hunting Path Road. Id.

On June 9, 2017, Respondent Fairways Development filed a motion for summary judgment based on the absence of any genuine issue of material fact as to whether Respondent owed a duty to Appellant, breached a duty to Appellant, or caused Appellant's damages. See Fairways Development LLC's Motion for Summary Judgment and Memorandum in Support, R. pp. 0162-0176. Three other respondents also filed motions for summary judgment. On August 31, 2017, Appellant filed a memorandum in opposition to all Respondents' motions for summary judgment. See Plaintiff's Memorandum in Opposition, R. pp. 0197-0212.

On September 5, 2017, the Honorable Judge G. Thomas Cooper, Jr. heard arguments as to the Respondents' motions for summary judgment. The court granted Respondent Fairways Development's motion for summary judgment by Order dated September 22, 2017. The court found (1) that Fairways Development owed no duty to Appellant under either common law or by contract, (2) that Appellant failed to show an issue of fact as to any breach by Fairways Development, and (3) that Appellant failed to show an issue of fact as to whether any alleged breach proximately caused Respondent's injuries. September 22, 2017 Order at pp. 3-10, R. pp. 0024-0034.

Appellant filed a Notice of Appeal on October 19, 2017. This Court subsequently dismissed the appeal for Appellant's failure to provide proof of filing of the Notice of Appeal with the Circuit Court. November 9, 2017 Order. By Order filed December 8, 2017, the Appeal was then reinstated.

ARGUMENT

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is proper when "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 judgment as a matter of law." S.C. R. Civ. P. 56(c). When a defendant properly supports a motion for summary judgment pursuant to this rule, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." S.C. R. Civ. P. 56(c) (emphasis added). A party opposing summary judgment "'may not rest upon the mere

allegations or denials of his pleading[s].'" Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010). Rather, the party must "come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial." Hoard at 549, 694 S.E.2d at 6 (2010) (citing SSI Med. Servs. Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990)).

Here, the Circuit Court granted Fairways Development summary judgment as to Appellant's two claims for negligence and premises liability. In a negligence cause of action, a plaintiff must show (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiffs injury, and (4) the plaintiff suffered an injury or damages. See Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). Likewise, "[t]o establish negligence in a premises liability action, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." Roe v. Bibby, 410 S.C. 287, 296, 763 S.E.2d 645, 650 (Ct. App. 2014). To sustain a negligence cause of action, the plaintiff must primarily establish that the defendant owed a duty of care to the plaintiff. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) (citations omitted). "The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." Id. at 387, 520 S.E.2d at 149 (citations omitted).

As set forth below, the Circuit Court properly granted Fairways Development's motion for summary judgment as to Appellant's causes of action for negligence and premises liability

because Appellant failed to raise genuine issues of material fact as to duty, breach, and proximate cause.

I. BECAUSE APPELLANT FAILED TO RAISE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER FAIRWAYS DEVELOPMENT, LLC OWED A DUTY TO APPELLANT, THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENT FAIRWAYS DEVELOPMENT, LLC AS TO ALL CLAIMS IN THE APPELLANT'S COMPLAINT.

To sustain a negligence cause of action, the Appellant must primarily establish that the defendant owed a duty of care to the Appellant. Steinke, 336 S.C at 387, 520 S.E.2d at 149. "The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." Id. at 387, 520 S.E.2d at 149 (citations omitted. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law. Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000).

"Ordinarily, the common law imposes no duty on a person to act," and [a]n affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. S.C. Dep't of Corr., 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). "Thus, a person usually incurs no liability when he fails to take steps to protect others from harm not created by his own wrongful conduct." Dennis by Evans v. Timmons, 313 S.C. 338, 342, 437 S.E.2d 138, 141 (Ct. App. 1993). "The concept of duty in tort liability must not be extended beyond reasonable limits. S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 377, 346 S.E.2d 324, 326 (1986).

a. Fairways Development Owed No Common Law Duty to Appellant.

In the present case, Fairways Development owed no duty to the Appellant. As an initial matter, the South Carolina Court of Appeals has explicitly held that private landowners owe no

duty to "ensure that their trees do not hinder traffic control devises...." Underwood v. Coponen, 367 S.C. 214, 219, 625 S.E.2d 236, 239 (Ct. App. 2006). In Underwood, the plaintiff brought an action against a property owner's estate, alleging that the owner negligently failed to trim a tree on the property and allowed it to partially obscure a stop sign. Id. at 217-18, 625 S.E.2d at 238. As a result of the obstruction, plaintiff alleged that a motorist ran the stop sign and collided with the plaintiff. Id. The plaintiff further alleged that because the property owner had periodically trimmed the tree on his property, he undertook a duty to keep the tree from blocking the stop sign. Id. The circuit court granted the defendant summary judgment, and the court of appeals affirmed. Id. Specifically, the court of appeals found that although the landowner occasionally trimmed the tree to clear the stop sign, and even though his failure to trim the tree might have increased the risk that the sign would be obstructed, these actions did not create a duty for which the landowner could be held liable. Id. at 219, 625 S.E.2d at 239. In so holding, the court noted that the tree did not fall or injure anyone, and thus it did not constitute an "unsafe" or "defective" condition. Id. at 218, 625 S.E.2d at 238. Furthermore, the court stated that even had the landowner's actions created a duty, the landowner abandon the duty at any time, as long as he did not increase any risk that might have existed. Id. at 219, 625 S.E.2d at 239. Finally, the court noted that neither the plaintiff nor the other motorist knew the landowner trimmed the tree, and thus they could not rely on his doing so. Id. The court thus refused to extend "the duty to require private landowners to ensure that their trees do not hinder traffic control devises[.]" Id.

The court of appeals found that public policy supported its refusal to extend a duty to private landowners. Specifically, the court stated, "[i]f we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devises, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which

adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability." Underwood, 367 S.C. at 219, fn. 3; 625 S.E.2d at 239, fn. 3. The court also cited outside authority stating that obstruction from overgrown vegetation was "no different from obstructions which are caused by houses and buildings encountered routinely in daily life." Id., citing Nichols v. Sitko, 510 N.E.2d 971, 974 (Ill. 1987). As a result, in addition to the legal basis for its holding, the court noted that sound public policy considerations justified its findings.

Underwood's rule—that a landowner owes no duty to trim trees to prevent them from obscuring traffic signals—controls the present case. As in Underwood, the Appellant here alleges that by planting and maintaining plants on its property, Fairways Development assumed a duty to prevent the plants from obscuring the stop sign at Hunting Path Road. However, pursuant to Underwood, the South Carolina Court of Appeals specifically declined to impose any duty on a private landowner to trim plants to prevent them from obscuring traffic control devices. In fact, the present case provides an even more compelling basis to find that Fairways Development owed no duty because, unlike the defendant in Underwood, who undertook to trim trees, the Appellant here has provided no evidence that Fairways Development trimmed the trees at the intersection of Hunting Path and Longtown Road East. In addition, Appellant has provided no evidence that the Appellant or Ms. Edwards knew and relied on Fairways Development's trimming of those trees. Finally, the trees in the present case did not fall and injure the Appellant, and so pursuant to Underwood, they were not an "unsafe or defective" condition. As a result, Fairways Development owed Appellant no duty regarding trimming the trees at the intersection.

Appellant's effort to distinguish Underwood as applying only to rural, individual landowners is unavailing. In deciding that a private landowner owes no duty to trim trees to prevent them from obscuring traffic devices, the Underwood court did *not* distinguish between

rural and urban locations or individual and corporate landowners. In fact, the court did not even analyze whether the intersection at issue fell within a rural or urban area. Instead, without qualification or limitation, the court of appeals held that private landowners owe no duty to protect others from tree branches that may obscure traffic devices. See id. Furthermore, the Underwood court actually rejected application of what it called the "Israel" rule, a reference to Israel v. Carolina Bar–B–Que, Inc., 292 S.C. 282, 288, 356 S.E.2d 123, 127 (Ct. App. 1987), which distinguished between urban and rural areas with regards to a landowners' duty as to defective trees. Underwood, 367 S.C. at 218. Finally, the public policy considerations cited by the Underwood court apply to both rural and urban settings, and to all types of private landowners, whether individual or corporate. As a result, Underwood governs the facts of the present case.

The circuit court also properly found that to the extent any entity owed a duty to maintain plant growth at the intersection in question, it was not Fairways Development. Notably, Richland County holds a fifty-foot right-of-way on Hunting Path where it approaches the stop sign in question. Clerk of Court Records, Deed Book 331, Page 399-400 (Richland County, South Carolina) (Jul. 30, 1999), R. p. 0287-0288. Pursuant to the terms of that deed, Richland County Council is to "maintain and repair said streets or roads in a reasonably good and workmanlike manner thereafter." In addition, the Code of Ordinances for Richland County provides that "[t]he 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, it is undisputed that Longtown Road East is a South Carolina state highway. The Department of Transportation is required to keep streets and highways within its control in a reasonably safe condition for public travel. See Ford v. S.C. Dep't of Transp., 328 S.C. 481, 487,

492 S.E.2d 811, 814 (Ct. App. 1997). This requirement 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." Stanley v. S.C. State Highway Dep't, 249 S.C. 230, 234–35, 153 S.E.2d 687, 689 (1967) overruled on other grounds by McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). Thus, defects within Longtown Road East's right-of-way, including objects overhanging the right-of-way, fall within the Department of Transportation's duty to maintain.

b. Fairways Development Owed No Contractual Duty to Appellant.

While it does not appear that Appellant alleges Fairways Development owed a duty arising out of contract, this issue is addressed here out of an abundance of caution. Appellant has identified no contract to which Fairways Development was a party. To the extent Appellant alleges that Fairways Development owed Appellant a duty based on a landscaping contract between Advantage Services and Halcyon Real Estate Services, LLC, this argument is without merit. Fairways Development is not a party to that contract. Furthermore, Appellant was neither a party nor third-party beneficiary of that contract. Because there is no contract involving Fairways Development, there can be no contractual duty, particularly one owed to another non-party. See Thompson v. Pruitt Corp., 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016), reh'g denied (Apr. 21, 2016), cert. denied (Dec. 2, 2016) ("there can be no third-party beneficiary unless a valid contract exists"). Therefore, the Court finds Respondent Fairways Development owed no contractual duty to the Appellant.

II. BECAUSE APPELLANT FAILED TO RAISE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER ANY BREACH BY FAIRWAYS DEVELOPMENT, LLC PROXIMATELY CAUSED DAMAGES TO APPELLANT, THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENT FAIRWAYS DEVELOPMENT, LLC AS TO ALL CLAIMS IN THE APPELLANT'S COMPLAINT.

To establish a genuine issue of material fact as to a negligence cause of action, a plaintiff must establish a breach of a duty and show that the negligence is a proximate cause of the injury. See Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980). In establishing proximate cause, the plaintiff has the burden of proving the injury would not have occurred "but for" the defendant's alleged negligence and that the plaintiff's injury was foreseeable. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d. 715, 721 (Ct. App. 1996). Furthermore, when a defendant properly supports a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." S.C. R. Civ. P. 56(c) (emphasis added). When the evidence is susceptible of only one inference, proximate cause becomes a matter of law for the court. Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88-89 (1998).

In the present matter, Appellant has failed to set forth specific facts showing an issue of fact (1) that any alleged breach proximately caused Appellant's injuries, or even (2) that as to Ms. Edwards, Fairways Development breached a duty in the first place.

a. Appellant Has Established No Material Issue of Fact as to Proximate Cause

Appellant has failed to set forth evidence in this matter creating a genuine issue of material fact as to whether (1) Ms. Edwards failed to stop at the stop sign, or (2) that the reason she failed to stop was because the stop sign was obscured by tree branches. As a result, Appellant cannot establish proximate cause.

None of the witnesses deposed in this case can testify regarding the cause of the accident. First, Ms. Edwards, the driver who allegedly caused the accident, testified that she does not recall any portion of the accident or of the day leading up to the accident. Dep. of Amber Michelle Edwards, March 9, 2017, at 11:4-15, R. p. 0364, lines 4-15. Second, the Appellant herself testified that she did not see Ms. Edwards' vehicle before the impact and that she cannot say whether tree limbs had anything to do with the accident. Dep. of Tina Bessinger, March 9, 2017, at 16:23-25, 29:1-15, R. p. 0373, lines 23-25, R. p. 0377, lines 1-15. Other deponents have testified likewise. See Dep. of Melissa Crook, March 21, 2017, at 50:11-51:13, R. p. 0503, line 11-p. 0504, line 13 (stating that she does not know how the accident occurred or what caused the other driver to pull out in front of Ms. Bessinger); Dep. of Jeannie Sharpe, March 9, 2017, 18:1-5, 49:16-50:2, 50:11-51:12, R. p. 0386, lines 1-5, R. p. 0487, line 16-p. 0488, line 2, R. p. 0488, line 11-p. 0489, line 12 (stating that she did not see the accident or talk with anyone at the scene). As a result, Appellant can provide no specific facts to establish the proximate cause of the accident, and Appellant thus relies on unsupported allegations as to this element. Because Appellant cannot establish proximate cause, Fairways Development is entitled to summary judgment.

To the extent Appellant cites on the testimony of another bus driver, Ms. Jeannie Sharpe, as evidence that Ms. Edwards' view was obstructed, Ms. Sharpe's testimony not competent to provide evidence as to the cause of the accident. Ms. Sharpe, a bus driver, stated that tree limbs partially obscured *her* view of a stop sign at Hunting Path and Longtown Road East, and that limbs sometimes made it difficult to see down Longtown Road East. Dep. of Jeannie Williams Sharpe, March 9, 2017, at 11:19-12:19, R. p. 0485, line 19-p. 0381, line 19. However, Ms. Sharpe testified that "when you're in a school bus, we sit higher than a car", and that "sometimes

the trees obstruct the view because we're sitting about 5 feet higher than a car." Dep. of Jeannie Sharpe at 43:16-21, R. p. 0486, lines 16-21. As a result, Ms. Sharpe's testimony is not competent to provide evidence as to whether Ms. Edward's view, from the perspective a Chevy Camaro sports car, was obstructed. See Dep. of Amber Michelle Edwards at 6:24, R. p. 0361, line 24 (identifying her vehicle as a 1995 Chevy Camaro). Perhaps more importantly, testimony that the stop sign was obstructed is only relevant if Ms. Edwards actually ran the stop sign in the first place, and Appellant has not provided even a scintilla of evidence that could prove Ms. Edwards ran the stop sign. As a result, this testimony does not create a genuine issue of material fact as to proximate cause.

Appellant's photos from Google Maps, which date from 2011, also fail to create a material question of fact. See Google Earth Photographs, Sept. 2011, R. pp. 0259-0262. As an initial matter, these photos were taken approximately *two years* before the accident occurred. Id. Furthermore, Appellant has failed to provide any evidence that the photos reflect the stop sign from the vantage point of Ms. Edwards. While Jeanie Sharpe testified that the photos reflected the stop sign on the date of the accident, Ms. Sharpe's testimony, proffered from the vantage point of a school bus driver, is not evidence of the condition of the intersection from Ms. Edwards' vantage point. See Dep. of Jeannie Sharpe at 43:16-21, R. p. 0486, lines 16-21. In addition, by Ms. Sharpe's own admission, were trimmed at some point after the photos but before the accident. See id. at 12:22-13:6, 53:22-54:2, R. p. 0381, line 22-p.0382, line 6, R. p. 0490, line 22-p. 0491, line 2. Thus, the 2011 Google Earth photos cannot represent the condition of the intersection at the time of the accident.

As a result, Fairways Development is entitled to summary judgment based on Appellant's failure to establish a genuine issue of material fact as to the element of proximate cause.

b. Appellant Has Established No Material Issue of Fact as to Breach

While Fairways Development did not owe any duty to the Appellant, even if it did, Appellant has also failed to establish a material issue of fact as to breach of that duty. As noted above, Appellant has failed to establish a genuine issue of material fact that Ms. Edwards' view of the stop sign or Longtown Road East was obscured by tree branches on Fairways Development's property. Appellant has also failed to establish that any obstruction, even if one existed, was caused by plants or growth from Fairways Development's property. As set forth above, supra p. 12, Richland County holds a fifty-foot right-of-way on Hunting Path where it approaches the stop sign in question. To the extent Appellant alleges Fairways Development breached any duty, Appellant's allegations are based on pure speculation, and Appellant has offered not even a scintilla of evidence of any breach by Fairways Development. As a result, Fairways Development is entitled to summary judgment on this ground as well.

CONCLUSION

In summary, this is not a case in which the Appellant offers competing evidence for a jury to evaluate; rather, the Appellant has failed to set forth specific issues of fact establishing proximate cause or breach, relying only on unsupported allegations in the Complaint. As a result, the circuit court properly granted Fairways Development's motion for summary judgment, and the judgment of the Circuit Court should be affirmed.

Respectfully submitted,

July 2, 2018

Mark. S. Barrow
Brandon R. Gottschall
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant Fairways Development, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
JUL 02 2018
SC Court of Appeals

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.

CERTIFICATE OF COUNSEL

I certify that the undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 2, 2018

Mark S. Barrow
Brandon R. Gottschall
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellant