

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JUN 27 2018

S.C. SUPREME COURT

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Unpublished Opinion No. 2018-UP-150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.

APPENDIX

John D. Clark, Esquire, S.C. Bar No.: 64296
Clark Law Firm, LLC
22 East Liberty Street
P.O. Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234
Attorney for Appellant

Elliott B. Daniels, Esquire, S.C. Bar No. 64158
John M. Grantland, Esquire, S.C. Bar No. 101165
Murphy & Grantland, PA
4406-B Forest Drive
Columbia SC 29206
(803) 782-4100
Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235

RECEIVED

JUN 27 2017

SC Court of Appeals

Cedric E. Young, Appellant,

v.

Valerie Poole, Respondent.

RECORD ON APPEAL

John D. Clark, Esquire, S.C. Bar No.: 64296

Clark Law Firm, LLC

22 East Liberty Street

P.O. Drawer 880

Sumter, South Carolina 29151-0880

(803) 775-1234

Attorney for Appellant

Elliott B. Daniels, Esquire, S.C. Bar No. 64158

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4406-B Forest Drive

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(803) 782-4100

Attorneys for Respondent

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Cedric E. Young

Plaintiff(s)

CIVIL ACTION COVERSHEET

2015-CP - 40- 03235

vs.

Valerie Poole,

Defendant(s)

Submitted By: John D. Clark, Esquire

Address: 22 East Liberty Street, Post Office Drawer 880
Sumter, South Carolina 29151

SC Bar #: 64296

Telephone #: (803) 775-1234

Fax #: (803) 775-8590

Other:

E-mail:

jclark@theclarklawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

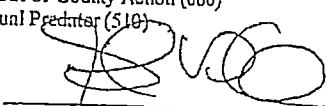
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 <u>NI</u> ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☒ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: 5/15/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cedric E. Young,

Plaintiff,

-v-

Valerie Poole,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

15-CP-40-_____

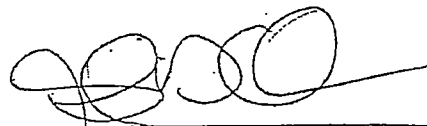
SUMMONS

RICHLAND COURT
FILED
2015 JUN -1 AM 11:28
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

TO: VALERIE POOLE, THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at this office at 22 East Liberty Street, Post Office Drawer 880, Sumter, South Carolina 29151-0880, within thirty (30) days after the service hereof, exclusive of the day of such service; and on your failure to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

CLARK LAW FIRM, L.L.C.
ATTORNEYS FOR PLAINTIFF



JOHN D. CLARK, ESQUIRE
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234 • (803) 775-8590 fax
jclark@theclarklawfirm.com

Sumter, South Carolina
May 15, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
15-CP-40-_____

Cedric E. Young,

Plaintiff,

-v-

Valerie Poole,

Defendants.

COMPLAINT
(Jury Trial Demanded)
(Permisses Liability)

JEANNETTE W. MCBRIDE
CLERK & G.S.

2015 JUN -1, AM 11:28

RICHLAND COUNTY
FILED

The Plaintiff complaining of the Defendants above named, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of the County of Richland, State of South Carolina.
2. Defendant Valerie Poole, on information and belief, is a citizen and resident of the County of Kershaw, State of South Carolina and at the time of the herein mentioned occurrence was the owner of the property located at 16 Thornberry Court, Columbia, South Carolina in the County of Richland, State of South Carolina, hereinafter referred to as premises.
3. On June 8, 2012 Plaintiff and Defendant entered into a Residential Lease Agreement in regards to the premises located at 16 Thornberry Court, Columbia, South Carolina.
4. The Defendant had a duty of care regarding the premises to comply with the requirements of applicable building and housing codes materially affecting health and safety; make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable

condition; and maintain in reasonably good and safe working order and condition all facilities.

FOR A FIRST CAUSE OF ACTION
(Negligence SC Code Ann. § 27-40-440 SC Landlord Tenant Act)

5. Plaintiff realleges the allegations of the above paragraphs and incorporates same herein by reference as if fully repeated verbatim.
6. On or about August 17, 2012, at approximately 4:45 p.m., Plaintiff was in the attic of the premises retrieving and as he proceeded to exit the attic down the stairs, Plaintiff stepped into an opening in the attic platform and the ceiling collapsed causing Plaintiff to fall violently to the floor.
7. As a result of said accident, the Plaintiff has suffered great physical harm and injury from the violent fall to the floor, all of which has and will in the future cause him to undergo much physical pain and suffering, has and will in the future cause him to have to spend money for medical services, lose time for employment, and lost wages.
8. The opening in the platform was dangerous in that Plaintiff could not appreciate its presence and could not avoid the said opening.
9. Defendants owed the duty to the Plaintiff to maintain the premises in a reasonable safe condition, to give warning of latent or concealed perils, to discover risks and take safety precautions to warn of or eliminate foreseeable risks.
10. The Defendants were willful, wanton, careless, and grossly negligent in the following particulars:
 - a) in failing to maintain a safe environment;

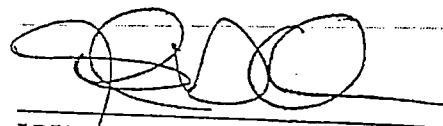
- b) in failing to maintain a proper look-out for said hazards;
- c) in failing to correct a known hazard from the premises;
- d) in failing to warn Plaintiff or adhere to applicable statutes, codes and/or industry practices in providing safety and/or precautionary measures in and/or about this structure

~~All of which were the direct and proximate causes of the injuries and~~
damages suffered by the Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

11. The Plaintiff is informed and believes that he is entitled to judgment against the Defendant, for actual damages and punitive damages in an appropriate amount.

WHEREFORE, Plaintiff requests judgment against the Defendant, for actual damages with punitive damages in an appropriate amount, for the cost of this action, and for such other and further relief as the Court may deem just and proper.

CLARK LAW FIRM, L.L.C.
ATTORNEYS FOR PLAINTIFF



JOHN D. CLARK, ESQUIRE
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234 • (803) 775-8590 fax
jclark@theclarklawfirm.com

Sumter, South Carolina
May 15, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO.: 2015-CP-40-3235

Cedric Young,

Plaintiff,

v.

ANSWER

Valerie Poole,

Defendant.

TO: JOHN D. CLARK, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:

The Defendant, answering the Plaintiff's Complaint herein, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 3 are admitted.
3. As for Paragraph 4, the allegations state a conclusion of law that requires no responses. However to the extent that the allegation alleges that the Defendant violated any duties to the Plaintiff, then the allegations are denied.

FOR A FIRST DEFENSE TO FIRST CAUSE OF ACTION

4. Paragraph 5 is denied.
5. As for Paragraph 6, the Defendant admits that on or about August 16, the Plaintiff has alleged he was involved in an accident in the accident in the attic of the rental house that he rented from the Defendant. Otherwise, Paragraph 6 is denied.
6. Paragraphs 7 through 11 are denied.

FOR A SECOND DEFENSE

7. The Defendant would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from the Defendant.

FOR A THIRD DEFENSE

8. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

- a. In failing to keep a proper lookout;
- b. In failing to watch where he was going;
- c. In failing to act as a reasonable and prudent person would have acted under the same or similar circumstances; and
- d. In other ways and particulars that may be shown through discovery and at trial.

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness,

recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FOURTH DEFENSE

9. The Defendant would should, upon information and belief, that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action. Therefore, pursuant to Rule 12(b)(6) of the *SCRCP*, the Defendant would move that the Plaintiff's Complaint be dismissed for failure to state a cause of action.

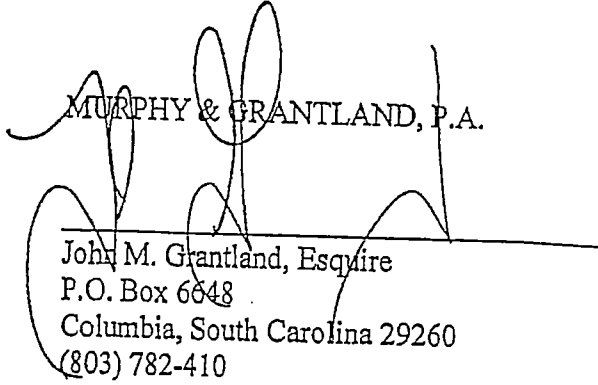
FOR A FIFTH DEFENSE

10. The Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against herself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates the Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for

awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs.

The Defendant demands a jury trial.



MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-410
Attorneys for Defendant

Columbia, South Carolina
July 16, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO.: 2015-CP-40-3235

Cedric Young,

Plaintiff,

v.

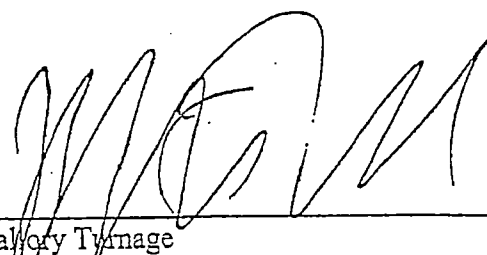
CERTIFICATE OF SERVICE

Valerie Poole,

Defendant.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys for Defendant, do hereby certify that on July 16, 2015, I have served a copy of the foregoing Answer in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

John D. Clark, Esquire
Clark Law Firm, LLC
Post Office Drawer 880
Sumter, SC 29151


Malory Tynage

Columbia, South Carolina

July 16, 2015

Honorable Jeanette W. McBride, Clerk
Richland County Clerk of Court
Post Office Box 2766
1701 Main Street
Columbia, SC 29202-2766

Re: Cedric Young vs. Valerie Poole
Civil Action No.: 2015-CP-40-3235
Claim No.: 15035062-6
Insured: Valerie Poole
Date of Loss: 08-17-12
Our File No.: 3250-0870

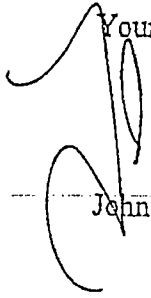
Dear Ms. McBride:

Enclosed please find an original and one copy of an Answer in regards to the above-referenced matter. It would be most appreciated if you would file the original and return the clocked copy to my office in the enclosed envelope.

By copy of this letter to counsel of record, I am serving them with a copy of the Answer.

Thank you for your assistance in this matter.

Yours truly,


John M. Grantland

JMG/mwt
Enclosure

cc: John D. Clark, Esquire
Dina M. Hester (via e-mail)

Telephone 803-782-4100 • Facsimile 803-782-4140 / 803-454-1258
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Fox 1 1
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates 1 3 ey B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson

*Member-American Board of Trial Advocates

COUNTY OF RICHLAND

Cedric Young,
☐ Plaintiff

v.

Valeña Poole,
☒ Defendant.CASE NO.
2015-CP-40-3235MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John D. Clark, Esquire
Clark Law Firm, LLC
P.O. Drawer 880
Sumter, SC 29151
phone: 803-775-1234 fax: 803-775-8590
Email:

Defendant's Attorney:

Rogers E. Harrell, Esquire Bar No.
Murphy & Grantland, PA
Post Office Box 6648
Columbia, SC 29260
phone: 803-782-4100 fax: 803-782-4140
e-mail: rharrell@murphygrantland.com

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

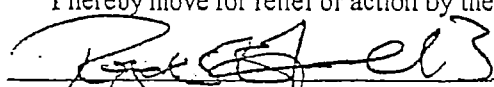
Nature of Motion: Summary Judgment

Estimated Time Needed: 15 Minutes Court Reporter Needed: No

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Defendant

September 10, 2015

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule.69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: 9-15-15

Collected by: metts

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cedric Young,

Plaintiff,

v.

Valerie Poole,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-40-3235

MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2015 SEP 10 AM 11:53
JEANETTE W. HICKS
Clerk, S.C.

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant, Valerie Poole, will move before the presiding judge of the Richland County Court of Common Pleas at the Richland County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Defendant, Valerie Poole, on grounds that there is no genuine issue as to any material fact.

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire

Rogers E. Harrell, Esquire

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-410

Attorneys for Defendant

Columbia, South Carolina
September 10, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO.: 2015-CP-40-3235

Cedric Young,

Plaintiff,

v.

Valerie Poole,

Defendant.

CERTIFICATE OF SERVICE

2015 SEP 15 PM 11:53
JEANETTE W. POOLE
RICHLAND COUNTY
FILED

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys for Defendant, do hereby certify that on September 11, 2015, I have served a copy of the foregoing Motion for Summary Judgment in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

John D. Clark, Esquire
Clark Law Firm, LLC
Post Office Drawer 880
Sumter, SC 29151


Mallory Turnage

Columbia, South Carolina

September 10, 2015

Honorable Jeanette W. McBride, Clerk
Richland County Clerk of Court
Post Office Box 2766
1701 Main Street
Columbia, SC 29202-2766

Re: Cedric Young vs. Valerie Poole
Civil Action No.: 2015-CP-40-3235
Claim No.: 15035062-6
Insured: Valerie Poole
Date of Loss: 8-17-12
Our File No.: 3250-0870

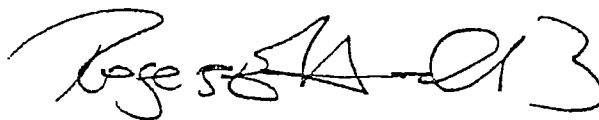
Dear Ms. McBride:

Enclosed please find the original and one copy of a Motion for Summary Judgment in regards to the above-referenced matter. It would be most appreciated if you would file the original and return the clocked copy to my office in the enclosed envelope.

By copy of this letter to opposing counsel, I am serving them with a copy of same.

Thank you for your assistance in this matter.

Yours truly,



Rogers E. Harrell, III

REH/mwt
Enclosure

cc: John D. Clark, Esquire
Dina M. Hester (via e-mail)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. 1 7 r Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Harrell, 1 5
*Member-American Board of Trial Advocates

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Cedric Young,) C/A NO.:2015-CP-40-3235
)

Plaintiff,)

) Deposition
)

vs.)

) of

Valerie Poole,)

) Cedric Young
)

Defendant.)
)
_____)

Deposition of Cedric Young, taken pursuant to the
South Carolina Rules of Civil Procedure, commencing at
the hour of 10:27 a.m., Tuesday, October 13th, 2015, at
Murphy & Grantland, P.A. 4406-B Forest Drive, Columbia
South Carolina.

Reported by

Cheri B. Williams, CVR-M

Appearances

For the Plaintiff: John D. Clark, Esquire
The Clark Law Firm, LLC
22 East Liberty Street
Sumter, SC 29150

For the Defendant: Elliott B. Daniels, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260

Reported By: Cheri B. Williams, CVR-M

Also Present: Valerie Poole

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Exhibits

Defendant's Exhibit No. 1, Hand-drawn diagram;
one page 35

Defendant's Exhibit No. 2, Hand-drawn diagram;
one page
. 67.

Defendant's Exhibit No. 3, Residential Lease Agreement;
four pages 68

Defendant's Exhibit No. 4, Copies of Color Photographs;
nine pages 74

Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

~~Cedric Young, being duly sworn and cautioned~~
to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Direct Examination

By Mr. Daniels:

Q Mr. Young, my name is Elliott Daniels, and I represent Ms. Poole. And we met briefly before going on the record this morning. And as I explained, today is my opportunity to ask you questions about what happened the day that you were in the attic, a bit about you beforehand and a bit about what happened afterwards, okay?

A Okay.

Q There's a few rules I'm required to go over with you before your deposition starts. One of the rules is that you always have an opportunity to ask for clarity. If I ask a question that does not make sense, please ask me to rephrase it. It does happen. Please ask me to ask the question again.

1 But if you go ahead and answer the question, is it
2 fair to assume you understood what I asked?

3 A Yes.

4 Q Okay. And you always have the opportunity to
5 correct your testimony. At the end if you say I
6 ~~didn't say something right, I need to correct that,~~
7 you always have that opportunity, okay?

8 A Okay.

9 Q And you're doing great at this, but one rule that's
10 important for us because we're taking a record is
11 that you need to answer in the affirmative or the
12 negative, a yes or a no. I can see you nodding
13 your head and it makes sense to me, but it won't
14 show up on a transcript, okay?

15 A Okay.

16 Q And you're doing great. And, finally, I'll try to
17 let your answers finish and if you could let my --
18 the questions finish. When we speak over each
19 other I understand what you're saying, but it
20 becomes difficult to read and follow, okay?

21 A Yes.

22 Q All right. You can take a break any time you like.
23 This isn't a marathon. Just stand up, get some
24 water, go to the restroom. But now that you're
25 sworn in it's my opportunity to ask questions. You

1 can't speak with your attorney about your
2 testimony, okay?

3 A Yes.

4 Q All right. Do you have any questions before we get
5 started?

6 A No, I don't.

7 Q Okay. Can you state your full name for the record?

8 A Cedric E. Young.

9 Q And what do you go by?

10 A Cedric.

11 Q Okay. Are you married?

12 A No.

13 Q Ever been married?

14 A Yes.

15 Q Tell me about that. When were you married?

16 A I got married in mid 80s, somewhere around there.

17 Q And how long were you married?

18 A Probably 13 -- 12, 13 years.

19 Q And what's your former spouse's name?

20 A Andrea Young.

21 Q And what does Andrea do?

22 A Postal worker.

23 Q Here in Richland County?

24 A No. New Jersey.

25 Q Okay. And did you ever marry again?

1 A No.

2 Q Okay. Do you have children?

3 A Yes.

4 Q And how many kids do you have?

5 A I have three kids.

6 Q Are they over the age of 18?

7 A Yes.

8 Q And what are their names and ages?

9 A Shawn Young. Shawn is 26. Alana Ponder, she is
10 32. And Steven Young. Steven is probably 23,
11 somewhere around there.

12 Q And do any of them live here in South Carolina?

13 A No. They all live in New Jersey.

14 Q Okay. What brought you from New Jersey to South
15 Carolina?

16 A My sister. She's been teaching down here since
17 1998.

18 Q Okay. Where does she teach?

19 A Orangeburg High School.

20 Q All right. And when did you move to South
21 Carolina?

22 A I would say at the end of 2006.

23 Q All right. And where did you move?

24 A I moved to Winnsboro.

25 Q All right. And is that where you live today?

1 A No.

2 Q All right. From 2006 to today, let me -- can you
3 tell me where you've lived?

4 A When I first came down here I lived on Tenth Street
5 in Winnsboro and then I moved after that. I moved
6 to Birch Street, B-I-R-C-H, in Winnsboro. And then
7 I moved to Columbia for a couple of years where I
8 still live right now.

9 Q Can you give me your Columbia addresses?

10 A 1028 -- before -- before that was -- where I was
11 living at Ms. Poole's address and then I moved to
12 1028.

13 Q 1028 what?

14 A 1028 Hamilton Square Place.

15 Q All right. And is that where you still live today?

16 A Yes.

17 Q All right. And you've lived there since, I guess,
18 2013?

19 A I think. I don't know when I moved out of Ms.
20 Poole's place. So it was right after I moved out
21 of Ms. Poole's. It had to be somewhere around --
22 probably '13 because I -- '12, '13, yeah.

23 Q Did you only have a single year lease with Ms.
24 Poole?

25 A Yes.

1 Q Okay. I think that it would have been the summer
2 of '13 then.

3 A I think it was the -- yeah, might have been the
4 summer because I -- yeah, I was there -- moved in
5 on the 12th of the year of 2012.

6 Q Where were you born?

7 A New Brunswick, New Jersey.

8 Q And what is your date of birth?

9 A 4/29/59.

10 Q And I'm going to ask you for your Social Security
11 number and we'll only record the last four digits.

12 A 3842.

13 Q Do you have any relatives in Richland County?

14 A Yes.

15 Q And what are their last names?

16 A Young, and I have a relative named Lundy.

17 Q Last name is Lundy?

18 A Yes. L-U-N-D-Y.

19 Q Is that it?

20 A Yes.

21 Q Okay. And is Young your sister?

22 A Yes.

23 Q And what about Lundy?

24 A Lundy is my cousin.

25 Q All right. Tell me about your educational

1 background.

2 A High School, New Brunswick High School. After that
3 I went to the service, U.S. Army. I did two years
4 there. Got out and then I did -- went to the post
5 office. Worked at the post office.

6 Q And how long did you work at the post office?-----

7 A Probably seven years.

8 Q Okay. And generally after that tell -- walk me
9 through your work history. It doesn't have to be
10 in exact detail, but you spent seven years at the
11 post office. What came after that?

12 A I went to bail bond.

13 Q Okay. And is that what you do today?

14 A Yes.

15 Q All right. Are you currently working?

16 A Yes.

17 Q And who is your employer?

18 A Metro Bail Bond.

19 Q When did you start that job?-----

20 A I would say last year, September.

21 Q September 2014?

22 A Yes.

23 Q Okay. And what about before September 2014, where
24 did you work?

25 A I didn't. I didn't work -- I was out of work for

1 two years from the injury. And before that I
2 worked at A1 Bonding.

3 Q Okay. Tell me about your two year gap in work for
4 the injury.

5 A I was just trying to rehab my foot and I couldn't
6 ~~do too much with it. I was just back and forth and~~
7 to the doctors and just trying to rehab it.

8 Q What was the injury?

9 A To my foot.

10 Q Was it the injury related to the attic?

11 A Yes.

12 Q Okay. Were you working at the time of this
13 accident?

14 A No, I wasn't.

15 Q Okay. And why were you not working at that time?

16 A I had just -- I got laid off probably -- I want to
17 say maybe a month prior to the accident.

18 Q Was that from A1 Bonding?

19 A Yes.

20 Q Who was your supervisor at A1?

21 A Supervisor was Thomas Brunson.

22 Q Okay. And you were laid off of A1 before this
23 accident and when did you go back to work?

24 A September.

25 Q Okay. So this accident was in August of 2012. Did

1 you -- were you laid off in July of 2012?

2 A No. August. Like I said, right before the
3 accident so it had to be within that month. I
4 think it was, yeah, the end of -- somewhere around
5 August.

6 Q Okay. So you did not work from August 2012 through
7 September of 2014, is that right?

8 A I did a part-time job as security for AFLAC.

9 Q Tell me about that job. When did it begin?

10 A I don't know. I don't know when it begin exactly,
11 but it ended right before -- a week before I got
12 the bail bond job.

13 Q Before you got your present job with Metro Bail
14 Bonds?

15 A Yes.

16 Q How long did you work with AFLAC?

17 A I can't exactly -- I know it's under a year.
18 Probably six months, somewhere around there.

19 Q And what did you do for AFLAC?

20 A I did security work for them.

21 Q And what does that mean? What is security work?

22 A A security guard.

23 Q Okay. Is there an AFLAC facility here in the
24 Midlands?

25 A It's one down on -- I think on Huger Street.

1 Q And is that where you were a security guard?

2 A Yes.

3 Q All right. Okay. But you testified earlier that
4 you missed that two years of work because of the
5 injury to your foot, is that correct?

6 A Yes.

7 Q Okay. Did a doctor ask you to not work during that
8 time?

9 A No.

10 Q And what were you unable to do? Why did you miss
11 that time?

12 A Well, my foot was still bothering me. I couldn't
13 do too much walking on it. My activities had
14 changed so --

15 Q Were you able to walk during that time?

16 A I was able to walk, but it was just still bothering
17 me. So I was just still trying to do what they
18 told me to do as far as the therapy with the

19 machines they gave me and everything else they told
20 me to do.

21 Q Okay. Are you claiming a loss of income in this
22 case?

23 A No.

24 Q Okay. So you did not miss any income or any wages
25 because of this accident, is that correct?

1 A No.

2 Q Okay. I'm sorry. Is that correct?

3 A Yes.

4 Q Okay. Thank you. Are you a member of any social
5 organizations or churches in the area?

6 A No.

7 Q Okay. And you have two years of military service?

8 A Yes.

9 Q Okay. Have you ever been arrested?

10 A No.

11 Q Okay. Do you have a criminal record? Ever been
12 charged with a crime?

13 A No.

14 Q Okay. Have you ever treated with a psychiatrist or
15 psychologist?

16 A No.

17 Q Okay. And what about for drug or alcohol abuse?

18 A No.

19 Q Okay. Have you ever made a personal injury claim
20 before this case?

21 A No.

22 Q Have you ever made a workers' compensation claim?

23 A No.

24 Q Have you ever filed a lawsuit before this case?

25 A No.

1 Q Okay. Have you ever been involved in a lawsuit at
2 all? And I'm not referring to any divorce action.

3 A No, not as I recall. No.

4 Q This is your first time giving testimony?

5 A Yes.

6 Q Okay. In general, how was your health before this
7 incident?

8 A Very good.

9 Q Any hospitalizations in the ten years prior?

10 A No.

11 Q Do you have a regular family doctor?

12 A No.

13 Q If something goes wrong here in the Midlands, where
14 do you go?

15 A It's a clinic on Monticello. I'm not sure of the
16 name, but that's where I was going.

17 Q Do you know what intersection it's at?

18 A No. All I know is probably across from that Family
19 Dollar.

20 Q Okay. How is your eyesight?

21 A It's good.

22 Q Do you require any corrective lens?

23 A Yes.

24 Q Okay. Are those seeing glasses or reading glasses?

25 A These are reading glasses.

1 Q Okay. And when you're not reading, do you require
2 contacts or glasses?

3 A No, I don't.

4 Q Okay. Had you ever treated for any back or neck
5 pain before this incident?

6 A No.

7 Q What about for head pain?

8 A No.

9 Q What about for left foot pain?

10 A No.

11 Q Had you ever experienced loss of consciousness?

12 A Yes.

13 Q Tell me about that.

14 A When I had -- when I fell from the attic I was out
15 for a few. I don't know how long. All I know is
16 that I was out for a few.

17 Q And what do you mean by a few?

18 A I can't determine what -- the minutes or the time

19 on it. All I know I was out and when I -- my
20 brother came home, he woke me up and took me to the
21 hospital.

22 Q Okay. Where did he find you?

23 A On the floor.

24 Q On the second story?

25 A Yes.

1 Q Okay. So you fell through the attic ceiling, --

2 A Yes.

3 Q -- through the drywall ceiling and landed on the
4 second story floor, is that correct?

5 A Yes.

6 Q Okay. And before this incident, had you ever
7 experienced a loss of consciousness?

8 A No.

9 Q Okay. What areas were injured as a result of this
10 incident?

11 A My -- my left foot and my left knee.

12 Q Anywhere else?

13 A Just -- just the head. I had a headache after.
14 That's it.

15 Q Okay. So your left foot, your left knee and a
16 temporary headache. Are those your only injuries?

17 A Yes.

18 Q Okay. And as you know, I represent Ms. Poole, who
19 is the owner of the house on 16 Thornberry where
20 you were renting. I want to talk about your
21 experience at that house and the attic space, okay?

22 A Yes.

23 Q I understand you don't live at 16 Thornberry
24 currently?

25 A No, I don't.

1 Q When did you move in?

2 A I don't remember exactly the date.

3 Q Did you live there for one 12 month period?

4 A No, I didn't.

5 Q How long did you live there?

6 A I don't know exactly. I don't know exactly how
7 many months.

8 Q You seem sure it wasn't a year. Was it something
9 shorter?

10 A I think it -- it might have been longer. It might
11 have been longer than a year. I don't know. It
12 might have been longer than a year or shorter than
13 a year. I don't know. I'm not exactly fixed on
14 how many months it was. I don't know. It might
15 have been over a year. It might have been right
16 under a year. I stayed there for a while.

17 Q Okay. Do you know when you moved out?

18 A It had to be during the summer. I don't know what
19 month. I know it was warm outside. It was the

20 summertime.

21 Q The summer of what year?

22 A I don't know what year.

23 Q How long did you live at the house before this
24 incident occurred?

25 A I don't know. I don't know. She would know that.

1 I don't know that.

2 Q Was it a matter of days? Was it an entire year?

3 Can you estimate?

4 A It might be close to a year.

5 Q Okay. So you had lived at the house for close to a

6 year before this injury occurred, is that right?

7 A I'm not sure.

8 Q Did you ever miss any rent payments?

9 A I'm trying to figure. No.

10 Q Okay. So all of your rent payments were made on

11 time, is that correct?

12 A Yes.

13 Q Was the house generally in good condition?

14 A Yes.

15 Q Were there any problems with any part of the house

16 when you moved in?

17 A As far as I could see when I moved in, no.

18 Q Okay. Before this accident, did you ever report

19 any dangerous conditions to Ms. Poole?

20 A No.

21 Q Okay. Do you agree that she kept the house in

22 generally good condition?

23 A I would say yes, except the attic.

24 Q Okay. Was it in a state of good repair or were

25 things falling apart at the house?

1 A I think the only problem I had was something with
2 the air conditioner one time I had to tell her
3 about. Everything else seemed to be kept up.

4 Q Okay. Was she generally a responsive landlord? If
5 something happened, would she respond to you?

6 A Yes.

7 Q And if you requested anything on the house, she
8 would respond and perform that work?

9 A I don't know because I never requested anything get
10 fixed but the air conditioner and she sent somebody
11 out to fix that.

12 Q Okay. So anything that you did request --

13 A Yes.

14 Q -- she took care of, is that right?

15 A Yes.

16 Q All right. How many bedrooms were in the house?

17 A Three.

18 Q And how many tenants lived there?

19 A Me and my brother.

20 Q And what's your brother's name?

21 A Antwon Young.

22 Q And where does he live now?

23 A I don't know what street. He lives in Columbia,
24 but I don't know what street. I know how to get
25 there, but I don't know what street.

1 Q Do you have a good phone number for him?

2 A Yes.

3 Q What's his phone number?

4 A Get out my phone. Still trying to come up. Okay.

5 803.629.9907.

6 Q Okay. Did Antwon live with you the entire time you
7 were at that house?

8 A Yes.

9 Q Okay. So between the two of you, you had a three
10 bedroom house?

11 A Yes.

12 Q Was there enough room to store your things in that
13 house?

14 A No.

15 Q Okay. Did each bedroom have a closet?

16 A Yes.

17 Q Were there -- could you use those bedrooms for
18 storage?

19 A Clothes, yes.

20 Q And did the house have shared storage space or
21 closets in the common areas?

22 A No.

23 Q Okay. Did the house have a shed?

24 A It had -- yes, it had a shed, but the shed was
25 never cleaned out. It had old tires and old stuff

1 in there from the people that lived there in the
2 past.

3 Q Okay. Was it big enough to walk in? Was it a
4 large walk in shed?

5 A Yes. I never went back there, but I think it was.
6 I just seen it.

7 Q Did you ever go in that shed?

8 A No.

9 Q Okay. Were you told that you could use the shed?

10 A No.

11 Q Okay. Did you ever ask if you could use the shed?

12 A Yes. She had a maintenance worker there. I asked
13 was it going to be cleaned out. Where were we
14 going to store our stuff at. He said we could
15 store it in the attic and he showed us where we
16 could store it at.

17 Q And who said that?

18 A His name was Angel. I'm going to have to go in my
19 phone again. I don't know his last name. Angel.
20 He was the guy doing work for her over there when
21 we moved in. Angel. What's Angel's last name?

22 Q And when that comes on, you can -- you can remind
23 us of his last name.

24 A Okay.

25 Q Okay. So there was a maintenance man by the first

1 name of Angel.

2 A Yes.

3 Q And tell me exactly what he told you with respect
4 to the attic.

5 A Okay. When me and my brother moved in, I asked
6 him. I said where are we going to store the rest
7 of our stuff because we both had a lot of stuff.
8 And he told me that someone was going to come clean
9 the shed outside up, but the guy was -- I guess the
10 guy was -- wasn't available right now. But he told
11 us we can store our stuff up in the attic and he
12 showed us where to store it at.

13 Q And what do you mean by he told you -- he showed
14 you. How did show you?

15 A He pulled the string down because it was a string
16 where you pulled the door down. It comes down and
17 then it's a ladder that comes down too. So he
18 pulled that down and showed us.

19 Q Did he go up there in front of you?

20 A I don't remember him going up there in front of us.

21 Q Did you go up there when he pulled the ladder down?

22 A Yes.

23 Q Okay. So when Angel pulled the ladder down, you
24 walked to the top, right?

25 A Yes.

- 1 Q Okay. And what did you see?
- 2 A I seen just a storage spot. There's plenty of
- 3 space to put stuff at.
- 4 Q And was this on the day that you moved in?
- 5 A I would say yes. Okay. His name is DeLeon.
- 6 DeLeon. I don't know how you spell it. Let me see
- 7 if I can pull it up. I know it's DeLeon. If I
- 8 have it -- have his last name on here. No. I just
- 9 have his first name. Angel.
- 10 Q Do you have his phone number?
- 11 A 319 -- 391.1405.
- 12 Q Okay. So on the day you moved in, Angel pulled
- 13 that attic ladder down --
- 14 A Uh-huh.
- 15 Q -- in front of you and your brother --
- 16 A Yes.
- 17 Q -- and you went up and looked around, is that
- 18 right?
- 19 A Yes.
- 20 Q Did you actually step off the ladder onto the
- 21 platform?
- 22 A No.
- 23 Q Okay. Did you just stand on the ladder and look
- 24 around?
- 25 A Yes.

1 Q And then went back down?

2 A Yes.

3 Q Okay. Did your brother go up too?

4 A I don't remember him going up. I don't know.

5 Q And from when you walked up the ladder, were you
6 able to get a good look at the attic? Was it easy
7 for you to look around?

8 A Yes.

9 Q Okay. And you were pretty aware of the condition
10 and where you could step from the position where
11 you walked up?

12 Mr. Clark: Object to the form. You can
13 answer the question.

14 A Ask that again.

15 Q Sure. Let me ask a better question. When you
16 walked up on that first day when you moved in and
17 Angel showed you where the ladder was, did you have
18 a good vantage point? Were you able to see the
19 attic from where you were at the top of the ladder?

20 A Yes.

21 Q Okay. Was there anything obstructing your view of
22 the platform?

23 A No.

24 Q Okay. Was there anything obstructing your view of
25 the rest of the attic?

1 A No.

2 Q Okay. Okay. Before your -- so the first time you
3 pulled down that ladder and looked in the attic
4 space was the day you moved in, is that right?

5 A Yes.

6 Q All right. When was the first time you actually
7 entered the attic, accessed that space?

8 A It probably was the same day.

9 Q Okay. Did you store things that very first day in
10 the attic?

11 A Yes.

12 Q Okay. And how many times during the course of what
13 you believe was close to a year did you access the
14 attic before you were hurt?

15 A I don't know, but it had to be probably double
16 digits.

17 Q Okay. More than ten times?

18 A Yeah.

19 Q Okay. And so you were in the attic more than ten
20 times from the time you moved in through the day
21 that you were injured, is that correct?

22 A Yes.

23 Q Okay. And during those ten times, did you see
24 anything dangerous about the attic?

25 A No, I didn't notice anything dangerous.

1 Q During those ten times you visited before you were
2 injured, did you report to Ms. Poole that there was
3 anything in the attic that needed to be repaired?

4 A I didn't -- no, I didn't see anything that needed
5 repaired. I didn't know.

6 Q Okay.

7 A I didn't notice anything.

8 Q And so you -- to be clear, you never verbally
9 reported to Ms. Poole at any time before you fell
10 that the attic was in a dangerous condition or that
11 the attic needed to be repaired?

12 A I didn't notice anything wrong, no.

13 Q Okay. Did you ever notify your landlord in writing
14 at any time before you fell that the attic was
15 either in a dangerous condition or that it needed
16 to be repaired?

17 A I never noticed that it was in a dangerous
18 condition.

19 Q Okay. So you did not notify her in writing at any
20 time?

21 A Never, no.

22 Q Okay. Were you familiar with the layout of the
23 attic before you went up that day that you were
24 injured?

25 A I had been up there, yeah. Many times, yes.

- 1 Q What did you store in the attic?
- 2 A Stuff to cut the grass, some other boxes that we
- 3 had, maybe some workout equipment. I think -- I
- 4 don't know what my brother stored up there. He had
- 5 boxes, though. I know he had some suitcases up
- 6 there. A few things.
- 7 Q And how often did you access that attic to access
- 8 those things? _____
- 9 A I don't know. I mean, ...
- 10 Q Was it a weekly basis?
- 11 A No, not -- maybe -- I don't know.
- 12 Q Every month?
- 13 A I couldn't tell you. I don't know. If I needed
- 14 something, I would go up there. If I don't ...
- 15 Q Did you cut your grass at this rental property?
- 16 A Yes.
- 17 Q And what do you mean by stuff to cut the grass?
- 18 What did you keep in the attic for that?
- 19 A The hedge cutters. I think we kept a hose up there
- 20 to water the lawn. And it was two different hedge
- 21 cutters. It was an electric hedge cutter and the
- 22 other one, just a manual one.
- 23 Q Did you have access to the shed during that time?
- 24 A No. The stuff was still full up in there. No.
- 25 Q Did you have access to it? Was it open?

1 A It was open, yes.

2 Q And did you have access to it?

3 A Yes, I had access to it.

4 Q You could have stored --

5 A No. You couldn't store nothing in there. It was
6 filled with old tires and everything.

7 Q Was it filled to the brim?

8 A Yes.

9 Q Okay. Do you have any pictures of the attic?

10 A No, I don't. No, I don't have any pictures.

11 Mr. Clark: He had some on his phone. He
12 sent them to me. I may have misplaced them,
13 but we're trying to get -- well, I don't know
14 if we're going to be able to get them, but he
15 did have some.

16 Q Do you have them on your phone today?

17 A No. That phone I had service -- no service with it
18 no more. That's been three years.

19 Q When did you take those pictures?

20 A My brother took the pictures right after I fell.

21 Q How many pictures do you think your brother took?

22 A I would say under ten, but over five.

23 Q Okay. And did he take pictures of the actual attic
24 space?

25 A No. He didn't take from going up there looking

1 down. He took it from looking up.

2 Q So he took pictures from the second floor looking
3 towards the ceiling?

4 A Yes.

5 Q And was it on the same day that you fell?

6 A Yes.

7 Q Okay. And when do you think you emailed those to
8 your attorney?

9 A Right after I seen him. After I seen him. He
10 asked me for them and I emailed them.

11 Q Okay. And I also want to be clear. I don't want
12 to ask any questions about what you and your
13 attorney spoke about. When did you first retain
14 your attorney? Was it within a week of the wreck?
15 Was it this year?

16 A I think it might have been within a couple weeks of
17 the wreck or somewhere around there.

18 Q Okay.

19 A Within that time period somewhere.

20 Mr. Clark: The wreck?

21 Q I'm sorry. The accident.

22 A Yeah. Accident, yeah.

23 Q Yeah. Absolutely. And it was in one of those
24 early meetings with your attorney that you emailed
25 it to him, is that right?

1 A Yes.

2 Q Okay. So we're talking probably the month of the
3 accident is when you emailed those pictures out?

4 A Actually, I think the accident was near the end of
5 the month so it might have been the next month
6 over.

7 Q Okay. Okay. Have -- has your or your attorney
8 accessed this unit to inspect it or take pictures
9 since the lawsuit was filed?

10 A I have. I couldn't retrieve the pictures on it. I
11 have a different service now so it wouldn't pull
12 the pictures back up.

13 Q Okay. Let me ask a better question. Since the
14 lawsuit was filed, have you been to the property to
15 look at it again?

16 A No.

17 Q Has your attorney?

18 A I don't know.

19 Q Okay. And so today you have no pictures of what
20 the attic looks like, is that right?

21 A No, I don't.

22 Q Okay. Well, I'm going to need you to describe what
23 the attic looks like, okay?

24 A Okay.

25 Q So you get to the top of the drop down ladder.

1 You're at the top step.

2 A Uh-huh.

3 Q What do you see?

4 Mr. Clark: This is a little diagram that
5 we drew actually that we planned on using and
6 --

7 A This was the ladder right here.

8 Q Okay. Did you draw this?

9 Mr. Clark: I actually drew it.

10 A I draw better than that.

11 Mr. Clark: I hope you do. You can draw
12 your own.

13 A No. I was letting him do his own thing.

14 Q We won't question John's artistry. Did you -- were
15 you with him when you two drew this together or is
16 this something that John completely drew?

17 A Yes. I was together, yes. Yes.

18 Q Okay. So tell me what we're looking at. We're
19 looking at a yellow piece of paper.

20 A Okay. These were the steps. This was the pull
21 down. You pull it down, comes down with a string.
22 This was the steps you go on. Okay. And this was
23 where I fell through right here and this was the
24 rest of the attic. I guess you had enough paper,
25 but this was the rest of it back there.

1 Q Okay. Can you put an arrow with this pen towards -
2 - to exactly the point where you fell? Here, I'll
3 give you this Sharpie. It will make a better mark.
4 Why don't you put an X exactly where you fell?

5 A (Complies).

6 Q Okay. And what is that rectangle where the X is?
7 Is that a platform?

8 A Where, right here?

9 Q You drew an X inside a rectangle.

10 A That's where -- because I fell through a hole right
11 there.

12 Q Tell me what that -- what does this rectangle look
13 like? What is that? Is that a floor? Is that
14 insulation?

15 A It was a -- I thought it was a floor, but it was
16 insulation over a floor. I walked up there many
17 times so I thought it was a floor. I never fell
18 through the floor.

19 Q Okay. So was it that pink insulation?

20 A I seen pink, but it was pink all over the whole
21 place.

22 Q Sure. Okay. And -- okay. So where that red X is,
23 there was insulation and you had walked on that
24 insulation before and been okay, is that right?

25 Mr. Clark: Object to the form.

1 Q Go ahead.

2 A Yes. Well, as far as I know. I've never fell
3 through it and so I just walked up there. I didn't
4 ever notice it, you know. I had no problem. Like
5 I said, I've been up there many times.

6 Q Okay. And to be clear, the flooring that you were
7 walking on where you drew that red X, it was pink
8 insulation, is that correct?

9 A Yes.

10 Q Okay. And is that the -- is that the material that
11 you would walk on when you accessed the attic?

12 A Yes. I walked on it before. I just -- I didn't
13 notice it. You know, I just walked on it before so
14 I didn't -- I didn't notice it.

15 Q Okay.

16 A I never -- I never detoured and go around it or
17 over it.

18 Q Okay. And it was -- on the date of your injury you
19 had stepped on insulation and that's when you fell
20 through the ceiling, is that correct?

21 A Yes.

22 Q Okay. All right.

23 Mr. Daniels: We'll mark this as Exhibit
24 Number One. And this is a diagram that --
25 we'll just say has been drawn.

1 Defendant's Exhibit No. 1, Hand-drawn diagram;
2 one page.

3 Q Okay. All right. Mr. Young, let's look at this
4 diagram one more time. And it's clear where there
5 are vertical ladder rungs --

6 A Uh-huh.

7 Q -- headed up towards the X --

8 A Yes.

9 Q -- where you fell through the insulation.

10 A Uh-huh.

11 Q Tell me what the rest of the attic floor looks
12 like.

13 A It was mixed. It was insulation and wood.

14 Q Are there wooden beams with insulation between? Is
15 that what it looks like?

16 A I don't think I seen on that side wooden beams with
17 insulation on it. I know it was on the other side
18 it was. I noticed that.

19 Q Tell me what you mean by what you noticed on the
20 other side.

21 A On the other side it had insulation with the beams
22 like you're talking about. It was an empty spot.
23 Just empty. You could look right across the whole
24 house and it was beams with insulation on it.

25 Q Okay. And now what about on the side where you

1 fell? What did that side look like? -

2 A It had the air conditioning up there and everything
3 and the boiler and everything. So I never went
4 behind there to see what was behind there.

5 Q Was there any actual flooring over top of the
6 joists or was it all beams and insulation?

7 A I don't understand that, over the joists. What --

8 Q Sure. Did the attic appear to be only beams with
9 insulation between or was it finished with a floor
10 over top of the beams?

11 A On the side that I was it had wood on it. On the
12 other side it didn't -- it wasn't finished at all.

13 Q Okay. I'm going to do a second drawing. That
14 first one was so good. I don't want you to compare
15 me with John's drawing. So this is the floor plan
16 of the house, is that right? It's a rectangular
17 house, is that fair?

18 A Uh-huh.

19 Q Can you show me -- draw me a square where you would
20 have accessed the door, where the ladder would have
21 come up on this attic space?

22 A Okay. Well, actually, the ladder -- it's like
23 here. It came up this way and there would have
24 been a ladder coming up.

25 Q Okay. If this is looking down at the floor plan, -

1 -
2 A Uh-huh.

3 Q -- put a square where the ladder would pop up on
4 this attic floor plan.

5 A What you mean? It would pop right here. But the
6 attic didn't come all the way up. I mean, the
7 ladder didn't come all the way up there. It just
8 pulled down. It didn't go over the floor.

9 Q Sure. I understand.

10 A Yeah.

11 Q Can you draw a square on this floor plan where the
12 ladder would come up into the floor? Was it here?
13 Was it here? Was it here?

14 A It never came up into the floor.

15 Q Okay.

16 A It never came up to the floor. It came up to where
17 the opening was, but it never came onto the floor.

18 Q Okay. And what did the opening look like right
19 here?

20 A The opening looked like -- right here -- right here
21 is where I fell.

22 Q And that was insulation, is that correct?

23 A Well, it looked like insulation. Like I said, it
24 looked like insulation.

25 Q And that dot right there, I'm going to put an X

1 over top of that dot. And that's where you fell,
2 is that correct?

3 A Yes.

4 Q And it looked like insulation to you. Where was
5 the floor on this attic -- in this attic? Can you
6 show me with the pen where was there flooring?

7 A The flooring was all -- right there. All over the
8 whole -- the whole thing was flooring.

9 Q Okay. So there was actually flooring over top of
10 the wooden beams?

11 A I didn't see any beams.

12 Q Okay.

13 A I never seen any beams. Like I said, the other
14 side I seen beams, but it had so much stuff up
15 there. They had the air conditioning system up
16 there. They had the boiler up there. They had
17 everything up there.

18 Q Sure.

19 A So I never -- I never went back that far.

20 Q Yeah.

21 A Our stuff was right out -- my stuff was right here.

22 Q Okay.

23 A Right on this side right here. We just came up
24 there and put it on the side right there. We
25 didn't put it over back to the back.

1 Q And what did you put it on? What did you set your
2 stuff on?

3 A On beams and insulation. I mean, on the wood.

4 Q Okay. So you had to set your things on either
5 insulation or the wooden beams, is that correct?

6 A Yes. Yes.

7 Q And there was not a hard floor that was put on top
8 of those, is that correct?

9 A Can you rephrase that?

10 Q Sure. When you accessed the attic either to walk
11 or to store things, you only had wooden beams and
12 pink insulation to either store things or walk on,
13 is that correct?

14 A Yes. Yeah.

15 Q Okay. And when you stored things, you would store
16 your things either on top of the insulation or on
17 those wooden beams, is that correct?

18 A Wherever it was a space at, yes.

19 Q Okay. I understand. And I'm not trying to be
20 confusing or difficult. Without pictures I'm
21 trying to get you to --

22 A Yes.

23 Q -- kind of give us a picture of what it looked like
24 and that was helpful. Okay. Did this attic look
25 any different than any other unfinished attic you

1 had seen?

2 A I don't know. I've never seen an unfinished attic
3 so I don't know.

4 Q Is there anything about this attic that looked
5 different than any other attic you've been in?

6 A No.

7 Q Okay. And you were aware of the way the attic was
8 designed the day you went up into the attic and you
9 were injured, is that correct?

10 A No. I just peeked up there. I didn't know how it
11 was designed. I didn't go all the way through the
12 attic.

13 Q Sure. Well, let me ask a better question. The day
14 that you did fall, you had been up there plenty of
15 times before, is that right?

16 A Yes.

17 Q Okay. And so you were aware of the layout and you
18 were aware of where to step and where not to step,
19 is that correct?

20 A No, I wasn't aware of where to step because I
21 stepped anywhere. I never looked to -- I was never
22 cautious to step anywhere.

23 Q And what do you mean by you were never cautious to
24 step anywhere?

25 A Because I didn't know that she hadn't finished the

1 attic, that it was an opening there or it wasn't
2 stable enough to step on. Like I said, I've
3 stepped up there many times and I had no problem.
4 I was never cautious.

5 Q And so you were never cautious when you stepped on
6 the insulation?

7 A Never.

8 Q Okay. And on the day that you fell, you stepped on
9 the insulation and it came through the ceiling, is
10 that correct?

11 A I -- what I did is when I came out, I had the
12 equipment in my hand. I just stepped. You know, I
13 didn't see anything. I just stepped as I usually
14 do and the next thing I know I just went through.

15 Q Okay. What did you have in your hand?

16 A I had the hedge cutters and a cord to hook them up.

17 Q Electric --

18 A Yes.

19 Q -- hedge cutters?

20 A I had the electric and I had the manual.

21 Q So you had two hedge cutters and a rolled up cord
22 in your hand?

23 A Well, the rolled up cord, I had that but I threw
24 that down.

25 Q Okay.

- 1 A Okay. Then I had just the hedge cutters, the two
2 hedge cutters.
- 3 Q So you had two hedge cutters in your hands?
- 4 A Yes.
- 5 Q Were you looking at your feet when you were
6 walking?
- 7 A I might have been. Like I said, I wasn't cautious.
8 I just was walking. You know, wasn't no reason to
9 look at my feet. I just was walking.
- 10 Q Okay. So you were just -- were you looking forward
11 towards the exit?
- 12 A Yes.
- 13 Q And were you looking at your feet?
- 14 A No.
- 15 Q Okay. Why don't you walk us through step by step
16 what happened after you got to the top of the
17 ladder the day that you fell.
- 18 A After I got to the top of the ladder, I just walked
19 over. Walked, picked up what I had to pick up.
20 Then proceeded to walk back down.
- 21 Q Okay. And you picked up three things; a cord and
22 two hedge clippers, is that correct?
- 23 A Uh-huh.
- 24 Q Is that a yes?
- 25 A Yes. Yes. Sorry about that. Yes.

- 1 Q Did you throw the cord down the ladder?
- 2 A Yes. I threw the cord to the floor; yes.
- 3 Q Okay. And you had two hedge clippers, one in each
- 4 hand, is that correct?
- 5 A No. I had them both in one hand.
- 6 Q Both in one hand?
- 7 A Yes.
- 8 Q And were you wearing shoes?
- 9 A Actually, I was wearing boots.
- 10 Q What kind of boots?
- 11 A Just regular steel-toe boots. I was getting ready
- 12 to cut the grass so I had boots on.
- 13 Q All right. How heavy do you think those two hedge
- 14 clippers are?
- 15 A Five pounds. Maybe five pounds. Not even five
- 16 pounds a piece.
- 17 Q Okay. Do you still have those two hedge clippers?
- 18 A I think my brother has them because they were his.
- 19 I think he has them.
- 20 Q Okay. How close to the hatch door were you when
- 21 you fell?
- 22 A I don't know. I can't approximate how far I was.
- 23 Q Was it a few inches or was it 30 feet?
- 24 A I don't know. I don't know by inches. I know I
- 25 was close enough to get ready to go down the steps.

- 1 Q Okay.
- 2 A Grab the steps and go down.
- 3 Q Which foot -- which foot went through the
- 4 insulation in the ceiling?
- 5 A I couldn't tell you. It happened so fast.
- 6 Q You don't know if it was your left foot or your
- 7 right foot?
- 8 A I don't know. Yeah, it happened so fast. I don't
- 9 know.
- 10 Q Did your foot catch on anything as you were walking
- 11 up in the attic?
- 12 A No.
- 13 Q And you indicated that you stepped onto the
- 14 insulation where you ordinarily walked, is that
- 15 correct?
- 16 A Yes.
- 17 Q Was there wood on either side of the insulation?
- 18 A I can't remember right now.
- 19 Q Were there wood beams in the attic that framed
- 20 those insulations in the attic space?
- 21 A I seen the ones. Like I said, I seen the ones on
- 22 the other side of the house.
- 23 Q But you can't remember if there was any wood beams
- 24 on the side where you fell?
- 25 A No. I can't remember because like she had

1 everything over there. The water, the air
2 conditioner, everything. Big units up there in the
3 basement. I mean, the attic.

4 Q Okay. Could you have instead stepped on wooden
5 beams instead of the insulation as you're walking?

6 A I don't think so. That was the way to get down.

7 Q Was it an option for you to walk on beams instead
8 of insulation?

9 A I don't think it was an option. That's the way I
10 always went. I always stepped that way.

11 Q What was the initial position of your body when
12 your fall began?

13 A It happened so fast. I don't know. All I know I
14 was up and I went through.

15 Q Standing up?

16 A Standing up straight.

17 Q And your body went through?

18 A And went through. Feet first went through.

19 Q Did both feet go through the ceiling?

20 A Yes.

21 Q And then your entire body went through the ceiling,
22 is that correct?

23 A Yes.

24 Q And you ended up where?

25 A On the floor below.

1 Q And what is that flooring? Is it a carpet floor?

2 A It was carpet, yes.

3 Q Okay. Did you hit anything as you went through the
4 ceiling?

5 A I think I hit my head. I think I hit my head. It
6 happened so fast.

7 Q Okay. And tell me about your -- the position where
8 your body came to a rest.

9 A When I woke up, I was just laying on the floor.
10 Like I said, right through the hole, below the hole
11 just laying across the floor.

12 Q Okay. And how long were you in that position on
13 the floor?

14 A I really don't know. I really don't know how long
15 I was on the floor. I don't know.

16 Q Was your brother home at the time of this incident?

17 A No. He was -- he had came in the house and found
18 me on the floor.

19 Q Okay. Did he find you unconscious?

20 A Yes.

21 Q Okay. Do you know how long you were unconscious?

22 A No. I don't know how long.

23 Q Do you know if it was very brief or if it was a
24 matter of hours?

25 A I couldn't even tell you. I didn't -- I didn't

1 look at the clock before I fell so I really don't
2 know.

3 Q Okay. Do you believe that you stepped in the wrong
4 place on the day that you fell?

5 A No.

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

8 A Yes.

9 Q Explain that. What exactly?

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

17 Q Okay. So do you think that they intentionally
18 camouflaged it to make it look finished?

19 A No. I think they didn't do their job.

20 Q Okay.

21 A I don't know if she went up there and reviewed it
22 after the fact. She would have seen that, you know
23 what I mean, okay, you have to finish this and
24 finish that because she's the owner. But to me it
25 looked like it was all right, but it wasn't.

1 Q Okay. How many times do you think you had stepped
2 on that spot before the day you fell?

3 A Probably every time I went up there.

4 Q How many times do you think that would have been?

5 A Could have been anywhere between probably ten
6 times. Maybe more than that.

7 Q And did you notice anything wrong with that area on
8 those ten times that you stepped there before the
9 day you were hurt?

10 A No. I didn't because I would have told her.

11 Q And did you ever let her know that there was
12 anything wrong with the area where you fell after
13 those ten times you had stepped over it prior to
14 the impact?

15 A I didn't know anything was wrong with that.

16 Q Okay. So the answer is no, that you did not let
17 her know?

18 A No. No, I didn't let her know because I didn't
19 know anything was wrong with it.

20 Q Okay. If we are able to go up there and take
21 pictures of the attic, would the condition that
22 you've described be obvious in the photographs?

23 A I don't know. See, I don't know the work they did.
24 You know what I mean? She had people come do work
25 after that, but I don't know what they did, if they

1 left it unfinished again or -- I don't know what
2 they did. But they did it pretty fast so I don't
3 know what they did up there. I didn't go back up
4 there after I fell.

5 Q Okay. What about when you moved out, how did you
6 get your things down from the attic?

7 A I had my brother and I had family members come over
8 to help me move.

9 Q And they went to the attic for you?

10 A Yes.

11 Q Okay. Was there anyone else at the house at the
12 time of this accident?

13 A I had a cousin that went to the house, but he came
14 after. He came after. My brother might have
15 called him. I don't know, but when I woke up and
16 got up he was there and he took me to the hospital.

17 Q Okay. So when you came to you had a brother and a
18 cousin at the house?

19 A No. My brother -- my cousin wasn't there yet. He
20 came after the fact so my brother must have called
21 him.

22 Q Okay. And what's that cousin's name?

23 A Alterick Lundy.

24 Q How do you spell that?

25 A A-L-T-E-R-I-C-K Lundy, L-U-N-D-Y.

1 Q And can you give us his phone number too?

2 A 732.421.4442.

3 Q And he lives here in Columbia? Alterick does?

4 A I don't know where Alterick lives at now. I know
5 he's a truck driver so he's back and forth. So I
6 don't know where he's at now.

7 Q Okay.

8 A He's around the area somewhere.

9 Q Do you know if -- so it's your testimony that you
10 were not aware of the condition in the attic before
11 you fell, is that right?

12 A Yes.

13 Q Do you know if anyone was aware of the condition in
14 the attic before you fell?

15 A I don't think my brother was aware because he was
16 back and forth up there too and he never said
17 nothing to me about it.

18 Q Are you aware of any other tenant that knew of any
19 dangerous condition in the attic?

20 A Nobody else went up there but me and my brother.

21 Q Are you aware if the landlord knew about any
22 dangerous condition in the attic?

23 A I don't know. I don't know if she knew or not.

24 Q Okay. Okay. When you came to, tell me -- did you
25 notice any injuries right away?

1 A I felt -- I felt like I couldn't move my foot. I
2 thought it might have been broke because I couldn't
3 move my toes. I couldn't move anything and it was
4 a lot of pain.

5 Q Which side?

6 A My left.

7 Q Okay. Had you had anything to drink that day, any
8 alcohol to drink?

9 A No.

10 Q Were you on any medication that day?

11 A No.

12 Q Okay. Have you given any statements about what
13 happened since the accident, either to law
14 enforcement or any companies? I'm not talking
15 about what you've discussed with your lawyer.

16 A No. Nothing but the doctors.

17 Q Okay. All right. And so you came to and you
18 noticed some pain in your left foot. What happened
19 next?

20 A Before I came to I heard my brother calling me. He
21 was calling me, calling my name. Get up, get up.
22 And then I came to. I noticed the pain in my foot
23 and I couldn't get up at all and I couldn't move my
24 foot. And he helped me up and took me to the couch
25 and sit me down, asked me did I want an ambulance

1 to come, but my cousin had just came and he said
2 I'll take you to the hospital. He took me.

3 Q All right. And your cousin took you to the ER?

4 A Yes.

5 Q And what hospital did you go to?

6 A I'm not familiar with hospitals. It might have
7 been --

8 Q Was it Providence?

9 A It might have been Providence. I'm not -- I wasn't
10 familiar with the area really.

11 Q Okay. And so you went to the hospital and what did
12 you report?

13 A I told them that -- they asked me what happened. I
14 told them what happened and I told them that I hurt
15 my foot and my knee was bothering me and I think I
16 was out for a few. And they asked me the same
17 thing you asked, how long. I didn't know. I
18 didn't know.

19 Q Okay. Did you receive any diagnoses from the ER?
20 Did they tell you what was wrong with you?

21 A All they told me that it wasn't broken.

22 Q Okay. Did they take any imaging?

23 A No. They took x-ray.

24 Q And what areas did they take x-rays?

25 A Of the foot, my left foot.

1 Q And did that image show any injuries?

2 A It showed no broke -- nothing was broke.

3 Q Okay. Did they take imaging anywhere else?

4 A No.

5 Q All right. And did they provide any treatment for
6 you?

7 A No. They didn't provide no treatment, no.

8 Q Okay. Did they refer -- what did they do for you?

9 Did they release you? Did they refer you to
10 anyone?

11 A They released me. Yeah, they released me.

12 Q Okay. The same day?

13 A Yes. Same night.

14 Q And at the ER your primary complaint was what?

15 A My foot.

16 Q Left foot?

17 A Yes.

18 Q Okay. At the ER, explain to me what your left foot
19 condition was.

20 A I couldn't move anything. I couldn't move any of
21 my toes or -- and the foot -- I couldn't move my
22 foot either. It was a great amount of pain.

23 Q On a scale of one to ten at the ER, what was your
24 pain level in your level foot?

25 A Ten. Ten.

1 Q Okay. And how long did that pain of a ten out of
2 ten last?

3 A I couldn't say. It was a while. I still have pain
4 to this day so ...

5 Q Did it last for a number of months?

6 A It had to be months. A while, yeah. I can't count
7 how many months, but it last for a long time.

8 Q Okay. To be clear, your pain stayed at a level of
9 a ten out of ten for a number of months?

10 A Yes.

11 Mr. Clark: Object to the form.

12 Q Okay. Did they ask you to follow up with a primary
13 care doctor?

14 A They asked me did I have a doctor and they told me
15 I should go see a doctor if I had -- or find one so
16 ...

17 Q Did you do that?

18 A Yes.

19 Q And where did you go?

20 A I think I went to some kind of care place.

21 Q Was it Doctors Care?

22 A Yes.

23 Q Okay. And when did you go there?

24 A Probably within that week.

25 Q Okay. How many times did you go to Doctors Care?

1 A I think I went to Doctors Care two times maybe.

2 Maybe more. Maybe three at the most.

3 Q Okay. And what did they do for you?

4 A He looked at the foot and just asked me where the
5 pain was and everything and that's about it.

6 Q Did they provide any treatment? Did Doctors Care
7 actually treat your pain?

8 A No. He didn't -- he didn't treat the pain. He
9 just referred me to somebody else.

10 Q Okay. Did they take any additional imaging?

11 A Not at that time. I don't think so, no.

12 Q What did they tell you your injuries were? Did
13 they give you any diagnoses?

14 A They just told me I had an injury. It wasn't
15 broke. I had an injury to the foot, a traumatic
16 injury to the foot, and that was about it.

17 Q Okay. And why did you go back two or three times?

18 A Kept bothering me.

19 Q But when you were there you said they didn't treat
20 your pain, did they?

21 A No, they didn't treat the pain.

22 Q Okay. And so what did they do for you when you did
23 go?

24 A They looked at the foot. They looked at the foot
25 again. That's all.

1 Q Was it just diagnostic imaging and sort of
2 diagnostic treatment when you went, like just go to
3 diagnose you and tell you what was wrong with you,
4 or did they provide any actual treatment?

5 A They didn't provide no treatment.

6 Q Okay. Where else did you treat?

7 A That's it.

8 Q Did you ever receive any physical therapy?

9 A Yes.

10 Q Okay. Did you ever see an orthopaedist?

11 A I don't know. I seen a lot of doctors. I don't
12 know. I might have went to an orthopaedist. It
13 was so many doctors. I don't know.

14 Q Okay. So far you've told me you went to the
15 emergency room and Doctors Care.

16 A Uh-huh.

17 Q We also note -- we haven't spoken about your
18 physical therapy yet. Was there another treatment?
19 Did you go to an orthopaedist or not?

20 A I don't know.

21 Q Okay. And did you ever receive a TENS unit? Do
22 you ever treat with a TENS unit at home?

23 A Yes.

24 Q Okay. What is a TENS unit? What did it do for
25 you?

1 A Well, it tells me where the pain is at. I know
2 that. It sends pulses to the pain areas, like
3 massaging inside the foot. And I still use that
4 still.

5 Q Okay. So you have it today?

6 A Yes.

7 Q Have you had to use it consistently since the
8 accident?

9 A Yes, I do.

10 Q How often?

11 A Probably three to four times a week.

12 Q Okay. And you've used it that consistently since
13 the injury?

14 A Yes.

15 Q Okay. And who prescribed the TENS unit to you?

16 A I think the therapy. I think the therapy. Yes,
17 they prescribed it.

18 Q Does it help?

19 A I don't know if it helped because it's not getting
20 better yet, my foot, but it tells me that it's
21 still got pain in it because it send pulses. It
22 vibrates inside and the foot still bother me. I
23 can tell it's still hurting.

24 Q Okay. Finally, let's talk about your physical
25 therapy. You indicated you treated with a physical

1 therapist, is that right?

2 A Yes.

3 Q How did you find that physical therapist?

4 A I'm trying to think that they gave it to me, the
5 Doctors Care. I think they sent me because it was
6 right on the side of the building.

7 Q Okay. Were you referred by your attorney?

8 A I don't think so.

9 Q Okay. When did that treatment begin, the physical
10 therapy treatment?

11 A I don't know the exact time.

12 Q Was it very soon after the accident? Did you wait
13 some time?

14 A I don't think I waited that long because I was
15 always complaining about my foot hurt. I don't
16 know how long it was, though.

17 Q Was it within a week or two or was it several
18 months later?

19 A No. It wasn't seven months. Yeah.

20 Q Okay. And when did the physical therapy treatment
21 end?

22 A Maybe a month.

23 Q Okay. So you went -- you treated for about one
24 month, is that right?

25 A Maybe a month. Maybe two months. It was in that

1 period. I don't -- I don't exactly ...

2 Q How many times did you go?

3 A I don't know.

4 Q Was it a couple times or was it 50 times?

5 A It wasn't a couple times. It was more than a
6 couple times, but I think I was going maybe --
7 maybe once or twice a week.

8 Q Okay. And what did the physical therapist treat
9 you for?

10 A The foot pain. They put heat on the foot. They
11 put cold on the foot. They tried to describe some
12 -- some kind of exercise for the foot. Different
13 kind of exercise that I can do.

14 Q Okay.

15 A And -- yeah.

16 Q Were you having trouble walking when you were
17 treating with the physical therapist?

18 A Yes. It was bothering me more after.

19 Q And what do you mean by it was bothering more
20 after?

21 A After -- because it was aggravating my foot. I
22 felt like it was because when I went there it was
23 bothering me already, but through them bending the
24 foot and making me do this and do that it was
25 starting to hurt more.

1 Q Okay. And so when you were released from the
2 physical therapist, was your foot better?

3 A No.

4 Q Did physical therapy help?

5 A No.

6 Q Had you ever received physical therapy before?

7 A No, I don't think so.

8 Q Okay. And did you treat with any other provider
9 that we haven't discussed yet?

10 A No.

11 Q Okay. Is -- has your foot condition resolved
12 today?

13 A No.

14 Q Okay. Well, I'm going to walk you through a time
15 line since the accident. You can let me know the
16 level of pain. You indicated that it was a ten out
17 of a ten on the date of the accident, is that
18 right?

19 A Yes. Uh-huh.

20 Q Okay. And what about a month later?

21 A I can't tell you the level, but it was still
22 bothering me a whole lot.

23 Q Was it still a ten out of ten?

24 A I can't tell you it was a ten out of ten. I don't
25 know what level then. All I know is it's still

1 bothering me.

2 Q Okay. And what about two months afterwards?

3 A I couldn't tell you. All I know it still bother
4 me.

5 Q And what about six months afterwards?

6 A I couldn't tell you. Now, as far as the level, you
7 know, I couldn't tell you at that point.

8 Q Okay. What about today? We're now -- today in
9 October of 2105?

10 A I can't tell you a level, but I can probably tell
11 you that my foot is probably 75 percent. You know,
12 it bother me. Some days I get up, I can't walk.
13 The cold weather is bothering me. It's aching like
14 a toothache. The raining weather, it's hurting.
15 Can't use a treadmill. Can't run. Can't jump
16 rope.

17 Q And what do you mean by your foot is 75 percent?

18 A It's -- it feel like -- some days it feel like it's
19 feeling better. Then another -- I get up one day,
20 another day, and it's hurting.

21 Q Okay. Describe the pain. Where exactly is the
22 pain?

23 A The pain is over on the lefthand side of the foot.
24 It runs from the heel on that side up to the small
25 toe and under the toes.

1 Q Okay. And how often do you feel that pain?

2 A Every day.

3 Q Okay. And have you felt it every day since the
4 accident?

5 A Yes.

6 Q When was the last time you sought treatment?

7 A I haven't seen any treatment. I do my own
8 treatment like they told me. Just use the machine
9 and they gave me rubber bands and different kind of
10 exercises to do.

11 Q When -- was the physical therapist the last time
12 you sought treatment for your foot?

13 A No. I went to -- I think a couple more doctors to
14 get shoes and to get an MRI.

15 Q Okay. Who did you go see for that?

16 A I don't know. I don't know. I just know it's
17 downtown somewhere.

18 Q Did you get an orthopaedic shoe?

19 A Yes. I got shoes with inserts.

20 Q Do you use those?

21 A Well, I still do use them, but they're pretty old
22 now. But I still do use them, yes.

23 Q And you also had an MRI, is that right?

24 A Yes.

25 Q Of your left foot?

1 the injury that I have, you might think it's well
2 and you might take a wrong step and it'll bother
3 you again. So when I was at the flea market
4 walking, I guess the uneven ground, I couldn't even
5 finish walking.

6 Q And how did you get home?

7 A My car. I walked -- I stopped from the flea -- I
8 stopped walking. I didn't finish walking through
9 the whole flea market. Then I just got in my car
10 and went home.

11 Q All right. Do you know what your medical expenses
12 are that you're claiming is related to this
13 accident?

14 A No. I don't know.

15 Q Do you have health insurance?

16 A No.

17 Q Did you have health insurance at the time of this
18 accident?

19 A No.

20 Q Are your medical bills paid?

21 A I don't know.

22 Q Can you tell me why you're suing your landlord?

23 A Because this is an injury that I'm going to have
24 probably for the rest of my life. I'm 56 years
25 old. And it hasn't got well within three years.

1 I'm having this trouble with my foot. You know, I
2 might have to have surgery later on if this foot
3 continue to bother me. I've never had a foot
4 injury.

5 Q And I guess the question is can you explain why
6 it's your landlord that you're suing?

7 A It's her house. She should have took
8 responsibility of having it right.

9 Q Okay. So is it your testimony that you're suing
10 the landlord because the injury happened in her
11 house?

12 A I'm suing -- I'm suing her because she didn't have
13 her house done right, okay? Because I don't think
14 she even probably envisioned that they didn't
15 finish the job right.

16 Q Okay. Can you tell me what you think that she did
17 wrong?

18 A Well, when you get somebody to -- and you're paying
19 somebody to do work, you have to make sure that
20 work is done before you pay them.

21 Q Are you referring to those who constructed the
22 attic?

23 A Whoever came and fixed it. Excuse me. Whoever
24 came and fixed it. That's what I'm talking about,
25 yes. I don't know who fixed the attic.

1 Q Do you have any information that she did anything
2 to cause your fall?

3 A Yes. She didn't -- she didn't fix -- get the attic
4 fixed right.

5 Q Looking back, do you acknowledge that you may have
6 stepped in the wrong place?

7 A No.

8 Q Do you acknowledge that you may have made a mistake
9 when you were walking in the attic?

10 A No.

11 Q Okay. All right.

12 Mr. Daniels: And we'll mark the drawing
13 that we did earlier as Exhibit Number Two and
14 we'll mark this as Exhibit Number Three.
15 Defendant's Exhibit No. 2, Hand-drawn diagram;
16 one page.

17 Q Finally, Mr. Young, I'm going to show you a copy of
18 what I believe is your lease for the property --

19 A Okay.

20 Q -- that you resided on at the time of the accident.

21 A Uh-huh.

22 Q Do you recognize that lease?

23 A Yes.

24 Q Okay. And take your time, as long as you'd like to
25 look through it, and let me know if you see your

1 signature to that lease.

2 A Yes.

3 Q Okay. Is this a fair and accurate copy of the
4 residential lease that you executed with your
5 landlord?

6 A Yes. As far as I know, yes.

7 Q Okay.

8 Mr. Daniels: And we'll mark that as
9 Exhibit Number Three then.
10 Defendant's Exhibit No. 3, Residential Lease
11 Agreement; four pages.

12 Q And there's a couple quick sections I want to look
13 through with you.

14 A Can I go to the bathroom real fast?

15 Mr. Daniels: Absolutely. We'll take a
16 quick break.

17 (Off the record from 11:45 a.m to 11:47 a.m.)

18 Examination continues

19 By Mr. Daniels:

20 Q Mr. Young, have you had a chance to look at the
21 lease?

22 A Yes.

23 Q Okay. And marked as Exhibit Number Three. And is
24 that a representation of the residential lease you
25 signed with Ms. Poole?

1 A Yes.

2 Q Okay. There's a couple quick sections I'm going to
3 ask you about and then we'll be done, okay?

4 A Uh-huh.

5 Q Starting at the bottom of page two, you'll see
6 Section 14 is titled Condition of the Premises.

7 A Uh-huh.

8 Q Subsection One indicates that the tenant -- and
9 that's you, correct?

10 A Uh-huh.

11 Q Tenant agrees to properly use and operate --
12 properly use the premises. Do you believe that the
13 manner in which you were walking in the attic was a
14 proper use of the premises?

15 A Yes.

16 Q Okay. Do you think that you made any mistake by
17 walking where you did in the attic?

18 A No.

19 Q Okay. And you believe walking on the insulation
20 was a proper use of the attic?

21 A I have done it before, yes, many times.

22 Q Okay. Let's look at the next section. The same
23 section, Section 14 Subsection 4, it's going to
24 begin at the top of the next page. It says the
25 tenant agrees to -- can you read that out loud,

1 starting Subsection 4?

2 A I don't know where you're at right here.

3 Q Sure.

4 A "Notify the landlord in writing upon discovery of
5 any damages, defects or dangerous conditions and
6 about the premises."

7 Q Okay. And you agreed to notify Ms. Poole of any
8 dangerous condition on the property as soon as you
9 discovered it, is that right?

10 A Yes.

11 Q And do you believe the attic was in a dangerous
12 condition?

13 A Not at that time, no.

14 Q Okay. So not -- at no time before your injury did
15 you believe --

16 A No time.

17 Q -- it was in a dangerous condition, is that right?

18 A No time. I had been up there many times and walked
19 it -- walked the same way I walked.

20 Q Okay. And, accordingly, you never notified your
21 landlord in writing that the attic was in any
22 dangerous condition, is that right?

23 A It wasn't in any dangerous condition. Not as I
24 know of, no.

25 Q Okay. So you don't believe that the attic was in a

1 dangerous condition before you fell?

2 A As far as I know. I never noticed it.

3 Q Okay. All right. And to be clear, you didn't
4 believe the attic was in a dangerous condition
5 before you fell, is that right?

6 Mr. Clark: Object to the form.

7 A I never noticed it.

8 Q Okay. And, finally, again at the top of page
9 three, I'm going to point you to a third section
10 beginning right here. Can you read that out loud?

11 A "Tenants acknowledge that they have examined the
12 entire interior and exterior of the premises,
13 including plumbing, heating, electrical,
14 appliances, smoke detectors, fixtures, carpet,
15 drapes, paint and have found them to be good, safe
16 and clean condition and repair with the following
17 exceptions."

18 Q Okay. And did you specify any exceptions?

19 A No.

20 Q Okay. In this lease, did you acknowledge that you
21 had examined the entire interior and exterior of
22 the premises?

23 A Yes.

24 Q And did you acknowledge that you had found it to be
25 in good condition and repair?

1 A As far as I know, yes.

2 Q Okay. Did your landlord prohibit you from
3 inspecting any part of the house?

4 A No.

5 Q Did your landlord prohibit you from inspecting the
6 attic space?

7 A No. No.

8 Q Okay. And you signed off that the entire premises
9 was in good, safe condition and repair, is that
10 correct?

11 A I did, yes.

12 Q At any time after you signed that statement, did
13 you ever tell the landlord the attic space was
14 either damaged or that it needed repair?

15 A No.

16 Q Okay. Looking back, can you expect your landlord
17 to repair the attic without you notifying her of
18 that condition?

19 A Like I said, it wasn't any condition as far as I
20 know of. Now, I've been up there many times and
21 had no problem.

22 Q Okay. So you don't believe it was in a dangerous
23 condition before you fell?

24 Mr. Clark: Object to form.

25 A I don't know. Like I said, I've been up there many

1 times. I didn't know if it was dangerous or not
2 until I fell.

3 Q Okay. All right.

4 Mr. Daniels: And we can go off the record
5 for a moment.

6 (Off the record from 11:52 a.m. to 11:56 a.m.)

7 Examination continues

8 By Mr. Daniels:

9 Q Mr. Young, how many steps did you take in the attic
10 before you fell that day?

11 A I don't know how many steps.

12 Q Was it two steps or was it 20 steps?

13 A Wasn't no 20. Maybe -- maybe between three and
14 five maybe. -----

15 Q Okay. And was every one of those steps on the pink
16 insulation?

17 A I don't know. I wasn't looking down.

18 Q But is that where you would walk when you would
19 make those steps?

20 A Yes.

21 Q Okay. And, finally, I'm going to show you a series
22 of photos and ask you if these are a true and
23 accurate depiction of the house and the attic
24 ceiling -- rather the second floor ceiling as it
25 appeared after you fell, okay?

1 A Uh-huh.

2 Q And, if so, we'll mark that as Exhibit Number Four.

3 A Okay. That is the outside of the house. Okay.

4 That's before. Yeah, that's the hallway and
5 everything. Yes. And that's the pull down. How
6 does this go? Okay. Yes. I don't know. Okay.

7 That's a closet. Okay. Yes.

8 Q Okay. And those photographs, which we'll mark as
9 Exhibit Number Four, are those a fair and accurate
10 depiction of the property as it appeared after you
11 fell?

12 A Yes.

13 Q And before any repairs were done, is that correct?

14 A Yes.

15 Defendant's Exhibit No. 4, Copies of Color
16 Photographs; nine pages.

17 Mr. Daniels: Okay. Well, I don't have
18 any further questions.

19 Cross-examination

20 By Mr. Clark:

21 Q Mr. Young, Mr. Daniels asked you several questions
22 about the lease and there was one in particular
23 about inspection of the property. Where were you
24 physically when you actually signed this lease?

25 A I think I met her in a parking lot of a shopping

1 center.

2 Q Okay. All right. And had you -- so you weren't at
3 the house?

4 A No. Uh-uh. Not at the house.

5 Q Had you seen the house before then?

6 A I had seen the house from the outside, yes.

7 Q Had you been inside?

8 A I think I had looked around inside one time, yes,
9 with my brother. She said the door was open so I
10 could go inside.

11 Q All right. And I believe you testified you didn't
12 inspect the attic?

13 A No, I didn't inspect the attic.

14 Q All right. When you leased the house, did you
15 expect that Ms. Poole had inspected the house for
16 safety?

17 A Yes.

18 Q And you relied on that?

19 A Yes.

20 Q All right. All right. The diagrams that have been
21 admitted here, there was some talk about beams in
22 the attic and insulation. Do you remember he asked
23 you questions about that?

24 A Yes. I remember that, yes.

25 Q Do you know what plywood is?

1 there was plywood?

2 A Yes.

3 Q All right. Now, the way these diagrams are drawn,
4 it appears that the area that you fell was right in
5 front of the staircase, is that correct?

6 A Yes.

7 Q To get down, was there any other route that you
8 could have taken?

9 A No.

10 Q Did you have to cross this portion where there was
11 no plywood?

12 A Yes, you had to.

13 Mr. Clark: I have to take this call.

14 (Off the record briefly at 12:02 p.m.)

15 Q So was there any other way that you could have gone

16 --

17 A No.

18 Q -- to get down?

19 A You have to step -- you have to step that way to go
20 down the ladder. It's right in front of that.

21 Q All right. Now, Mr. Daniels asked you a couple of
22 questions about your pain level in the ER and at
23 various times since this incident. Can you
24 remember verbatim everything you said at each
25 doctor's visit?

- 1 A No.
- 2 Q Do you rely on the medical records for what was
3 actually said and done during your visits?
- 4 A Yes.
- 5 Q In fact, have you actually read these medical
6 records?
- 7 A I never looked at them.
- 8 Q Okay. All right. So as far as your pain level in
9 the ER, do you remember exactly what it was?
- 10 A No, I don't.
- 11 Q Was it bad pain, though?
- 12 A Yes. It was bad pain, yes.
- 13 Q Okay. Now, did Ms. Poole ever speak about the
14 attic?
- 15 A No. No. She didn't speak about the attic until I
16 called her and told her that I fell through and she
17 asked me what was I doing up there.
- 18 Q Okay. Did she ever tell you not to go up there?
- 19 A No, never.
- 20 Q And I believe you said her maintenance man told you
21 --
- 22 A Yes.
- 23 Q -- that's where to store?
- 24 A That's where to store. He told me and my brother
25 that's where to store stuff at.

1 Q Okay. And the shed outside you couldn't store
2 anything in?

3 A No. She had all kind of tires from the previous
4 tenant.

5 Q Now, Mr. Daniels asked you about the TENS unit. I
6 realize it may not have completely removed all of
7 your pain, but did it help some?

8 A I think it bothers me more because it zeros in on
9 the pain, you know, and it vibrates and it hits the
10 pain. So it bothers -- it still bothers me.

11 Q All right. Does it help you some?

12 A The foot hasn't gotten well so I can't tell if it
13 helps me some or not because it hasn't gotten well.
14 Not to a point where I want it, to where I was
15 before the accident.

16 Q That leads me to this question. Is your foot
17 actually better than it was three years ago when
18 you fell, though?

19 A No. No.

20 Q It's the same as it was three years ago?

21 A Well, after I fell, like I told him, it's a
22 different percentage.

23 Q Right.

24 A You know what I mean? So it's better. I'm just
25 still experiencing pain.

- 1 Q Right. Right. Okay. And when you -- now, you
2 don't know if the TENS unit actually is helping it
3 or not, do you?
- 4 A No. I just -- I'm just doing what they told me to
5 do.
- 6 Q Okay. But the foot is better?
- 7 A It's getting better, yes, as times goes on.
- 8 Q All the medical treatment that you got, do you
9 think it contributed to making your foot better?
- 10 A It's contributed to, yes, getting better. I'm on
11 the road.
- 12 Q Okay. All right. And the physical therapy, did
13 that help you with motion and being able to walk a
14 little better?
- 15 A Yes. Because when I went there I couldn't move my
16 toes. I couldn't do anything.
- 17 Q Okay. All right. Now, did you ever get an
18 injection in your foot?
- 19 A No.
- 20 Q Did you ever get any pain medicine?
- 21 A I think I didn't want no pain medicine. I'm not --
22 I'm not a pill taker.
- 23 Q And when you left the ER, did you feel a little
24 better?
- 25 A Not that night, no.

1 Q Okay. The next day?

2 A It started to feel a little bit better. A little
3 bit.

4 Q Okay. But it -- but it's your testimony that at
5 this point your foot is 75 percent of a hundred
6 percent?

7 A Yeah. I have my good days and bad days.

8 Q What would you say it was right after the accident?

9 A It wasn't good at all. I couldn't do anything. I
10 couldn't stand on it. Nothing. I couldn't do
11 anything.

12 Mr. Clark: All right. Thank you, sir.
13 Those are all the questions that I have for
14 you.

15 Re-examination

16 By Mr. Daniels:

17 Q I have two final questions to follow up with what
18 we heard you discuss with John. You indicated that
19 your landlord never told you you were not allowed
20 to go in the attic, is that correct?

21 A Yes. I thought I was renting the whole house so

22 ...

23 Q Did she ever tell you to go in the attic?

24 A No. But I was renting the whole house so I didn't
25 have -- if I wasn't supposed to go in the attic,

1 she probably would have specified that to me.

2 Don't go in the attic because this is not done
3 right or I don't want you to go there yet.

4 Q Did you ever ask her if you could access the attic?

5 A No, I never asked that.

6 Q Did you ever ask her if you could step on
7 insulation in her attic space?

8 A I didn't think I had to ask her, no.

9 Q Did you ever ask her if you could use the attic for
10 storage?

11 A No. I talked to the guy that was fixing the house
12 up, which was the guy that she trusted -- Angel --
13 the most. So he told me and my brother to store
14 stuff up there.

15 Q Okay. And, finally, you indicated that you had to
16 walk -- you had to travel across a part of the
17 attic that did not have plywood floors in order to
18 reach the area where the HVAC unit was sitting on
19 plywood, is that correct?

20 A No. That's the other way.

21 Mr. Clark: Objection.

22 Mischaracterization.

23 Q Sure. Let me ask a better question. When you were
24 speaking with your attorney I believe it was your
25 testimony that you had to cross over the areas with

1 insulation in order to get to the ladder, is that
2 correct?

3 A Yes. To go back down, yes.

4 Q Were there also wooden beams leading to the access
5 door?

6 A I didn't notice that. Like I said, I just walked.
7 You know, I walked so many times. I didn't notice
8 that.

9 Q You did not notice it. Did you look for wooden
10 beams to walk on?

11 A No. I just -- I just walked right out all the
12 time. Like I said, it held me and, like I said,
13 I've been up there for -- many times so I didn't
14 think --

15 Q Yeah. But you did not look for wooden beams to
16 walk on?

17 A No. I didn't look for anything to walk around.
18 There wasn't any signs up there saying detour,
19 don't walk around that way. And the guy that told
20 me -- the maintenance guy that was up there all
21 over the house doing the painting, the fixing,
22 everything, he never told me to watch that, watch
23 your step up there.

24 Mr. Daniels: Okay. No further questions.

25 Thank you.

State of South Carolina)
)
 County of Lexington) Certificate

Be it known that the foregoing deposition of Cedric Young was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

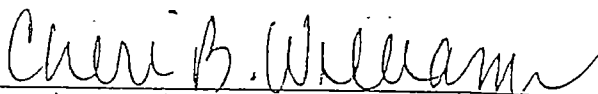
That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

The foregoing transcript of 84 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

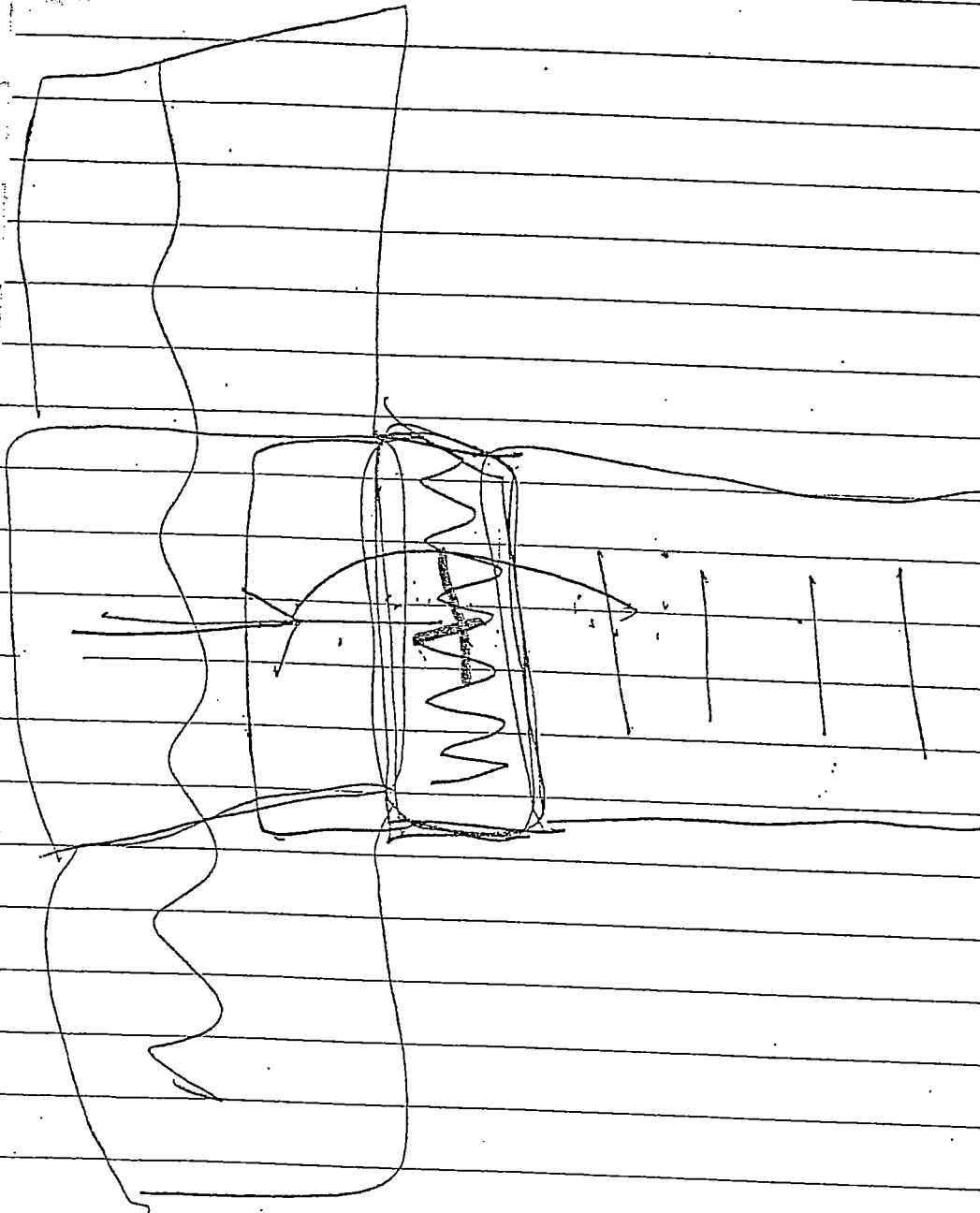
That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 13th day of November, 2015.


 Cheri B. Williams, CVR-M

Notary Public for South Carolina
 My commission expires May 13, 2025.

Note: Recordings are retained for twelve (12) months from date of certification.



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RESIDENTIAL LEASE AGREEMENT

1. IDENTIFICATION OF PARTIES AND PREMISES This Agreement is made and entered into this 8th of day of June, 2012 between the following named persons:

Valerie Poole

Valerie Poole

100 PEPPER GRASS DR
ELGIN SC 29045

and

Cedric Young
Cedric Young

(herein called "Tenants") and Lessor (herein called "Landlord"). Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, the premises located at 16 Thornberry Court, Columbia, SC 29229, California (herein called "the premises"). The premises shall be occupied only by the above mentioned Tenants. Tenants shall use the premises for residential purposes only and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and shall be considered a breach of this Agreement.

2. INDIVIDUAL LIABILITY Each tenant who signs this Agreement, whether or not said person is or remains in possession, shall be jointly and severally liable for the full performance of each and every obligation of this Agreement, but not limited to, the payment of all rent due and the payment of costs to remedy damages to the premises regardless of whether such damages were caused by a Tenant or invitee of a Tenant.

3. TERM OF THE TENANCY The term of this Agreement shall commence on June 8th 2012 and shall continue from that date

D a. on a month-to-month basis. This Agreement will continue for successive terms of one month each until either Landlord or Tenants terminate the tenancy by giving the other thirty (30) days notice of an intention to terminate the premises. In the event such notice is given, Tenants agree to pay all rent up to and including the notice period.

D b. For a period of 12 months expiring on June 8th 2013

- Should Tenants

vacate before the expiration of the term, Tenants shall be liable for the balance of the rent for the remainder of the term, less any rent Landlord collects or could have collected from a replacement tenant by reasonably attempting to re-rent. Tenants who vacate before expiration of the term are also responsible for Landlord's costs of advertising for a replacement tenant. In the event Tenants fail to give written notice of an intention to vacate the premises at the end of the term, the tenancy shall become one of month-to-month on all terms specified in section (a) of this clause.

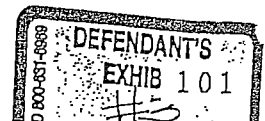
4. PAYMENT OF RENT Tenants shall pay Landlord rent of \$850 (cash only) per month, payable in advance or on the 3rd of each month. If that day falls on a weekend or legal holiday, the rent is due on the next business day. Rent shall be paid by cash only, to Valerie Poole at, said location

designate from time to time. _____, or at such other place as Landlord shall

5. LATE CHARGES If rent is paid after the 3rd day of the month there will be Late charge of \$ 50.00 (Fifty Dollars) assessed.

6. FAILURE TO PAY As required by law, Tenants are hereby notified that a negative credit report reflecting on Tenants' credit history may be submitted to a credit reporting agency if Tenants fail to fulfill the terms of their credit obligations, such as their financial obligations under the terms of this Agreement.

7. SECURITY DEPOSIT Before the commencement of this Agreement, Tenants shall pay Landlord \$850 as a security deposit. Landlord may use there from such amounts as are reasonably necessary to remedy Tenants' default in the payment of rent, repair damages to the premises exclusive of ordinary wear and tear, and to clean the premises if necessary. Landlord shall refund Tenants the balance of the security deposit after such deductions within



twenty-one (21) days after the expiration of this Agreement. If deductions have been made, Landlord shall provide Tenants with an itemized account of each deduction including the reasons for and the dollar amount of each deduction.

* Interest payments on security deposits accrue as follows:

- ☐ a. Local law does not require Landlord to pay interest on security deposits.
- ☐ b. Local law requires Landlord to pay Tenants interest payments on security deposits as follows:
N/A

8. UTILITIES Tenants shall pay directly for all utilities, services and charges provided to the premises, including any and all deposits required, except for the following, which shall be paid by Landlord:

- ☐ a. None.
- ☒ b. N/A Tenants responsibility

9. PARKING Tenants are assigned parking as follows:

- ☐ a. None.
- ☒ b. This space shall be used for the parking of 2 car(s) only. Tenants may not repair vehicles of any kind in any parking space or anywhere else on or about the property. Grease, oil and any other drippings must be cleaned by Tenants when they occur and at Tenants' expense. Cars are not to be washed on or about the premises. In addition to rent, Tenants shall pay Landlord a parking fee of \$ N/A. per month. This fee is payable in advance along with the rent and shall be paid at the same address as designated by Landlord for payment of rent.

10. PETS No animal, bird or other pet shall be brought on or kept on the premises without Landlord's prior written consent, except for the following:

- ☐ a. None.
- ☒ b. NO PETS ALLOWED

11. QUIET ENJOYMENT Tenants shall be entitled to quiet enjoyment of the premises. Tenants shall not use the premises in such a way as to violate any law or ordinance, commit waste or nuisance, or annoy, disturb, inconvenience, or interfere with the quiet enjoyment of any other or nearby resident.

12. ASSIGNMENT AND SUBLETTING No portion of the premises shall be sublet nor this Agreement assigned without the prior written consent of the Landlord. Any attempted subletting or assignment by Tenants shall, at the election of Landlord, be an irremediable breach of this Agreement and cause for immediate termination as provided here and by law.

13. POSSESSION OF THE PREMISES The failure of Tenants to take possession of the premises shall not relieve them of their obligation to pay rent. If Landlord is unable to deliver possession of the premises for any reason not within Landlord's control, Landlord shall not be liable for any damage caused thereby, nor will this Agreement be void or voidable, but Tenants shall not be liable for any rent until possession is delivered. If Landlord is unable to deliver possession within 15 calendar days after the agreed commencement date, Tenants may terminate this Agreement by giving written notice to Landlord, and shall receive a refund of all rent and security deposits paid.

14. CONDITION OF THE PREMISES Tenants agree to

- (i) properly use, operate and safeguard the premises and all furniture and furnishings, appliances and fixtures within the premises,
- (ii) maintain the premises in clean and sanitary condition, and upon termination of the tenancy, to surrender the premises to Landlord in the same condition as when Tenants first took occupancy, except for ordinary wear and tear,
- (iii) if the surrounding grounds are part of the premises and for exclusive use of Tenants, Tenants agree to irrigate and maintain the surrounding grounds in a clean and safe manner, keeping the grounds clear of rubbish and weeds and trimming all grass and shrubbery as necessary to effect a neat and orderly appearance to the property,

- (iv) notify Landlord in writing upon discovery of any damages, defects or dangerous conditions in and about the premises; and
- (v) reimburse Landlord for the cost of any repairs to the premises of damages caused by misuse or negligence of Tenants or their guests or invitees.

Tenants acknowledge that they have examined the entire interior and exterior of the premises, including plumbing, heating and electrical appliances, smoke detector(s), fixtures, carpets, drapes and paint, and have found them to be in good, safe and clean condition and repair, with the following exceptions: (Specify "none" if there are no exceptions)

15. **REPAIRS, ALTERATIONS AND DAMAGES** Except as provided by law or as authorized by the prior written consent of Landlord, Tenants shall not make any repairs or alterations to the premises, including but not limited to, painting the walls, installing wallpaper, murals, paneling, tile, or hanging posters or pictures weighing in excess of twenty pounds.

If the premises are damaged or destroyed as to render them uninhabitable, then either Landlord or Tenants shall have the right to terminate this Agreement as of the date on which such damage occurs, through written notice to the other party to be given within fifteen days of occurrence of such damage. However, if such damage should occur as the result of the conduct or negligence of Tenants or Tenants' guests or invitees, Landlord only shall have the right to termination and Tenants shall be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

16. **EMERGENCY ENTRY AND INSPECTION** Tenants shall make the premises available to Landlord or Landlord's agents for the purposes of making repairs or improvements, or to supply agreed services or show the premises to prospective buyers or tenants, or in case of emergency. Except in case of emergency, Landlord shall give Tenants reasonable notice of intent to enter. For these purposes, twenty-four (24) hour written notice shall be deemed reasonable, and reasonable hours shall be defined as _____ to _____ Monday through Friday and _____ to _____ on Saturdays. In order to facilitate Landlord's right of access, Tenants shall not, without Landlord's prior written consent, add, alter or re-key any locks to the premises. At all times Landlord shall be provided with a key or keys capable of unlocking all such locks and gaining entry. Tenants further agree to notify Landlord in writing if Tenants install any burglar alarm system, including instructions on how to disarm it in case of emergency entry.

17. **EXTENDED ABSENCES AND ABANDONMENT** In the event Tenants will be away from the premises for more than 14 consecutive days, Tenants agree to notify Landlord in writing of the absence. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damages and needed repairs. Landlord

Abandonment is defined as absence of the Tenants from the premises, for at least 30 consecutive days without notice to Landlord. If the rent is outstanding and unpaid for fourteen (14) days and there is no reasonable evidence, other than the presence of the Tenants' personal property, that the Tenants are occupying the unit, Landlord may at Landlord's option terminate this agreement and regain possession in the manner prescribed by law.

18. **INSURANCE DISCLAIMERS** Tenants assume full responsibility for all personal property placed, stored or located on or about the premises. Tenants' personal property is not insured by Landlord. Landlord recommends that Tenants obtain insurance to protect against risk of loss from harm to Tenants' personal property. Landlord shall not be responsible for any harm to Tenants' property resulting from fire, theft, burglary, strikes, riots, orders or acts of public authorities, acts of nature or any other circumstance or event beyond Landlord's control.
19. **HOLD HARMLESS** Tenants expressly release Landlord from any and all liability for any damages or injury to Tenants, or any other person, or to any property, occurring on the premises unless such damage is the direct result of the negligence or unlawful act of Landlord or Landlord's agents.
20. **SMOKE DETECTORS** The premises are equipped with a smoke detection device(s), and Tenants shall be responsible for reporting any problems, maintenance or repairs to Landlord. Replacing batteries is the responsibility of Tenants.

21. **LEAD BASED PAINT DISCLOSURE** By initialing, Tenant acknowledges receipt of disclosure of information on lead-based paint and lead-based paint hazards. Landlord has no reports or knowledge of lead-based paint on the premises.

Tenants initial here: _____

22. **LIQUID-FILLED FURNITURE** Tenant shall not use or have any liquid-filled furniture on the premises without Landlord's prior written consent.

23. **ADDITIONAL PROVISIONS** (Specify "none" if there are no additional provisions)

24. **ENTIRE AGREEMENT** This document constitutes the entire Agreement between the Tenants and Landlord. This Agreement cannot be modified except in writing and must be signed by all parties. Neither Landlord nor Tenants have made any promises or representations, other than those set forth in this Agreement and those implied by law. The failure of Tenants or their guests or invitees to comply with any term of this Agreement is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

Valerie Poole

Landlord/Manager

100 pepper grass drive

Elyon SC 29045

Landlord/Manager's Street Address, City, State & ZIP

Adrian & Jay

Tenant

Tenant

Tenant

Tenant

6/8/12

Date

June 8, 2012

Date

Date

Date

Date

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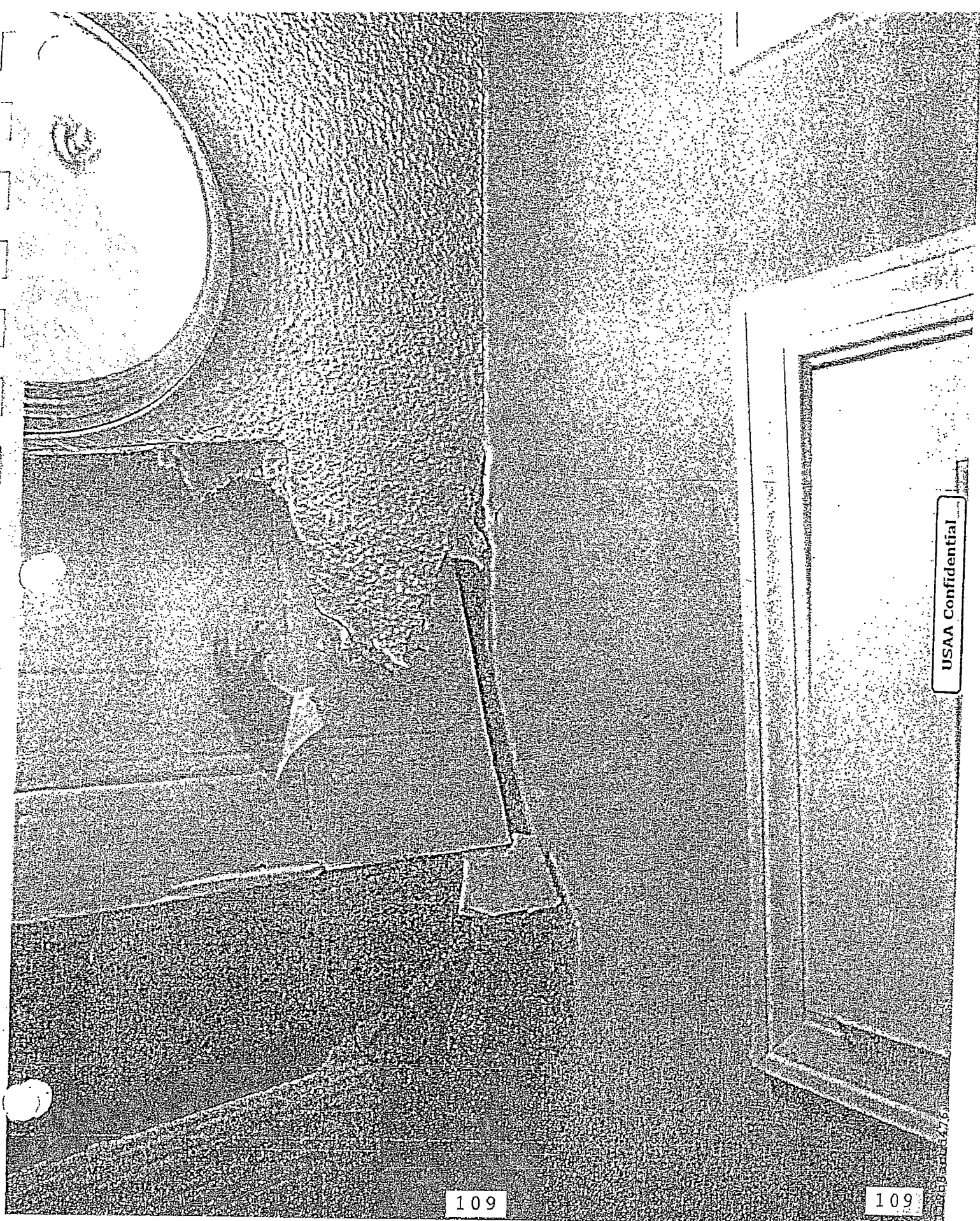
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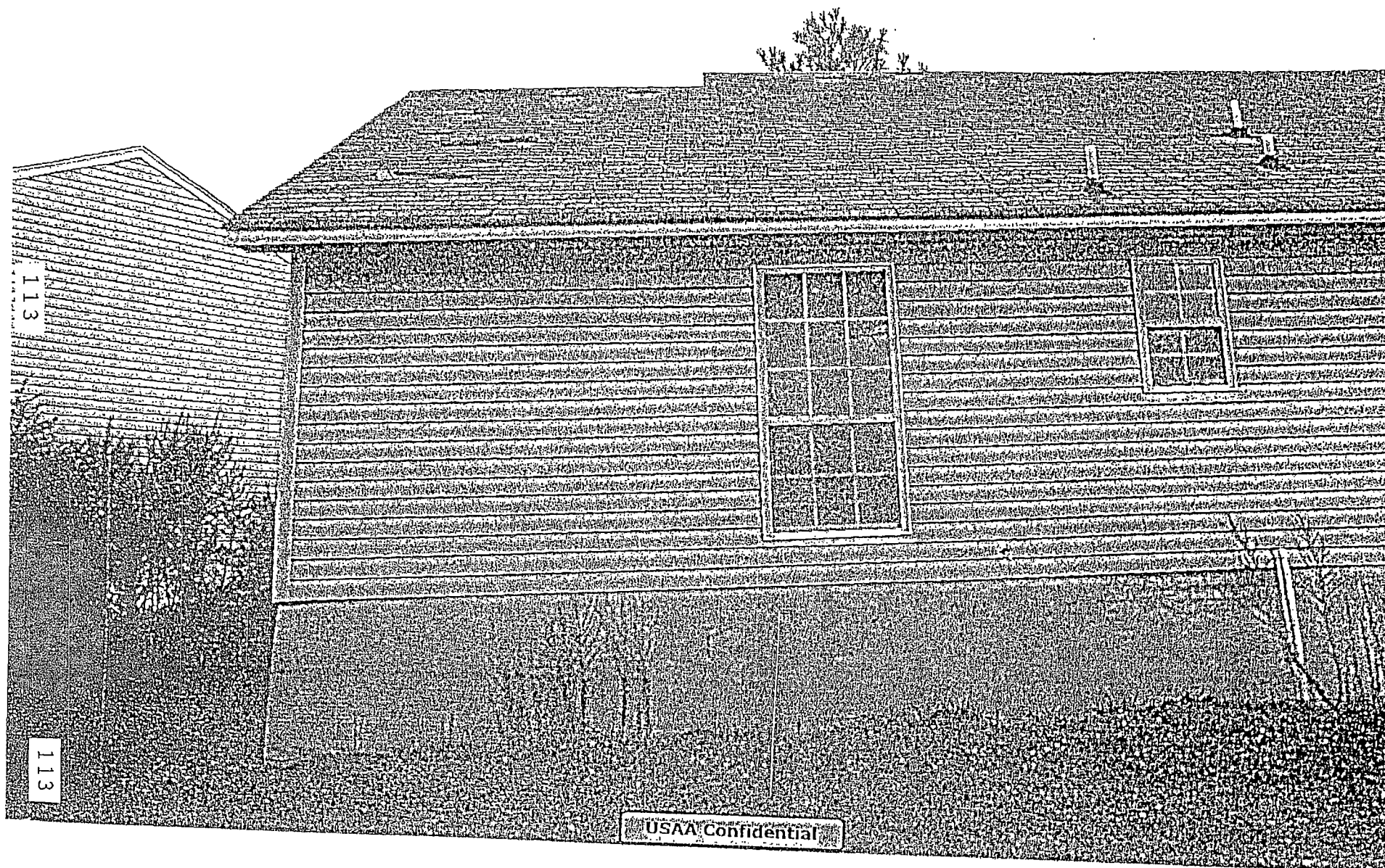
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

Cedric Young,) C/A NO.:2015-CP-40-3235
Plaintiff,)
vs.) Deposition
Valerie Poole,) Of
Defendant..) Valerie Poole

Deposition of Valerie Poole, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 12:22 p.m., Tuesday, October 13th, 2015, at Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, South Carolina.

Reported by
Cheri B. Williams, CVR-M

Appearances

For the Plaintiff: John D. Clark, Esquire
The Clark Law Firm, LLC
22 East Liberty Street
Sumter, SC 29150

For the Defendant: Elliott B. Daniels, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260

Reported By: Cheri B. Williams, CVR-M

Also Present: Cedric Young

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Exhibits

Defendant's Exhibit No. 1, Hand-drawn diagram;
one page.

Defendant's Exhibit No. 2, Hand-drawn diagram;
one page.

Defendant's Exhibit No. 3, Residential Lease Agreement;
four pages.

Defendant's Exhibit No. 4, Copies of Color Photographs;
nine pages.

Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken.

1 Before I became a lawyer I didn't even know what a
2 deposition was so don't feel bad about that. It's
3 a question and answer session. I'm going to ask
4 you some questions. You're under oath. You --

5 Mr. Clark: You want us to wait?

6 Mr. Daniels: No. Please go. I'm going
7 to grab a water.

8 Q Okay. You're under oath. You're sworn to tell the
9 truth. And they tell me it's just like being in
10 court subject to the penalty of perjury, even
11 though I've never seen anybody prosecuted for a
12 deposition. But, anyway, so you're under oath,
13 sworn to tell the truth. Do you understand that?

14 A I do.

15 Q All right. A couple other background issues. Now
16 that the deposition has started, if you have any
17 questions about my questions you have to direct
18 them to me. You are not permitted to ask Mr.
19 Daniels any questions --

20 A Okay.

21 Q -- now that the deposition has started, okay?

22 A All right.

23 Q Thank you. I don't think this will be a long
24 deposition. If you need to take a break, though,
25 just let me know.

1 A Okay.

2 Q And you don't have to even tell me why. You can
3 just take a break. Take as long as you need.
4 You're still not permitted to talk to Mr. Daniels
5 during a break, okay?

6 A I understand.

7 Q All right. Because this is being recorded, it's
8 important that you give verbal responses because
9 what's going to happen when we're done, our court
10 reporter is going to make a transcript. It's a
11 little booklet. Question, answer, question,
12 answer. And she can't -- it's hard to -- it makes
13 it difficult if you give head nods or you say uh-
14 huh and uh-uh because that might get misconstrued
15 and you might say uh-huh and she thinks it's uh-uh
16 and we have a problem, okay?

17 A Got it.

18 Q And we all do that as a matter of habit. If you do
19 it, it's not the end of the world. I'll just
20 remind you and ask you to give us a verbal
21 response, okay?

22 A Okay.

23 Q Now, I'm going to ask you some questions about your
24 background. Before I do it, I'm going to tell you
25 why I'm asking, though. This case is pending in

1 Richland County Court of Common Pleas. I have
2 requested a jury trial. If the case does not
3 resolve by settlement, eventually we'll go to court
4 and pick a jury.

5 A Okay.

6 Q I'm going to ask you about your background because
7 I don't want to pick anybody that you're related to
8 or that you know well or you're friends because
9 they'd probably favor you if we went to trial,
10 okay?

11 A Okay.

12 Q So having said that, what's your address?

13 A 100 Pepper Grass Drive.

14 Q And where is that?

15 A Elgin.

16 Q Now, is there two Elgins or just one?

17 A Just one Elgin as far as I know of. I'm not ...

18 Q Now, Elgin is between Camden and Columbia or is it
19 between Camden and Lancaster?

20 A I think it's Pontiac and Richland.

21 Q It's near Pontiac?

22 A Yeah.

23 Q Okay. All right. Okay. All right. Where are you
24 from originally?

25 A Originally I was born in New York, but I was raised

1 in Alabama by my grandmother so ...

2 Q Okay. What part of Alabama?

3 A Mobile.

4 Q Okay. All right. Do you have any relatives in
5 Richland County?

6 A I do not.

7 Q All right. What brought you to Columbia?
8 Military?

9 A My husband was military.

10 Q Okay. We have the good fortune of having people
11 come here because of the military. How long have
12 you been in Richland County or you been in South
13 Carolina?

14 A Since 1996.

15 Q Okay. So you actually live in Kershaw County, is
16 that correct?

17 A It's Richland County.

18 Q It's Richland County?

19 A It's designated -- zoned as Richland County, yes.

20 Q All right. What's your husband's name?

21 A Douglas. He's my ex-husband.

22 Q Okay. He's ex. Okay. Douglas?

23 A R. Poole. Ray Poole.

24 Q Okay. And so what's your maiden name?

25 A Hughes.

(1 Q H-U-G --

2 A H-E-S.

3 Q -- H-E-S. Like the Hughes Corporation?

4 A Yes.

5 Q Do you remember those guys?

6 A Yes.

7 Q Okay. All right. All right. And so do you have
8 any adult children that live in Richland County?

9 A No. My son is attending college.

10 Q Where does he go to school at?

11 A University of Alabama.

12 Q Okay.

(13 A And my daughter is in San Diego.

14 Q Okay. So you just have the two children that are -

15 -

16 A Yes.

17 Q -- college age or above?

18 A Yes.

19 Q All right. Does Douglas R. Poole still live in
20 Richland County?

21 A No, he does not.

22 Q Where does he live now?

23 A He's in Alabama.

24 Q Okay. He's from Alabama as well?

(25 A Yes.

1 Q Okay. All right. And you moved here in 1996, did
2 you say? About 1996?

3 A Yes. 1996.

4 Q And Douglas was stationed at Fort Jackson?

5 A That's correct.

6 Q All right. I'm assuming you went to high school in
7 Mobile?

8 A I did.

9 Q Okay. What high school did you go to down there?

10 A It was Mobile County High.

11 Q Okay. And what did you do after high school?

12 A I got married.

13 Q Okay. All right. And then you traveled as a
14 military wife?

15 A I did.

16 Q All right. And I'm always hesitant to ask this
17 question, but for legal purposes only, what's your
18 date of birth? And I apologize in advance.

19 A [REDACTED] 68.

20 Q Okay. All right. Now, this is also a very
21 sensitive subject and there are special rules in
22 place about this. I'm going to ask you your Social
23 Security number, but the rule says that only the
24 last four digits go in the transcript so that if
25 anybody gets a hold of the document they won't have

1 your Social Security number. I'm going to record
2 it in my notes and I'll tell you as an officer of
3 the court for the past 25 years that I will not
4 abuse your Social Security number. So would you
5 please give me your Social Security number?

6 A ~~██████████~~

7 Q Thank you. Ms. Poole, have you ever been convicted
8 of a crime? And I ask everybody this. My client
9 was asked this earlier.

10 A No, I haven't.

11 Q Okay. Good. All right. And when you moved here I
12 assume your kids were school age or at some point?

13 A Yes.

14 Q Or very young maybe. Very young. What school did
15 they attend?

16 A Killian Elementary.

17 Q Killian, okay.

18 A Uh-huh.

19 Q What other school did they attend?

20 A Bookman, Blythewood Middle, Spring Valley, Summit
21 Mill.

22 Q Okay.

23 A Pontiac Elementary.

24 Q Okay. All right. Go ahead. I didn't mean to
25 interrupt you.

- 1 A Pontiac Elementary and Windsor Elementary.
- 2 Q Okay. All right. Now, your husband -- or your ex-
- 3 husband, Mr. Poole, did he retire from the
- 4 military?
- 5 A Yes, he did.
- 6 Q He retired right here at Fort Jackson?
- 7 A He did.
- 8 Q Did he work somewhere after he retired?
- 9 A Not to my knowledge.
- 10 Q Okay. All right. Now, were you a stay-at-home
- 11 mom?
- 12 A No, I was not.
- 13 Q Did you work?
- 14 A I did.
- 15 Q Tell me where you worked in Richland County.
- 16 A I worked at RBMG/NetBank Mortgage Company.
- 17 Q Okay. All right. What else?
- 18 A I worked at First Citizens Bank.
- 19 Q Okay.
- 20 A And now I'm at Richland County Public Works.
- 21 Q Okay. Have you been busy this week, Richland
- 22 County Public Works?
- 23 A Yes. We have been since the flood, yeah.
- 24 Q Okay. How long have you worked for them?
- 25 A It'll be seven years on October the 20th.

1 Q What do you do for Richland County Public Works?

2 A Administrative assistant.

3 Q Okay. Do you like working there? I won't tell
4 them.

5 A I do.

6 Q All right. Now, do you have any specialized
7 training in anything that's noteworthy? I mean,
8 accounting, nursing, anything like that? Any
9 particular field of study that you have training in
10 or expertise?

11 A No, I don't.

12 Q Okay. So you've always done administrative type
13 work, clerical work?

14 A No. I was a mortgage reviewer at NetBank.

15 Q Okay. Mortgage reviewer?

16 A Uh-huh.

17 Q All right. What -- do you attend a church?

18 A Church of Christ.

19 Q Which one?

20 A I attend the one off of Farrow Road.

21 Q Okay. Who is the pastor there? And I didn't mean
22 to put you on the spot.

23 A I don't remember.

24 Q Okay. That's fine. That's fine. Are you a member
25 of any clubs or organizations in Richland County,

- 1 like Links, golf clubs or anything like that or
2 yoga clubs or anything like that?
- 3 A No, I'm not.
- 4 Q Okay. What kind of hobbies do you have? What do
5 you do in your spare time?
- 6 A I watch plenty of football during football season.
- 7 Q Football fan? Okay.
- 8 A Yeah.
- 9 Q Who do you like?
- 10 A Dallas Cowboys.
- 11 Q So you were disappointed last night when the
12 Steelers won?
- 13 A No. I'm just a fan of Dallas. I don't --
- 14 Q You just like --
- 15 A -- dislike other teams because mine doesn't win.
- 16 Q Okay. So you were disappointed Sunday?
- 17 A Yeah. I watch college football.
- 18 Q Okay. All right. Okay. Now, so you still live at
19 Pepper Grass?
- 20 A I do.
- 21 Q And that's in Elgin?
- 22 A Yes. That's correct.
- 23 Q And where is your office now?
- 24 A My office?
- 25 Q At the public works. Where is that?

1 A 400 Powell Road.

2 Q Where is that in Richland County?

3 A It's off of Hardscrabble.

4 Q Okay. Okay. All right. The property that we're
5 here about today -- and what's been marked as
6 Exhibit Three -- is 16 Thornberry Court. Have you
7 ever lived there?

8 A I have.

9 Q When did you live there?

10 A 1998 to 2002. I can't remember the month we moved
11 in.

12 Q Was that your first home when you got here or first
13 house that you bought?

14 A We stayed on -- yeah, that's the first home we
15 purchased here.

16 Q Okay. All right. And so I guess you purchased
17 that in 1998?

18 A It was '98, yes, sir.

19 Q All right. So you lived there -- how long did you
20 say you lived there?

21 A From 1998 to 2002.

22 Q Okay. About four years, you think?

23 A Around about that, yes.

24 Q All right. And then did you lease it after you
25 moved out? Did you lease it to other people?

1 A Yes.

2 Q When you lived there, can I assume that you used
3 the attic or not?

4 A I didn't go up there.

5 Q You never went up to the attic?

6 A I went to the -- to the base of stairway.

7 Q Okay. So you climbed up the stairs?

8 A Yeah. And that's as far as I went because I was
9 scared of attics.

10 Q Okay. As you sit here today -- I think today is,
11 what, the --

12 A 13th.

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

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

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

18 A Never stepped up there.

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

21 A I went to the top of the stairwell. As far as I
22 got and looked around.

23 Q Okay. Did you go and look around after the fact,
24 after this incident?

25 A I didn't go up the stairs. No, I did not.

1 Q Okay. All right. Before Mr. Young -- yeah. Mr.
2 Young fell, did you have anybody specifically
3 inspect the attic?

4 A I did not.

5 Q Did you -- when he -- has the -- has the ceiling
6 been repaired since this incident?

7 A It was repaired, yes.

8 Q Who repaired it?

9 A I can't remember the contractor's name.

10 Q But you hired someone to repair it?

11 A I did.

12 Q Do you have any records of this repair?

13 A I may have. I'll have to look. I'm not sure.

14 Q All right. I'll show you -- well, it's marked as
15 Defense Exhibit Number Three. I guess we can call
16 it Plaintiff's Exhibit Number Three or we can call
17 it Defendant's.

18 Mr. Clark: Do you mind either way?

19 Mr. Daniels: I have no preference.

20 Whichever is easiest for you.

21 Mr. Clark: Yeah. Let's just keep it

22 Defendant's Exhibit Number Three.

23 Q Is that a lease agreement that you entered with Mr.
24 Young?

25 A It is.

1 Q All right. How was your relationship with Mr.
2 Young?
3 A It was kind of like distant.
4 Q Okay. Was it anything unpleasant about it or --
5 other than this fall, up until the time this fall
6 occurred, did you have any problems with him as a
7 tenant?
8 A I can't say that I did.
9 Q Were there any issues with him prior to this fall?
10 A I can't say that it was.
11 Q Did he always pay his rent on time?
12 A Not always, but he was only in the house a couple
13 of months, I think, before the accident occurred so
14 I really can't --
15 Q You can't say one way or the other?
16 A Yes. I cannot say.
17 Q Okay. But he was never late to the point where you
18 had to institute eviction proceedings, was he?
19 A Yeah.
20 Q When did you do that? Was it before or after the
21 fall?
22 A It was after. Way after the fall.
23 Q Okay. Okay. All right. Now, when you leased him
24 the house, did it include the attic, the lease?
25 A Well, it's a part of the home so yes.

1 Q Okay. Did you ever tell him not to use the attic?

2 A I never told him he could not use it, no.

3 Q Okay. All right. Did you have a maintenance man
4 that worked with you on this home?

5 A I did.

6 Q What was his name?

7 A Angel DeLeon.

8 Q Okay. Is -- do you still work with him?

9 A I do not.

10 Q You do not. Why not?

11 A Because I no longer own the home and we just don't
12 communicate. I haven't talked to him in a minute.

13 Q Did anything happen between y'all?

14 A Uh-uh.

15 Q Okay. Is that a no?

16 A I mean, no. I'm sorry.

17 Q Okay. That's all right. What kind of things did
18 Angel do for you?

19 A Angel repaired things that were broken. He helped
20 with the remodeling of the home in 2011. I hired
21 him to do some remodeling because the house was in
22 bad shape.

23 Q Okay. Did that remodeling include anything in the
24 attic?

25 A It did not.

1 Q Okay. Did you ever discuss storage space with Mr.
2 Young?

3 A Well, he knew there was a storage shed out there in
4 the back yard.

5 Q All right.

6 A And I told him he could use that for storing.

7 Q Did you inspect that storage space before he rented
8 the property?

9 A Angel did. He had looked at it. He said there was
10 some tires out there.

11 Q Okay. So Angel told you that something was in the
12 -- in the storage space?

13 A Uh-huh. That's correct.

14 Q Okay. All right. When was the first time you
15 heard about an incident in the attic?

16 A I can't remember the date, but when Mr. Young
17 called me.

18 Q Okay.

19 A I don't recall what day it was on.

20 Q What do you recall him saying to you?

21 A He told me he had fallen through the attic and had
22 sprained his ankle. I can't recall which foot. I
23 think it was right foot. I'm not sure.

24 Q Did you go to the house at all at that point?

25 A I can't remember if I did or didn't.

1 Q Okay.

2 A I can't say that I did.

3 Q Okay. All right. When he told you that, what did
4 you say to him, if you remember?

5 A I asked him was he okay. How was his pain level.
6 Why -- first I asked him why did he go in the attic
7 when he had enough space out there in the storage
8 shed to store his items.

9 Q Okay.

10 A I asked him --

11 Q What did he say? I'm sorry. Go ahead. Finish.

12 A And I asked him why didn't he give me a call before
13 going in the attic.

14 Q Okay. And what did he -- tell me everything he
15 said.

16 A And he told me that -- let me see if I can think.
17 He said he had to store some things in the attic,
18 that he didn't have enough space out there in the
19 shed to store some items that he had.

20 Q Okay. Anything else?

21 A As far as what I want to tell you or as in as far
22 as what you're asking me?

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

25 A What transpired. I asked him -- I mean, I just

1 asked him why didn't he call me because I would
2 have let him know that the attic you can only step
3 in certain spaces. Well, certain areas within the
4 attic because they are dangerous.

5 Q Okay.

6 A I did communicate that to him.

7 Q After the fact?

8 A Well, when he called me, yes.

9 Q Okay. How did you know it was dangerous?

10 A Because I've seen TV shows plenty of times where
11 people have fallen through their attic and I've had
12 friends who have fallen through their attic.

13 Q Okay. All right. Do you rent other properties or
14 was this the only one?

15 A That was the only one.

16 Q And you've since sold the house now?

17 A Well, I couldn't afford it so it went bankrupt.

18 Q Okay. All right. As a landlord, did you believe
19 that you had a duty to provide a safe home or house
20 or premises for Mr. Young to live?

21 A Of course. Uh-huh.

22 Q All right. When you went in the attic -- or when
23 you went to the level of the attic --

24 A Uh-huh.

25 Q -- I think is what you were saying, right?

1 A That's correct.

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

4 A Right around the stairwell I saw that there was
5 some plywood right there.

6 Q Right. And you know -- and you agree -- and just
7 so we're talking about the same thing. Plywood is
8 the flat board that's laying down, right?

9 A That's correct.

10 Q That you can step on?

11 A That's correct.

12 Q All right. And then there's some areas that don't
13 have plyboard, right?

14 A That's correct.

15 Q All right. Mr. Young has said that in an area just
16 by the stairs where the stairs lead into the attic
17 --

18 A Uh-huh.

19 Q -- there's a space there that doesn't have plyboard
20 and then there's plyboard. Do you know whether
21 that's the case or not?

22 A I just know what I saw when I peeped up there into
23 the attic that it was right around -- if you go up
24 the stairs and once you get to the top of the
25 stairs there's plywood right around there. Now,

1 beyond that, I cannot say.

2 Q Do you know whether the plyboard meets the step?

3 A I can't recall that information.

4 Q Okay. All right. And is there any other way to
5 get down from the attic other than the stairs as
6 far as you know?

7 A Not that I'm aware of, no.

8 Q Okay. And, again, you didn't ever inspect the
9 attic before leasing the building? Or leasing the
10 home?

11 A I mean, it's an unfinished attic so, I mean, there
12 was no need for me to ever go up there and have it
13 inspected.

14 Q Okay. Is part of it finished, though?

15 A The only part that I saw was right there around the
16 base of the stairwell.

17 Q Okay. All right.

18 A I thought I saw some insulation back there.

19 Q Okay. All right. What's been marked collectively
20 as Plaintiff's Exhibit Number One -- or Defendant's
21 Exhibit Number One, is that the home we're talking
22 about? Number Four? Okay. Sorry. Yeah, Number
23 Four is a set of pictures here clipped together.

24 Is that -- the first one --

25 A Yes, sir.

1 Q That's the home?

2 A Uh-huh.

3 Q Is that the hallway?

4 A That's correct.

5 Q Where the attic was?

6 A That's correct.

7 Q And this second picture, is that -- is that the
8 damaged part of the ceiling?

9 A It appears to be.

10 Q Do you know if there was any plyboard right there
11 up top in the attic?

12 A You mean prior to?

13 Q Yes, ma'am.

14 A I mean, it was part -- whatever it is. I'm -- if
15 it was plywood you're asking me?

16 Q Yes, ma'am.

17 A I think whatever they did the home with up in the
18 ceiling. I can't say for sure.

19 Q Okay. All right. That appears to be a piece of
20 cardboard. Do you know who -- do you know where
21 that came from? Who put that there when they took
22 that picture?

23 A I believe it was there when I came to the home.
24 Someone had put it up there.

25 Q Okay. All right. Now, this third picture here

1 we're looking at that you can see the cardboard,
2 that's right by the ladder, right? Isn't that the
3 ladder right here in the corner of the picture?

4 A I believe it is. I'm not sure.

5 Q In what I'm going to call picture number five, is
6 that -- does that give you a better view?

7 A I'm trying to picture the home in my mind.

8 Q I understand. But do you see the attic door?

9 A I see the attic door.

10 Q And you see the cardboard area here?

11 A Uh-huh.

12 Q Do you know whether there's any plyboard right
13 there or was there at the time this accident
14 happened?

15 A I do not know. All I know is what's up there when
16 the ceiling was there when I lived in the home.

17 Q All right. Okay. Have you seen Mr. Young since
18 the accident?

19 A I did see him when I went to the home --

20 Q Okay.

21 A -- with -- for the man to fix the ceiling.

22 Q All right. And Mr. Young was there?

23 A I believe he was there, yes.

24 Q Did you notice whether he was injured or not?

25 A I -- he was limping.

1 Q Okay. All right. So you went there one time at
2 least with the maintenance -- with the repair guy,
3 right?

4 A Uh-huh.

5 Q Did you go back and see him at any other time?

6 A I called and checked on him.

7 Q What did he say when you checked on him?

8 A He said he was still experiencing some pain. He
9 had to go back to the doctor again.

10 Q Okay. How long did that go on, do you know?

11 A I can't recall.

12 Q Okay. Did you see anything that made you
13 disbelieve him when he said he was in pain?

14 A No, I did not.

15 Q Okay. All right. I'm almost done. I may have
16 asked you this already, but as a landlord, did you
17 believe it was your duty to provide a safe home,
18 house, for him?

19 A Yes, of course.

20 Q All right. Now, if there is no plyboard right --
21 if there's a gap in the plyboard when you get off
22 of the stairs, do you think that's a safe -- do you
23 think that's a safe area?

24 Mr. Daniels: Object to the form.

25 Q You can answer it. If there's no plyboard between

1 the -- right when you get off of the stair, do you
2 think that's -- that's a safe condition?

3 Mr. Daniels: Object to the form.

4 A It really -- if there's no plyboard there, I can't
5 say if it's safe or not. What I can say is that
6 the attic was an unfinished attic and whatever the
7 contractor, Mungo, put up there was what was passed
8 by inspection when the home was built.

9 Q Okay. Did you ever tell Mr. Young it was an
10 unfinished attic?

11 A No, I did not.

12 Q Okay. All right. You had it repaired after the
13 fact?

14 A I did.

15 Q Do you know whether they put plyboard there when it
16 was repaired?

17 A I cannot say, no, sir.

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

20 A Well, as -- I'm not saying he was wrong when he
21 walked on an insulated floor, but typically as an
22 adult we look at things before we walk on it to
23 make sure if it's going to hold our weight. I know
24 there have been guys from SCE&G went up in the
25 attic. One of the guys that I know went and

1 repaired the air conditioner, went in the attic,
2 and neither one of those fell through it because
3 they were stepping on beams. And I heard them tell
4 me well, you know, you have to be careful when you
5 go in the attic because you just can't step
6 anywhere.

7 Q Okay.

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

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

12 A I didn't expect for it to -- no, I did not.

13 Q Okay. Did you ever tell Angel that anybody
14 couldn't use the attic or that it was unsafe?

15 A I didn't tell Angel anything about anything. As
16 far as me being a landlord, I was the one
17 communicated, you know, when things need to be
18 done. I was notified and I'll communicate to Angel
19 go out there and take care of what needs to be
20 handled.

21 Q Other than the SCE&G people telling you that it's
22 dangerous or you had to be careful where you
23 stepped, are you aware of any other incidents that
24 occurred up there?

25 A No. No other than went up there and fixed the air

1 conditioning.

2 Q Is there anything else you want to tell me about
3 this case that you think is important to either Mr.
4 Young's complaint or your defense?

5 A I just know, you know, I provided a safe
6 environment for Mr. Young as far as what I was
7 notified of. If he had any complaints, I was right
8 there, you know, getting things repaired for him
9 and I deal with it to the best of my ability in a
10 timely manner. I prorated his rent when the air
11 conditioning went out. He said the sink wasn't
12 mounted to the floor properly. I had it replaced.
13 I had it fixed. The shower head, I had it fixed.
14 The home was a -- is a very nice home when I got
15 finished remodeling it or else he wouldn't have
16 been in it because he said he liked nice things.
17 So therefore I know according to how my home is for
18 myself, I like other people to be in nice
19 environments as well so I made sure the house was
20 really nice because just -- just what I provide for
21 myself, I want others to have the same kind of
22 enjoyment.

23 Q I understand that. I appreciate that. But just so
24 I'm clear, do you know what that area that he fell
25 in, what it looked like from inside the attic?

1 A No, I do not.

2 Mr. Clark: Give me just one second. Let
3 me speak with Mr. Young. I think I'm done.

4 (Off the record briefly at 12:54 p.m.)

5 Mr. Clark: Ms. Poole, thank you so much
6 for coming. Mr. Young couldn't think of
7 anymore questions and I don't have anymore
8 questions to ask you, okay? Thank you. Have
9 a good day. Now, your lawyer might have a few
10 questions.

11 Cross-examination

12 By Mr. Daniels:

13 Q I have a couple of questions for you. We'll be
14 brief, okay? Ms. Poole, I'm going to look at the
15 lease that I believe is in front of you and is
16 marked as Defendant's Exhibit Number Three, okay?

17 A Uh-huh.

18 Q Do you recognize -- is that your handwriting at the
19 top? Is that your name?

20 A It is.

21 Q And this is the same lease that your tenant, the
22 plaintiff, signed, is that right?

23 A That's correct.

24 Q Okay. There's a couple sections I want to go
25 through with you very briefly. If you turn to the

1 second page at the bottom under Section 14 that's
2 titled Condition of the Premises.

3 A Okay.

4 Q It says tenant agrees to. Section Four which is at
5 the top of the third page, it says tenant agrees to
6 quote. Can you read that for us?

7 A "Notify landlord in writing upon discovery of any
8 damages, defects or dangerous conditions in and
9 about the premises."

10 Q Thank you. Did the tenant ever notify you in
11 writing of any damages to the property?

12 A No, he did not.

13 Q Okay. And other than, of course, the shower head
14 and the sink and the HVAC, which you repaired, is
15 that correct?

16 A That's correct.

17 Q Is it also true that the tenant did not notify you
18 at any time of any defects or dangerous conditions
19 on the premises?

20 A He did not.

21 Q And any time that he did notify you of any work to
22 be done, did you take care of that work?

23 A I did.

24 Q And did he ever complain that you did not take care
25 of it or that you took too long?

1 A No, he did not.

2 Q You took care of it in a timely way, is that right?

3 A Yes. Right.

4 Q Okay. And we heard from the plaintiff earlier
5 today that he had been in the attic at least ten
6 times before the day that he fell. After any of
7 those ten visits to the attic, had he ever told you
8 that the attic was in dangerous condition?

9 A No, he did not.

10 Q Did he ever ask you to make any modifications to
11 the attic?

12 A No, he did not.

13 Q Did he ever ask you to lay any plywood down for him
14 to walk on?

15 A No, he did not.

16 Q Did he ever ask you if he could walk on insulation?

17 A No, he did not.

18 Q Okay. The next section just below Section Five, it
19 says tenant acknowledges that they have examined
20 the entire interior and exterior of the premises,
21 including these various parts, and have found them
22 to be in good, clean condition and repair. Did the
23 tenant sign this document when you leased the
24 property to him?

25 A He did.

1 Q And did you give him the opportunity to look around
2 inside before he leased the property?

3 A I did. I told him to do a checklist of things that
4 he found that may be out of order.

5 Q And what did he tell you?

6 A He just said it was some blinds that was too short
7 and was no blinds in one part of the home.

8 Q Okay. So before he leased the property, you opened
9 the home and let him inspect it, is that right?

10 A Yes.

11 Q Did you tell him not to inspect any part of the
12 house?

13 A No, I did not.

14 Q Did you prohibit him from inspecting the attic?

15 A I did not.

16 Q Okay. And after you opened the home and allowed
17 him to inspect, he told you that one set of blinds
18 was too short and some other windows were missing
19 blinds, is that right?

20 A That's correct.

21 Q After his inspection, did he tell you that he had
22 any problem with the way the attic was designed?

23 A No, he did not.

24 Q Okay. In the same section on Subsection One of
25 Section 14, it's Condition of the Premises. It

1 says that the tenant agrees to properly use the
2 premises. You've heard testimony today that the
3 plaintiff indicated that he's 220 pounds, was
4 wearing steel-toed boots and carrying two hedge
5 clippers while walking on the insulation. In your
6 view, was he properly using the premises?

7 Mr. Clark: Object to -- well, never mind.

8 Go ahead.

9 A Can you repeat that, please.

10 Q Sure. Based on what you've heard from the tenant
11 this morning, do you believe he was properly using
12 the premises when he was walking on the insulation?

13 A No, I do not.

14 Q Okay. Let's talk about the storage space briefly.
15 Now, we've heard that there was a storage shed on
16 the property. Can you tell us about that shed? Is
17 it a walk in shed?

18 A It's a walk in shed. I don't know -- I can't
19 recall the size of it, though.

20 Q Okay. And how many bedrooms does your house have?

21 A It's a three bedroom home.

22 Q And did you lease it to one person?

23 A One person.

24 Q Just the plaintiff, is that correct?

25 A That's correct.

- 1 Q And you've later learned that there may have been
2 another tenant as well?
- 3 A That's correct.
- 4 Q And that's his brother?
- 5 A Correct.
- 6 Q Okay. So there's a three bedroom house for a
7 single tenant that you rented to that may have also
8 housed his brother, is that right?
- 9 A That's correct.
- 10 Q And he also had access to the storage shed?
- 11 A That's correct.
- 12 Q Did he ever ask you if he could access the attic
13 space?
- 14 A No, he did not.
- 15 Q Did he ever ask you if he could store his
16 belongings in the attic space?
- 17 A No, he did not.
- 18 Q Did he ever ask you if he could walk on insulation
19 in the attic space?
- 20 A No, he did not.
- 21 Q Okay. And, finally, we've heard about a repairman
22 who had been to your property at some time three to
23 five years ago doing some renovation work. His
24 name is Angel, is that right?
- 25 A Uh-huh. That's correct.

1 Q Angel is your repairman, is that correct?

2 A He was at the time, yes.

3 Q If you have a leaky faucet, you call Angel to fix
4 the leaky faucet, is that right?

5 A That's correct.

6 Q Okay. Is Angel the property manager?

7 A No, he's not.

8 Q Is he the property owner?

9 A No, he's not.

10 Q Does he exercise any ownership or control over the
11 property that you owned?

12 A No, he does not.

13 Q Did you give him permission to speak on your behalf
14 as a property manager?

15 A No, I did not.

16 Q Okay. And based on your communications with the
17 plaintiff when you leased your property to him, did
18 you make it clear that you were the only landlord?

19 A That's correct.

20 Q Did you ever tell him to talk to Angel if he had
21 questions about how to use the property?

22 A No, I did not.

23 Q Okay. And did he ever call you with any questions
24 about the attic space?

25 A No, he didn't.

1 Q And did he ever call you with any requests to
2 modify or repair the attic space?

3 A No, he did not.

4 Q Okay. And the final two questions. And I know you
5 may have answered this, but I just wanted to be
6 clear, okay? At any time before the date that the
7 plaintiff fell, did he notify you verbally that
8 there was any condition in the attic that he wanted
9 you to repair?

10 A No, he did not.

11 Q At any time before the date that he was injured,
12 did the plaintiff notify you in writing that there
13 was anything wrong with the attic or that there was
14 anything in the attic that he wanted you to repair?

15 A No, he did not.

16 Mr. Daniels: Thank you. I don't have any
17 further questions for you.

18 Mr. Clark: No further questions.

19 (Whereupon the deposition was concluded at
20 1:02 p.m.)
21
22
23
24
25

(
State of South Carolina)
County of Lexington) Certificate

Be it known that the foregoing deposition of
was taken before me;

That I was then and there a Notary Public in
and for the State of South Carolina-At-Large;

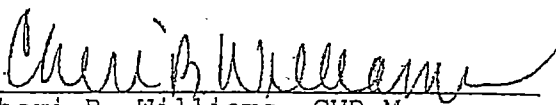
That by virtue thereof I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth concerning the matter in controversy aforesaid;

The foregoing transcript of 38 typewritten
pages represents a true, accurate and complete
transcription of the testimony so given at the time and
place aforesaid to the best of my skill and ability;

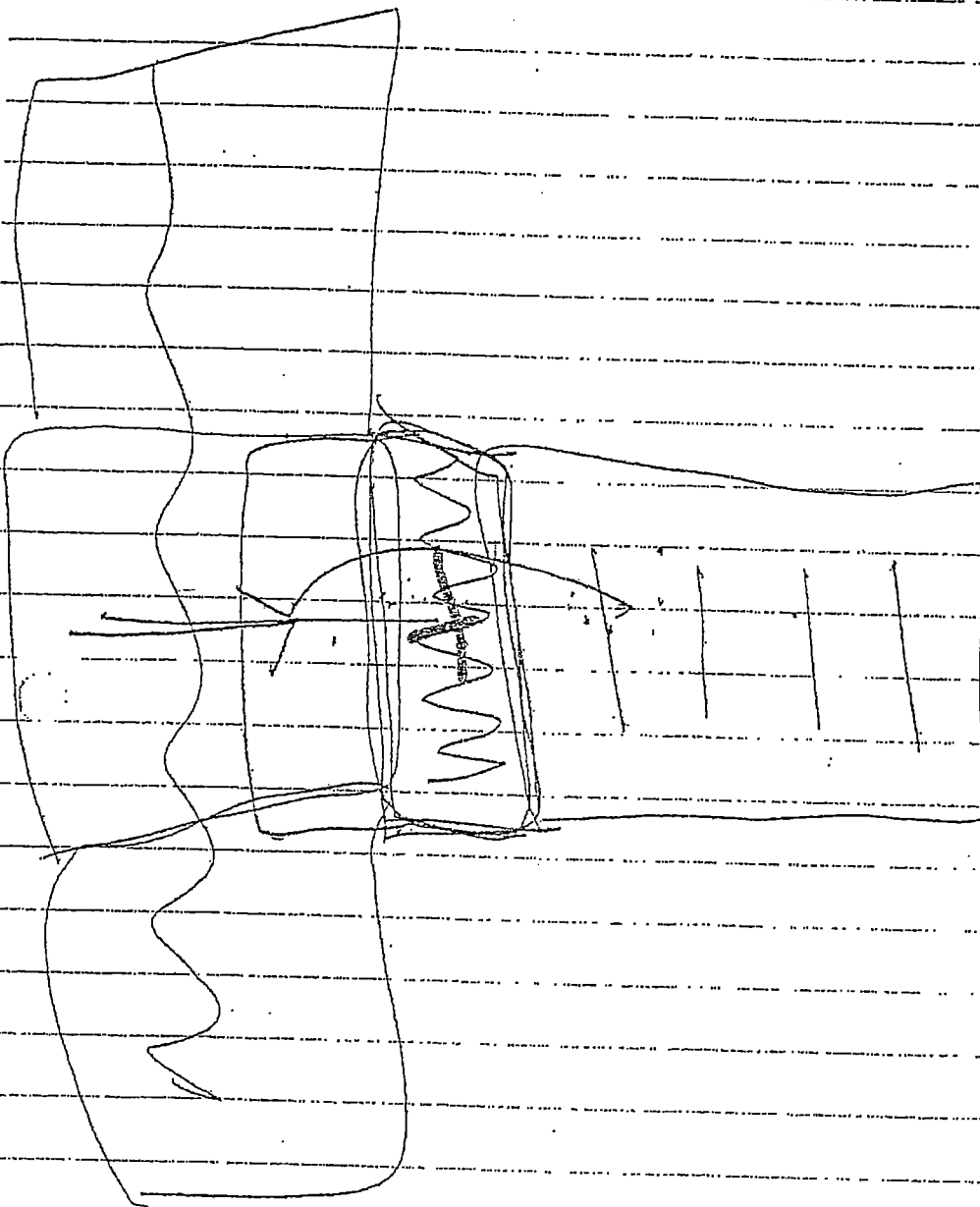
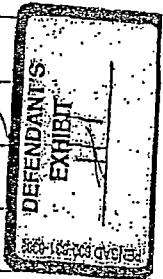
(
That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

Signed this 13th day of November, 2015.


Cheri B. Williams, CVR-M

Notary Public for South Carolina
My commission expires May 13, 2025.

Note: Recordings are retained for twelve (12) months
from date of certification.



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X

Y

RESIDENTIAL LEASE AGREEMENT

1. IDENTIFICATION OF PARTIES AND PREMISES This Agreement is made and entered into this 8th of day of June, 2012 between the following named persons:

Valerie Poole

Valerie Poole

100 Pepper Cross Dr
Elgin SC 29045

and

Cedric Young
Cedric Young

(herein called "Tenants") and Lessor and Lessor (herein called "Landlord"). Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, the premises located at 16 Thornberry Court, Columbia, SC 29229, California (herein called "the premises"). The premises shall be occupied only by the above mentioned Tenants. Tenants shall use the premises for residential purposes only and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and shall be considered a breach of this Agreement.

2. INDIVIDUAL LIABILITY Each tenant who signs this Agreement, whether or not said person is or remains in possession, shall be jointly and severally liable for the full performance of each and every obligation of this Agreement, but not limited to, the payment of all rent due and the payment of costs to remedy damages to the premises regardless of whether such damages were caused by a Tenant or invitee of a Tenant.

3. TERM OF THE TENANCY The term of this Agreement shall commence on June 8th 2012 and shall continue from that date

D a. on a month-to-month basis. This Agreement will continue for successive terms of one month each until either Landlord or Tenants terminate the tenancy by giving the other thirty (30) days notice of an intention to terminate the premises. In the event such notice is given, Tenants agree to pay all rent up to and including the notice period.

D b. For a period of 12 months expiring on June 8th 2013 - Should Tenants

vacate before the expiration of the term, Tenants shall be liable for the balance of the rent for the remainder of the term, less any rent Landlord collects or could have collected from a replacement tenant by reasonably attempting to re-rent. Tenants who vacate before expiration of the term are also responsible for Landlord's costs of advertising for a replacement tenant. In the event Tenants fail to give written notice of an intention to vacate the premises at the end of the term, the tenancy shall become one of month-to-month on all terms specified in section (a) of this clause.

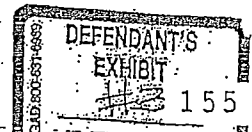
4. PAYMENT OF RENT Tenants shall pay Landlord rent of \$850 (cash only) per month, payable in advance or on the 3rd of each month. If that day falls on a weekend or legal holiday, the rent is due on the next business day. Rent shall be paid by cash only, to Valerie Poole at, said location

designate from time to time, or at such other place as Landlord shall

5. LATE CHARGES If rent is paid after the 3rd day of the month there will be Late charge of \$ 50.00 (Fifty Dollars) assessed.

6. FAILURE TO PAY As required by law, Tenants are hereby notified that a negative credit report reflecting on Tenants' credit history may be submitted to a credit reporting agency if Tenants fail to fulfill the terms of their credit obligations, such as their financial obligations under the terms of this Agreement.

7. SECURITY DEPOSIT Before the commencement of this Agreement, Tenants shall pay Landlord \$850 as a security deposit. Landlord may use there from such amounts as are reasonably necessary to remedy Tenants' default in the payment of rent, repair damages to the premises exclusive of ordinary wear and tear, and to clean the premises if necessary. Landlord shall refund Tenants the balance of the security deposit after such deductions within



twenty-one (21) days after the expiration of this Agreement. If deductions have been made, Landlord shall provide Tenants with an Itemized account of each deduction including the reasons or and the dollar amount of each deduction.

Interest payments on security deposits accrue as follows:

- ☐ a. Local law does not require Landlord to pay interest on security deposits.
- ☐ b. Local law requires Landlord to pay Tenants interest payments on security deposits as follows:
N/A

8. UTILITIES Tenants shall pay directly for all utilities, services and charges provided to the premises, including any and all deposits required, except for the following, which shall be paid by Landlord:

- ☐ a. None.
- ☒ b. N/A Tenants responsibility

9. PARKING Tenants are assigned parking as follows:

- ☐ a. None.
- ☒ b. This space shall be used for the parking of 2 car(s) only. Tenants may not repair vehicles of any kind in any parking space or anywhere else on or about the property. Grease, oil and any other drippings must be cleaned by Tenants when they occur and at Tenants' expense. Cars are not to be washed on or about the premises. In addition to rent, Tenants shall pay Landlord a parking fee of \$ N/A. per month. This fee is payable in advance along with the rent and shall be paid at the same address as designated by Landlord for payment of rent.

10. PETS No animal, bird or other pet shall be brought on or kept on the premises without Landlord's prior written consent, except for the following:

- ☐ a. None.
- ☒ b. NO PETS ALLOWED

11. QUIET ENJOYMENT Tenants shall be entitled to quiet enjoyment of the premises. Tenants shall not use the premises in such a way as to violate any law or ordinance, commit waste or nuisance, or annoy, disturb, inconvenience, or interfere with the quiet enjoyment of any other or nearby resident.

12. ASSIGNMENT AND SUBLETTING No portion of the premises shall be sublet nor this Agreement assigned without the prior written consent of the Landlord. Any attempted subletting or assignment by Tenants shall, at the election of Landlord, be an irremediable breach of this Agreement and cause for immediate termination as provided here and by law.

13. POSSESSION OF THE PREMISES The failure of Tenants to take possession of the premises shall not relieve them of their obligation to pay rent. If Landlord is unable to deliver possession of the premises for any reason not within Landlord's control, Landlord shall not be liable for any damage caused thereby, nor will this Agreement be void or voidable, but Tenants shall not be liable for any rent until possession is delivered. If Landlord is unable to deliver possession within 15 calendar days after the agreed commencement date, Tenants may terminate this Agreement by giving written notice to Landlord, and shall receive a refund of all rent and security deposits paid.

14. CONDITION OF THE PREMISES Tenants agree to

- (i) properly use, operate and safeguard the premises and all furniture and furnishings, appliances and fixtures within the premises,
- (ii) maintain the premises in clean and sanitary condition, and upon termination of the tenancy, to surrender the premises to Landlord in the same condition as when Tenants first took occupancy, except for ordinary wear and tear,
- (iii) if the surrounding grounds are part of the premises and for exclusive use of Tenants, Tenants agree to irrigate and maintain the surrounding grounds in a clean and safe manner, keeping the grounds clear of rubbish and weeds and trimming all grass and shrubbery as necessary to effect a neat and orderly appearance to the property,

- (iv) notify Landlord in writing upon discovery of any damages, defects or dangerous conditions in and about the premises; and
- (v) reimburse Landlord for the cost of any repairs to the premises of damages caused by misuse or negligence of Tenants or their guests or invitees.

Tenants acknowledge that they have examined the entire interior and exterior of the premises, including plumbing, heating and electrical appliances, smoke detector(s), fixtures, carpets, drapes and paint, and have found them to be in good, safe and clean condition and repair, with the following exceptions: (Specify "none" if there are no exceptions)

15. **REPAIRS, ALTERATIONS AND DAMAGES** Except as provided by law or as authorized by the prior written consent of Landlord, Tenants shall not make any repairs or alterations to the premises, including but not limited to, painting the walls, installing wallpaper, murals, paneling, tile, or hanging posters or pictures weighing in excess of twenty pounds.

If the premises are damaged or destroyed as to render them uninhabitable, then either Landlord or Tenants shall have the right to terminate this Agreement as of the date on which such damage occurs, through written notice to the other party to be given within fifteen days of occurrence of such damage. However, if such damage should occur as the result of the conduct or negligence of Tenants or Tenants' guests or invitees, Landlord only shall have the right to termination and Tenants shall be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

16. **EMERGENCY ENTRY AND INSPECTION** Tenants shall make the premises available to Landlord or Landlord's agents for the purposes of making repairs or improvements, or to supply agreed services or show the premises to prospective buyers or tenants, or in case of emergency. Except in case of emergency, Landlord shall give Tenants reasonable notice of intent to enter. For these purposes, twenty-four (24) hour written notice shall be deemed reasonable, and reasonable hours shall be defined as _____ to _____ Monday through Friday and _____ on Saturdays. In order to facilitate Landlord's right of access, Tenants shall not, without Landlord's prior written consent, add, alter or re-key any locks to the premises. At all times Landlord shall be provided with a key or keys capable of unlocking all such locks and gaining entry. Tenants further agree to notify Landlord in writing if Tenants install any burglar alarm system, including instructions on how to disarm it in case of emergency entry.

17. **EXTENDED ABSENCES AND ABANDONMENT** In the event Tenants will be away from the premises for more than 14 consecutive days, Tenants agree to notify Landlord in writing of the absence. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damages and needed repairs. Landlord

Abandonment is defined as absence of the Tenants from the premises, for at least 30 consecutive days without notice to Landlord. If the rent is outstanding and unpaid for fourteen (14) days and there is no reasonable evidence, other than the presence of the Tenants' personal property, that the Tenants are occupying the unit, Landlord may at Landlord's option terminate this agreement and regain possession in the manner prescribed by law.

18. **INSURANCE DISCLAIMERS** Tenants assume full responsibility for all personal property placed, stored or located on or about the premises. Tenants' personal property is not insured by Landlord. Landlord recommends that Tenants obtain insurance to protect against risk of loss from harm to Tenants' personal property. Landlord shall not be responsible for any harm to Tenants' property resulting from fire, theft, burglary, strikes, riots, orders or acts of public authorities, acts of nature or any other circumstance or event beyond Landlord's control.

19. **HOLD HARMLESS** Tenants expressly release Landlord from any and all liability for any damages or injury to Tenants, or any other person, or to any property, occurring on the premises unless such damage is the direct result of the negligence or unlawful act of Landlord or Landlord's agents.

20. **SMOKE DETECTORS** The premises are equipped with a smoke detection device(s), and Tenants shall be responsible for reporting any problems, maintenance or repairs to Landlord. Replacing batteries is the responsibility of Tenants.

21. **LEAD BASED PAINT DISCLOSURE** By initialing, Tenant acknowledges receipt of disclosure of information on lead-based paint and lead-based paint hazards. Landlord has no reports or knowledge of lead-based paint on the premises.

Tenants initial here: _____

22. **LIQUID-FILLED FURNITURE** Tenant shall not use or have any liquid-filled furniture on the premises without Landlord's prior written consent.

23. **ADDITIONAL PROVISIONS** (Specify "none" if there are no additional provisions)

24. **ENTIRE AGREEMENT** This document constitutes the entire Agreement between the Tenants and Landlord. This Agreement cannot be modified except in writing and must be signed by all parties. Neither Landlord nor Tenants have made any promises or representations, other than those set forth in this Agreement and those implied by law. The failure of Tenants or their guests or invitees to comply with any term of this Agreement is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

Valerie Poole

Landlord/Manager

100 pepper grass Drive

Elgin SC 29045

Landlord/Manager's Street Address, City, State & ZIP

Adrian & Jay

Tenant

Tenant

Tenant

Tenant

Date

6/8/12

Date

June 8, 2012

Date

Date

Date



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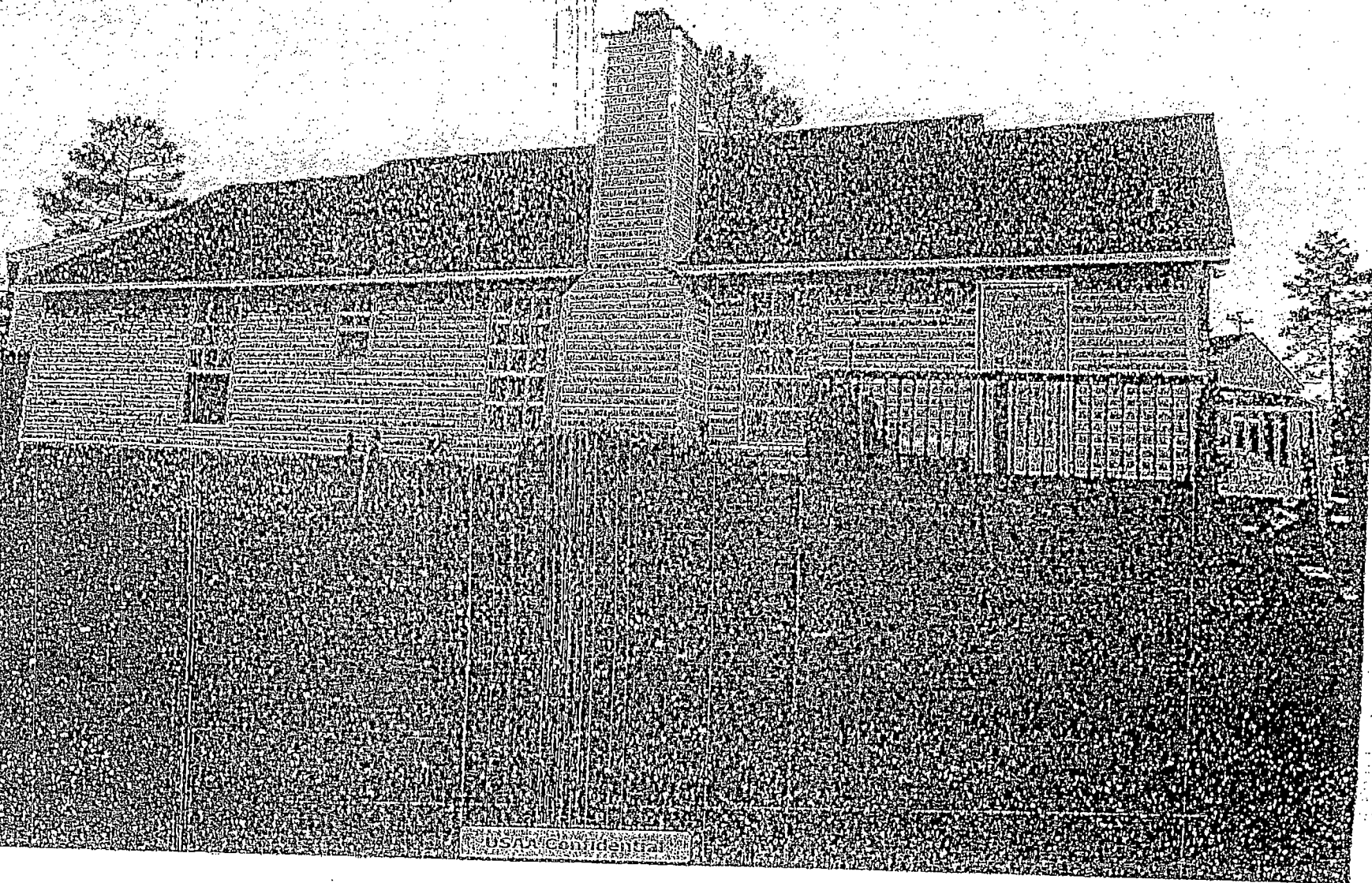
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1 State of South Carolina Court of Common Pleas
2 County of Richland Fifth Judicial Circuit
3

4 Cedric Young,)
5 Plaintiff,) Transcript of Record
6 vs.) 2015-CP-40-03235
7 Valerie Poole,)
8 Defendant.)

9
10 August 22, 2016
Columbia, South Carolina

11 B E F O R E:

12 The Honorable Clifton Newman, Judge
13

14 A P P E A R A N C E S:

15 John D. Clark, Esquire
Attorney for the Plaintiff

16 Elliott Daniels, Esquire
17 Attorney for the Defendant
18

19
20 STACY S. JOHNSON
CIRCUIT COURT REPORTER
21
22
23
24
25

I N D E XWITNESSPAGE

(No witnesses called.)

Certificate Of Reporter

36

E X H I B I T SNUMBERDESCRIPTIONID.EVD.

(No exhibits marked.)

P R O C E E D I N G S

THE COURT: All right.

MR. DANIELS: Your Honor, I have a copy of my memo, which I provided on Friday, for you and your law clerk.

THE COURT: All right. And you are?

MR. DANIELS: My name is Elliott Daniels. I'm with Murphy and Grantland.

THE COURT: Elliott Daniels. What do you have for me, Mr. Daniels?

MR. DANIELS: May it please the Court?

THE COURT: Yes, sir.

MR. DANIELS: Your Honor, we're here today on Defendant Valerie Poole's motion for summary judgment. Defendant Valerie Poole is a landlord in this matter and we filed this motion respectfully asking for judgment as a matter of law for two reasons. One, because there is no condition. The condition in this case is an unfinished attic, but we don't believe he's reached that question, Your Honor, because we believe that this claim is barred under the Residential Landlord Tenant and Act because the tenant failed to provide the landlord with any notice of any alleged condition.

Your Honor, the facts briefly. Plaintiff asserts this negligence action under only the Residential Landlord and Tenant Act and not under common law negligence

1 alleging an injury that occurred on August 17, 2012, when
2 the Plaintiff, who was a tenant in my client's rental unit,
3 was walking directly on the insulation of the attic rather
4 than on the beams in a rental unit owned by my client. At
5 the time of the injury, of course, the Plaintiff was a
6 tenant, my client was a landlord. Ms. Poole is a single
7 mother and comes from a family of military veterans.

8 THE COURT: Who is?

9 MR. DANIEL: My client, Valerie Poole.

10 THE COURT: Is a mother?

11 MR. DANIELS: She's a single mother and she's a
12 family of military veterans and she owns the house since
13 her husband split and it was converted into a rental unit.
14 There is an attic in that rental unit. And, Your Honor,
15 I have pictures, if that's helpful to Your Honor.

16 THE COURT: What kind of house is this?

17 MR. DANIELS: Sure. I do have some photographs,
18 which, Your Honor, I provided to the Plaintiff. These are
19 the same which were used in discovery.

20 THE COURT: This must be in the northeast. Where is
21 this?

22 MR. DANIELS: That's correct. It is on Thornberry
23 Court. 16 Thornberry Court.

24 THE COURT: Thornberry Court. All right.

25 MR. DANIELS: The Plaintiff, Your Honor, moved in in

1 June and the injury allegedly happened in August. At
2 the time of the injury, Plaintiff decided to store lawn
3 equipment in the attic space. He had a 20- to 40-foot
4 shed in the backyard.

5 THE COURT: What kind of equipment?

6 MR. DANIELS: Lawn equipment. There were two hedge
7 clippers and a rolled up power extension cord.

8 THE COURT: Okay.

9 MR. DANIELS: On the date of his injury, the Plaintiff
10 decided to go into the attic space. And, Your Honor, I'm
11 sure everyone in the attic -- in the court is familiar
12 with what an unfinished attic looks like. There's pink
13 insulation and there's exposed beams. If you elect to walk
14 on these beams, I think that the Court would agree that's
15 the safer route. This was not a finished attic. There was
16 no plywood. On the other side of the floor plan, there was
17 a hot water heater on a piece of plywood and the Plaintiff
18 elected to store his lawn equipment on that piece of
19 plywood across the attic space.

20 Your Honor, Plaintiff testified that he's 220 pounds.
21 On the date of his injury, he put on steel-toed boots, he
22 went into the unfinished attic and walked directly on the
23 insulation. He picked up one hedge clipper, then another
24 and then the extension cord still on the insulation.
25 Walking across the insulation, he gets back to the hatch

1 door and throws a piece of lawn equipment from the
2 insulation where he's standing down to the second floor
3 carpet and that's when his left foot went through the
4 drywall ceiling and he's now claiming injury to his left
5 foot.

6 Your Honor, we believe that the Defendant is entitled
7 to judgment as a matter of law for two reasons. First,
8 there is no condition. The Plaintiff himself was asked
9 whether there was a dangerous condition and he said no.
10 The question was: Do you believe the attic was in a
11 dangerous condition, and he said No, not at that time, no.
12 He testified that he had been in the attic more than ten
13 times, that he was very familiar with the attic, and that
14 he decided that it was advisable for him to walk directly
15 on the insulation. There were beams. Instead, he elected
16 to walk on the insulation. Again, he answered it was not
17 in a dangerous condition.

18 How can there be a duty for a landlord to correct a
19 condition if the Plaintiff himself admits it's not a
20 dangerous condition? An unfinished attic, Your Honor, is
21 not a dangerous condition. You just have to know to walk
22 on beams and not directly on the insulation. But the Court
23 doesn't need to reach the question -- this matter on those
24 grounds, Your Honor, because under the Residential Landlord
25 and Tenant Act, a landlord -- in order to have liability,

1 the landlord must have two things; one, notice from the
2 tenant and, two, a reasonable opportunity to correct the
3 condition.

4 The Court of Appeals in the operative case, which I
5 provided, Your Honor, is Watson versus Sellers, in 1989,
6 which first announced or really clarified this notice
7 requirement. Of course, the traditional rule under
8 South Carolina law is that a landlord has no duty to
9 maintain a leased premises in a safe condition. In 1986,
10 the Residential Landlord and Tenant Act was passed. In
11 this case, Watson makes very clear that it abrogated the
12 common law and created a statutory cause of action.

13 THE COURT: Let's look at this Watson case; Watson v.
14 Sellers.

15 MR. DANIELS: Sure.

16 THE COURT: Sellers owned the Maple Lane Home Mobile
17 Park, rented a mobile home to Watson. Sellers provided a
18 set of wood stairs for access to the front door, the stairs
19 collapse under Watson.

20 MR. CLARK: Your Honor, I have a hard copy of that
21 case --

22 MR. DANIELS: I provided it.

23 THE COURT: The testimony of record is the steps were
24 rickety and Watson knew that. Sellers testified that she
25 had checked all the stairs and found Watson's set to be

1 fine and solid.

2 All right. So what happened in that case?

3 MR. DANIELS: In the operative portion of that
4 decision, Your Honor, you'll find on Pages 4 through 6,
5 Judge Peebles for Horry County -- the Horry County Common
6 Pleas entered a jury verdict for the Plaintiff in that
7 case. The Court of Appeals took the question on appeal
8 from the landlord and answered the question whether the
9 Residential Landlord and Tenant Act abrogated the common
10 law and created a statutory cause of action. The Court of
11 Appeals said yes, it did, and the Court of Appeals repeated
12 the notice requirement six times in its decision.

13 THE COURT: And what do they say, Dr. Daniels?

14 MR. DANIELS: It's on Pages 4, 5 and 6, and the
15 language is this, Your Honor. Quote --

16 THE COURT: Zone me in to where you're reading.

17 MR. DANIELS: Sure. Sure.

18 THE COURT: Just tell me. I'll find it. Is it on
19 Page 4, 5 or 6?

20 MR. DANIELS: 4, 5 and 6, I believe, Your Honor.

21 THE COURT: You're not going to read all those pages
22 to me. Just tell me.

23 MR. DANIELS: I won't, Your Honor.

24 THE COURT: What do I need to look at? We conclude
25 the General Assembly implemented its intent to modernize

1 and revise the law regarding rental of dwelling units
2 and the rights and obligations of landlord and tenants;
3 therefore, we reject Sellers' contention that the landlord
4 did not intend to abrogate the existing law. It was the
5 intent of the Legislature to cause the law of this state to
6 be consonant with the modern trends set forth. What else?

7 MR. DANIELS: The language, Your Honor, is, quote,
8 there's liability --

9 THE COURT: On page what?

10 MR. DANIELS: I believe it's on Pages 5 and 6, and
11 there are six different references, Your Honor, to the word
12 -- to the notice requirement. Okay. If you look at the
13 bottom of Page 7, just above conclusion, it says we hold,
14 therefore, even had the residential landlord not created a
15 cause of action for personal injury for failure to repair
16 after notice on the part of the landlord, and then they
17 cite the grounds.

18 THE COURT: I don't see what you're reading.

19 MR. DANIELS: Sure. If you look just above
20 conclusion, Your Honor.

21 THE COURT: Just above conclusion. We hold,
22 therefore, under the two-issue rule?

23 MR. DANIELS: That's correct, Your Honor. And you
24 will notice the operative language is the cause of action
25 for personal injury was created for failure to repair after

1 notice on the part of the landlord. Your Honor, that
2 notice requirement was -- I know that I've had difficulty
3 pointing you to the right paragraph, was repeated six times
4 in this motion -- I'm sorry, in that decision, and the
5 Court of Appeals reached the notice requirement again in
6 the second case, which I've also provided to Your Honor,
7 and that's the Code case.

8 THE COURT: Code?

9 MR. DANIELS: The Code case, Your Honor.

10 THE COURT: All right.

11 MR. DANIELS: Yes, Your Honor. That's a 2009
12 decision.

13 THE COURT: Merl Code. You know Merl Code. He's a
14 big-time lawyer in Greenville.

15 MR. CLARK: Now he's a judge or something.

16 THE COURT: Yeah, a municipal up in -- you know Merl
17 Code from Greenville?

18 MR. DANIELS: Yes, sir.

19 THE COURT: Someone sued Merl? A personal
20 representative; Robinson v. Merl Code.

21 MR. CLARK: I think Mr. Code owned the house, Your
22 Honor.

23 MR. DANIELS: That's correct, Your Honor. In the Code
24 decision, the death of a tenant was allegedly attributable
25 to a landlord's failure to install smoke alarms.

1 THE COURT: All right.

2 MR. DANIELS: And all parties agreed that it was a
3 violation of state law to not install smoke detectors,
4 but the South Carolina Court of Appeals nonetheless
5 concluded that because the Plaintiff tenant failed to
6 allege that they notified the owner of a lack of smoke
7 detectors they could not state a claim under the South
8 Carolina Residential Landlord and Tenant Act. Your Honor,
9 the same is true in Code and in the prior case, Watson.
10 It was certainly an agreement that the staircase fell apart
11 in Watson. There were no smoke alarms in the Code case.

12 And then the final case we'll discuss, the Thompson
13 case, if the Court would like to read it?

14 THE COURT: All right.

15 MR. DANIELS: There was a set of railing on a second
16 story balcony in Thompson versus CDL and the South Carolina
17 District Court -- the U.S. District Court for the District
18 of South Carolina applying the substantive South Carolina
19 law, applying the Landlord Tenant Act, granted summary
20 judgment to a tenant -- I'm sorry, to a landlord defendant
21 without a hearing involving a railing that fell through,
22 which caused the defendant to fall two stories and caused
23 a catastrophic injury.

24 THE COURT: A house on Folly Beach, huh?

25 MR. DANIELS: That's correct, Your Honor. And the

1 language from that Thompson decision, which is found on
2 Page 292 as reported says, quote, the South Carolina
3 Supreme Court would require that a landlord have notice
4 of a defect before being liable to a tenant under the
5 South Carolina Residential Landlord and Tenant Act. In
6 the Thompson decision, summary judgment was granted at the
7 District Court level. It was reviewed de novo at the
8 Fourth Circuit level and was granted again.

9 And that leaves us, Your Honor, with twenty-five years
10 of undisturbed precedent from the South Carolina Court of
11 Appeals, the U.S. District Court, Horry County -- well,
12 I'll take the Horry County back, Your Honor, the South
13 Carolina District and the Fourth Circuit Court of Appeals,
14 that says this: In order for there to be liability, there
15 must be notice and without notice there is no duty --

16 THE COURT: Notice of what? The alleged --

17 MR. DANIELS: Of the alleged condition, Your Honor,
18 yes. The Plaintiff in this case testified that he had
19 been in the attic at least ten times before his alleged
20 injury. In addition to saying that he did not believe
21 there was a dangerous condition, he said, quote, I didn't
22 notice anything --

23 THE COURT: What was wrong with the attic?

24 MR. DANIELS: It was unfinished.

25 THE COURT: I mean, what's wrong with that?

1 MR. DANIELS: Your Honor, I agree.

2 THE COURT: You can't rent a house unless -- unless
3 the attic is finished?

4 MR. DANIELS: That's a -- that's a question my
5 client's asked me, Your Honor. It's simply an unfinished
6 attic. It looks like my own attic. It looks like many
7 attics probably that homeowners in this courtroom have.
8 It's simply exposed beams and the 220-pound Plaintiff with
9 steel-toed boots and three pieces of lawn equipment walked
10 directly on the insulation, poked a hole in the drywall
11 ceiling and now is alleging that it's a dangerous condition
12 to have an unfinished attic. First, we don't believe
13 there's a condition. Second, we believe that the act
14 requires notice given to the landlord before liability
15 attaches. We believe this is a consistent precedent that's
16 been applied for more than twenty-five years and --

17 THE COURT: You know, that happened to me one time in
18 my house. This is about thirty years ago. I was in the
19 attic and I didn't know that I had to walk on a beam. I'm
20 just walking across the ceiling and the next thing I'm
21 falling through the ceiling. And people tell me hey,
22 sheetrock is not designed to hold a body. I didn't have
23 anyone to file a case against because it was my house.

24 MR. DANIELS: That's unfortunate. Your Honor, I
25 presume that's sometimes the way we learn lessons in life.

1 Your Honor, finally, with this I'll rest. I think
2 that we'll hear from Mr. Clark for the plaintiff two
3 things. One, he'll reference common law. First, the
4 common law was abrogated by the Residential Landlord and
5 Tenant Act.

6 THE COURT: That was clearly established in that case.

7 MR. DANIELS: That's correct. Watson is clear on
8 that. Two, a common -- a common law cause of action for
9 negligence was not pled. I can hand up the complaint if
10 Your Honor would like to review it.

11 THE COURT: I've looked at the complaint.

12 MR. DANIELS: You have a copy of the complaint. This
13 -- this action was only brought under the Residential
14 Landlord and Tenant Act. Under the --

15 THE COURT: What's the policy behind that? You know,
16 there are many people who have rental properties out there
17 in life. What's the policy on that landlord tenant law to
18 not pin landlords with all these liability situations?

19 MR. DANIELS: Sure. Well, the old -- the old law was
20 immunity. There was no liability. In that case, the
21 state of South Carolina comes onboard with the majority of
22 other states saying there has to be some limited form of
23 liability where, one, the landlord is told and, two, the
24 landlord failed to make repairs. Your Honor, here if --
25 Your Honor, we could go through the deposition testimony,

1 but our client and his client both agree this was an
2 unfinished attic. No one had asked the landlord to
3 refinish the attic. He had been up there about a dozen
4 times. No one had said please lay down plywood for me to
5 walk on the insulation.

6 THE COURT: Well, the rent would have been more if he
7 had that.

8 MR. DANIELS: That's correct, Your Honor. The policy,
9 I believe, of this act is that there has to be a limited
10 form of liability where a landlord is asked to do something
11 and failed to do so. Here the landlord was never -- it was
12 never brought to the landlord's attention. There's no
13 notice despite about a dozen at least entrances into the
14 attic. Your Honor, we don't believe there's a condition
15 and we do believe that the act requires notice and we
16 believe that the case law is clear and for that reason we
17 believe that the Defendant is entitled to judgment as a
18 matter of law.

19 THE COURT: All right. How about it, Mr. Clark?

20 MR. CLARK: Your Honor, unfortunately, we disagree,
21 Your Honor, and we think we can show that the Defendant's
22 case must go forward and summary judgment should be denied.
23 Your Honor, Mr. Daniel would be right if our claim was only
24 under the Residential Landlord and Tenant Act.

25 THE COURT: Isn't that what you sued under?

1 MR. CLARK: No, sir, Your Honor. I'd point out -- you
2 have the complaint?

3 THE COURT: Yes, sir.

4 MR. CLARK: I have an extra copy right here, Your
5 Honor.

6 THE COURT: I'm looking at it.

7 MR. CLARK: Your Honor, the complaint -- the
8 averments that Rule 10 speak to clearly alleges common law
9 negligence.

10 THE COURT: How can you sue a landlord under common
11 law negligence?

12 MR. CLARK: Your Honor, Mr. Daniels' statement that
13 the Residential Landlord and Tenant Act abrogated common
14 law is not totally correct. What that case says, Your
15 Honor, is that the Residential Landlord and Tenant Act
16 adds causes of action that didn't exist before, but they
17 do not take away causes of action that existed before.
18 And that case that he cited, that's what it actually says,
19 and that's the Watson case. And I'm gonna point to that
20 language on Page 5. Let's see. Under the third -- let's
21 see. Under the third subsection there, it says Residential
22 Landlord and Tenant Act.

23 THE COURT: Which page? Say it again.

24 MR. CLARK: It's on Page 5, Your Honor.

25 THE COURT: Page 5. All right.

1 MR. CLARK: And you see the heading number three,
2 Roman numeral three?

3 THE COURT: Yeah.

4 MR. CLARK: And then if you count one, two, three,
5 four -- five paragraphs down --

6 THE COURT: All right.

7 MR. CLARK: -- as will later be noted, we hold that
8 the Residential Landlord and Tenant Act by express words
9 creates a cause of action in favor of a tenant of
10 residential property against his landlord for failure
11 after notice, et cetera. So it creates a cause of action
12 and it does not abrogate or take away the common law cause
13 of action for concealed damages, and that's the difference
14 here, Your Honor. That's the difference. The cases that
15 Mr. Daniels cited --

16 THE COURT: What was concealed?

17 MR. CLARK: Well, Your Honor, it was a latent defect
18 is what I'm saying. It was a latent defect and was not
19 obvious.

20 THE COURT: What do you say was a latent defect?

21 MR. CLARK: Well, my client testified, and I put this
22 in our memo, Your Honor, and I would direct you over to the
23 last page just before conclusion --

24 THE COURT: All right.

25 MR. CLARK: -- where my client testified, and this is

1 in direct response to Mr. Daniels' question: Okay. Are
2 you alleging that something was defective about the attic?
3 Yes. Then he asked: Explain that. What exactly? I
4 think that, well, it was unfinished work and it was
5 camouflaged because I stepped there before many times, you
6 know, she didn't tell me not to go up there, she didn't
7 tell me not to step, so it wasn't finished, so whoever did
8 the work -- and here's the key language, they did it and
9 they camouflaged it like it was finished.

10 THE COURT: What is he talking about?

11 MR. CLARK: Well, I'm gonna point that out, Your
12 Honor. This attic -- I think to use the term unfinished
13 is not a correct description. I would describe it as
14 partially finished like most attics are where you have
15 some platform to store things and then there are other
16 areas that you don't have anything to store. That's what
17 this attic was.

18 THE COURT: Well, if you have an unfinished attic,
19 you put a piece of ply board up there so you can --

20 MR. CLARK: Yes, sir.

21 THE COURT: -- or that stretches across the beam where
22 you can sit something on it.

23 MR. CLARK: Yes, sir. That's what -- that's this
24 case.

25 THE COURT: Well, yeah, that's just --

1 MR. CLARK: It's --

2 THE COURT: So it's kind of typical.

3 MR. CLARK: Well, and so whether it's unfinished or
4 not, it still was intended to use some part as storage.
5 And, Your Honor, if you look at Ms. Poole's testimony on
6 Page 6 of the memo --

7 THE COURT: All right. On your memo?

8 MR. CLARK: Yes, sir.

9 THE COURT: All right.

10 MR. CLARK: -- the last question and answer there:
11 You climbed up on the stairs. Is there any ply board
12 surfaces up there? Right around the stairwell. So --

13 THE COURT: So if you put some plywood in your attic,
14 then it becomes partially finished?

15 MR. CLARK: Well, Your Honor, I guess finished is the
16 term that hasn't been defined. It's not finished like it's
17 heated space. It's never intended to be heated space with
18 walls and all that, but it is finished to the extent that
19 it's designed to store property up there.

20 THE COURT: I understand. I'm just trying to get my
21 -- if someone walks on insulation --

22 MR. CLARK: He didn't walk on --

23 THE COURT: What was he walking on?

24 MR. CLARK: Your Honor, he -- he was walking on a
25 surface that he said looked like it was finished. He

1 didn't walk on insulation.

2 THE COURT: He was working on board or --

3 MR. CLARK: On what he thought was wood. Well, Your
4 Honor, I'll show you a picture. I think I have a better
5 picture than that.

6 THE COURT: I spend my weekends fixing on houses --

7 MR. CLARK: I understand.

8 THE COURT: -- so I have to understand what we're
9 talking about.

10 MR. CLARK: Your Honor, that view in that picture is
11 standing on the staircase looking into the attic.

12 THE COURT: Standing on the staircase.

13 MR. CLARK: Looking into the attic.

14 THE COURT: All right.

15 MR. CLARK: That first area there is where he stepped.
16 That area does not have plywood, but where that bag is
17 does, and what he --

18 THE COURT: What's under the bag? Insulation?

19 MR. CLARK: That's plywood.

20 THE COURT: Plywood under the bag?

21 MR. CLARK: Yes, sir, that's plywood under the bag,
22 but that area is between -- is between the staircase and
23 the plywood and so what happened when he was coming back
24 to go down with objects in his hand, he stepped on that.

25 THE COURT: So are you contending that -- well, when

1 you said the -- Daniels says that there was immunity before
2 the landlord tenant law. The landlord tenant law gave the
3 right of the tenant to sue after notice. You're saying
4 it's a dangerous condition or you disagree with him on the
5 law and you're saying the landlord had notice or what?
6 Tell me -- aside from his version of the facts, tell me
7 what's going on.

8 MR. CLARK: Your Honor, the cases cited by Mr. Daniels
9 all involve failure to repair after the tenant is in the
10 house.

11 THE COURT: All right.

12 MR. CLARK: The Landlord and Tenant Act says if you're
13 in the house and a condition arises that's dangerous, you
14 have to call the landlord to come and fix it. If you don't
15 -- you don't call them, then you can't say that you got
16 injured on a dangerous condition. That's after you moved
17 in. Every case that he cited that's what the facts were.

18 THE COURT: Well, you never sue before you move in.

19 MR. CLARK: Well, Your Honor -- if I could approach,
20 Your Honor, that's the point. And what I'm gonna hand up,
21 Your Honor, is professors Felix and Hubbard that everybody
22 refers to, that first section there, concealed dangers,
23 and what that deals with -- see, if -- if you take their
24 position, then no matter how dangerous the property is,
25 even if they know about it, if you walk in there the first

1 day and you kill yourself, you can't ever sue them. That's
2 ridiculous. In this case, our position is the dangers
3 existed at the time that he took the lease, not something
4 where a staircase was rickety after someone was in the
5 property and called the landlord, but at the time he took
6 the property there was a concealed danger in that attic.
7 As the professors say, the lessor will be liable for
8 personal injury resulting from the condition as if he were
9 in control of the premises as if there was no lease. And
10 what it says is whether the lessor knows or should know
11 that a dangerous condition is not obvious to the lessee,
12 then the lessor must use due care to warn.

13 And so our position is it's not that he was in the
14 property and he called and said the staircase is broke,
15 come and fix it. When he moved in the property, there was
16 a concealed danger that he didn't -- didn't know about,
17 it's clear she did know about that, and I don't think
18 Mr. Daniels disputes that. We cited in our brief -- what
19 she said, Your Honor, is that when he called her after he
20 fell she said I wish he would have called me, I would have
21 told him that it was dangerous up there, I would have told
22 him that two repairmen from SCE&G went up there and they
23 told her you can't step anywhere. We cited that in our
24 memo, Your Honor.

25 THE COURT: You can't step anywhere because there's

1 junk up there, because there's no room to walk?

2 MR. CLARK: Well, because there is room to walk, but
3 that area that looks like ply board is not and it was not
4 open and obvious to him, he stepped on it and he fell
5 through.

6 THE COURT: Well, he says -- Daniels says regardless
7 of any of that before this landlord tenant law landlords
8 were immune from suit. Here in South Carolina you just
9 couldn't sue landlords. It was buyer beware. Lessor
10 beware. If you rent a house, it's your responsibility
11 once you get in the house, it's not the landlord's
12 responsibility at all, and since South Carolina was -- way
13 back, you know, you can do it in New York and every place
14 else, South Carolina came up to the twentieth century and
15 passed this law saying that you could sue here if you've
16 given notice to the landlord that there's a problem and
17 they didn't fix the problem.

18 MR. CLARK: Your Honor, and that's all true regarding
19 issues that come up for failing to repair after you're in
20 the property, but it does not apply to concealed dangers
21 that existed at the time you took the -- the lease.

22 THE COURT: So the landlord tenant law excludes
23 dangerous conditions before you lease the place?

24 MR. CLARK: You don't have to give notice of concealed
25 dangers that --

1 THE COURT: So are there any cases in which anyone has
2 prevailed on that argument?

3 MR. CLARK: Yes, sir. Yes, sir.

4 Your Honor, I have three cases that I want to pass up
5 to the Court on that.

6 THE COURT: All right. I saw you gave me one from
7 1947.

8 MR. CLARK: Yes, sir, and that's been the law. And
9 Hubbard says --

10 THE COURT: I have a general rule that I don't
11 recognize authority that existed before I could go in a
12 courthouse.

13 MR. CLARK: But, Your Honor, it's cited by Felix and
14 Hubbard in 2011, and I submit, Your Honor, that that just
15 means that's been the law for a long time. Let's see here.

16 THE COURT: Give me something after South Carolina
17 came into -- into the current ages.

18 MR. CLARK: Okay. I think I can do that, Your Honor.
19 Give me one second.

20 Your Honor, the case that's from the current ages is
21 Byerly versus Connor.

22 THE COURT: All right.

23 MR. CLARK: I think that's a 1992 case, Your Honor.

24 THE COURT: All right. Connor v. The Public Service
25 Authority.

1 MR. CLARK: And here's what happened in Byerly versus
2 Connor.
3 THE COURT: This says Connor versus the Public Service
4 Authority. Is that the one you meant?
5 MR. CLARK: Yes. Byerly -- it's kind of obscured
6 there at the top where it has some ink on the top of it.
7 Do you see where --
8 THE COURT: Oh, yeah, I do. Okay. Byerly.
9 MR. CLARK: Byerly, he's the personal representative.
10 What happened, young Mr. Byerly was on a boat that was
11 moored to a dock that was leased from the state agency.
12 THE COURT: I think I remember this one out of
13 Clarendon County.
14 MR. CLARK: Yes, sir.
15 THE COURT: All right.
16 MR. CLARK: And what he did was he dived off a boat
17 into the water and he was electrocuted and --
18 THE COURT: Your friend John Miles' case.
19 MR. CLARK: Yes, sir.
20 THE COURT: And Judge Buck James was involved, too.
21 MR. CLARK: Yes, sir.
22 THE COURT: Okay.
23 MR. CLARK: Yes, sir. And what the Court said --
24 they denied liability in the case, but if you'll look
25 over under discussion, Headnote 2, it says an owner of

1 land possesses a general duty to warn others of latent
2 defects -- latent hazardous conditions on the land. It
3 says that, okay?

4 THE COURT: And I remember them saying that. This
5 is the SCE&G out at Lake Marion and they've got a
6 dangerous problem, a guy dived into the water and he
7 was electrocuted. It's not a landlord tenant case.

8 MR. CLARK: Well, if I could just read on.

9 THE COURT: Yeah, go ahead.

10 MR. CLARK: And it says this duty arises from the
11 owner's superior knowledge of the conditions on the
12 premises within his control. Then it says however, when
13 land is occupied by a lessee, as in this case, the law of
14 property regards the lease as equivalent to the sale of
15 premises for the term of the lease, and here's the key
16 language here -- or the next sentence actually. In absence
17 of an agreement to the contrary, the lessor surrenders
18 possession and control of the land to the lessee. Here's
19 the point. After the premises are surrendered in good
20 condition, the lessor typically is not responsible for
21 hazardous conditions thereafter developed or created by
22 the lessee, and what it does is it cites Keeton and then
23 it also cites the Young v. Morrissey case that Mr. Daniels
24 relied on, and what it says is -- and the way Byerly reads
25 that case it says landowner owes no duty to maintain leased

1 premises in a safe condition. Again, the landlord does
2 not have to come back and fix latent -- he's not liable
3 for latent conditions that occur after you take the
4 premises if you don't notify him.

5 THE COURT: All right. Well, you know -- you know,
6 you're talking -- there's lessors and lessees all over the
7 place in commercial settings, all kind of settings, and
8 people lease land for all kind of purposes. Is that the
9 same as a landlord tenant?

10 MR. CLARK: Yes, sir, because it -- like I said, the
11 Residential Landlord and Tenant Act -- well, it's not the
12 same, but -- it's not the same, but general negligence
13 principles apply as have been for eighty years. As I said,
14 Your Honor, if you -- if you took Mr. Daniels' position,
15 then it's -- no matter how dangerous the property is the
16 landlord would never be liable.

17 THE COURT: As long as it's a house --

18 MR. CLARK: Yes, sir.

19 THE COURT: -- under landlord tenant law.

20 MR. CLARK: And think about --

21 THE COURT: Unless there's notice.

22 MR. CLARK: Well --

23 THE COURT: Well, I understand. We've about exhausted
24 your fifteen minutes. How many minutes are we into this
25 case so far? We need to put us a clock up. How many

1 minutes, Mr. Daniels?

2 MR. DANIELS: Oh, how many minutes are we in, Your
3 Honor, so far?

4 THE COURT: Yes, sir. What time did you start
5 talking?

6 MR. DANIELS: I can't tell you.

7 THE COURT: Well, we've about used up your fifteen
8 minutes. Let me hear your response and let's move to the
9 next case.

10 MR. DANIELS: Your Honor, I'll be very brief in my
11 response. First, Your Honor, of course, the landlord
12 and tenant relationship is not the same as an ordinary
13 lessor and lessee. The Residential Landlord and Tenant
14 Act is a statutory matter where it creates the duties and
15 obligations that a landlord owes to a tenant.

16 THE COURT: You know, out there on Lake Marion with
17 SCE&G, you know, they -- I guess they own -- don't they own
18 everything and they were giving people ninety-nine year
19 leases and now people can buy property or -- there's some
20 strange situation out there.

21 MR. DANIELS: That's correct, Your Honor.

22 THE COURT: I can see someone trying to figure out how
23 to tie it into, say, getting electrocuted.

24 MR. DANIELS: Sure. And even in that case, Your
25 Honor, which was cited by Mr. Clark, the Supreme Court

1 affirmed a grant of summary judgment because the utility,
2 quote, did not possess a duty to discover and warn of
3 latent adverse conditions existing at the dock.

4 Your Honor, this case is governed by the Residential
5 Landlord and Tenant Act. The case law is clear. Notice is
6 required, no notice was given. You know, we can go back
7 and forth as to whether a finished or unfinished attic was
8 dangerous. The Plaintiff in his testimony was clear that
9 he was walking on insulation. I don't think that's of any
10 interest to the Court in this matter, Your Honor.

11 THE COURT: You know, when you get these kind of
12 cases, I think of it in terms of if I'm sitting on the
13 Court of Appeals and whatever the trial judge decides and
14 one of you-all show up there with argument, how would the
15 Court of Appeals look at this case? That case was before
16 the trial judge and --

17 MR. DANIELS: Sure, Your Honor.

18 THE COURT: Wait, wait, wait. If I deny summary
19 judgment, what would they say? What would they think of
20 this case? If you went up before the Court of Appeals and
21 said I tried to get Judge Newman to throw this out and he
22 denied it, what would they say?

23 MR. DANIELS: Well, Your Honor, I would argue that the
24 Court of Appeals has addressed this; once in 1989 and once
25 in 2009.

1 THE COURT: You say they'll say well, we've already
2 addressed this?

3 MR. DANIELS: We've already said that this is a notice
4 requirement.

5 THE COURT: He didn't read the law. This is clear.

6 MR. DANIELS: The Court of Appeals respectfully,
7 Your Honor, may say we've already decided this question,
8 notice is a requirement, we decided it in 1989, we decided
9 it in 2009.

10 THE COURT: I wonder why there's no Supreme Court
11 cases?

12 MR. DANIELS: That's a good question, Your Honor.
13 Both of those two cases stopped at the Court of Appeals
14 level and when the District Court took on the Thompson
15 case, they said as a matter of construction we look to
16 the Court of Appeals of South Carolina because there's no
17 South Carolina Supreme Court decision and they said --

18 THE COURT: Do you think this one is worth going to
19 the Supreme Court?

20 MR. DANIELS: Your Honor, that's a fine question.
21 Frankly, it hasn't been there. And the District Court
22 interpreting our South Carolina law said, quote, the South
23 Carolina Supreme Court would require that a landlord have
24 notice of a defect before being liable to a tenant under
25 the South Carolina Residential Landlord and Tenant Act.

1 The District Court in the Fourth Circuit did their best to
2 look at the Court of Appeals and interpret how the Supreme
3 Court would decide and they did say unless there's any
4 other --

5 THE COURT: Well, could people afford to rent their
6 places if someone was walking up in the attic and walks
7 through whatever this guy walked through and fell through
8 the ceiling? Could you afford to rent a place?

9 MR. DANIELS: Sure. It creates an exorbitant amount
10 of liability.

11 THE COURT: What kind of a -- how much would insurance
12 cost to insure a place?

13 MR. DANIELS: Or I think of the warnings that a
14 landlord would have to give to their tenants. Do not step
15 on insulation in steel-toed boots and three pieces of lawn
16 equipment, you only walk on wood in the attic. These are
17 the kind of warnings that -- I mean, does South Carolina
18 require landlords to give their tenants those warnings?

19 THE COURT: All right. Yes, sir.

20 MR. CLARK: One other issue, Your Honor. As for
21 the pleadings itself, if the Court concludes that the
22 pleadings are only under the Residential Landlord and
23 Tenant Act, then I would move to amend the pleading to make
24 it clear that the claim is under the general negligence
25 principles, Your Honor. Looking at the complaint, the

1 averments allege negligence. There is a heading that
2 says Landlord Tenant Act, but that is not an averment and
3 Rule 10 says the complaint consider -- consists of a number
4 of averments and in the averments we allege duty, breach,
5 proximate cause.

6 THE COURT: So you're saying that landlord tenant law
7 is not the exclusive remedy for a tenant?

8 MR. CLARK: Yes.

9 THE COURT: And does it address that?

10 MR. DANIELS: Your Honor, I point the Court to Watson.
11 It was argued that Watson did not abrogate the common law.
12 In Watson, rather, the Court of Appeals says that the
13 Residential Landlord and Tenant Act, quote, is designed to
14 abrogate the well-defined and established common law and
15 embark on a course fully divergent from the existing
16 precedent in this area as to the duty of a landlord to the
17 tenant.

18 THE COURT: So you're saying you can't -- he can't
19 amend it and sue under common law because it must be dealt
20 with in the confines of the Landlord Tenant Act?

21 MR. DANIELS: We believe, Your Honor, the Residential
22 Landlord and Tenant Act is the exclusive remedy in
23 situations like this.

24 THE COURT: Like worker's comp.

25 MR. CLARK: And, again, Your Honor, if you read

1 Watson, what it says is that the Landlord Tenant Act adds
2 causes of action, it doesn't say it eliminates the common
3 law negligence, and that's our position, Your Honor.
4 THE COURT: All right.
5 MR. CLARK: And at this stage with summary judgment
6 not being favored, all inferences are viewed in the light
7 most favorable to us, I believe.
8 THE COURT: There's -- you-all don't seem to have any
9 disputed facts. It's just where a tenant -- whether a
10 tenant can bring suit.
11 MR. CLARK: It's a question of law.
12 MR. DANIELS: Correct, Your Honor. It's a clear
13 question of law.
14 THE COURT: Well, I agree with the landlord in this
15 case. I think that it's -- I don't think the tenant can
16 sue. If you will prepare a proposed order.
17 MR. DANIELS: Thank you, Your Honor. We'll get you a
18 proposed order.
19 THE COURT: All right.
20 MR. CLARK: Your Honor, as for the pleading, I just
21 want to --
22 THE COURT: Well, amending the pleading? I don't see
23 how you can sue under common law when we have a landlord
24 tenant law.
25 MR. CLARK: And I understand that, Your Honor. I just

1 -- you know, I take a different position.

2 THE COURT: Yeah, I understand. I mean --

3 MR. CLARK: I move to just eliminate the words
4 "landlord tenant" from the pleading -- from the heading
5 because it's not an averment. I don't think it's
6 necessary, but just to clear up the record I propose to
7 do that so it's clear.

8 THE COURT: Well, I mean, I don't know about me ruling
9 on an oral motion in the middle of a hearing, but your
10 argument is made on the record and it's clear what you're
11 contending.

12 MR. CLARK: Yes, sir.

13 THE COURT: I'd have to hear a different motion on
14 that, I guess.

15 MR. CLARK: I just thought I could make the motion in
16 open court --

17 THE COURT: What do you say about his motion in open
18 court to make it clear in the pleading that he's not
19 claiming --

20 MR. DANIELS: Sure, Your Honor. I'd ask that our
21 hearing today be limited to the motion for summary judgment
22 which we prepared for.

23 THE COURT: Well, the statement is made in the record
24 that the pleading is not -- or the caption in the pleading
25 does not control the substance of the allegation and that's

probably a matter -- that's a fact anyway. I think it is.

2 I don't know.

3 ~~MR. DANIELS: Your Honor, we'll prepare an order.~~

4 THE COURT: I'll let you-all deal with that.

5 MR. CLARK: Thank you, Your Honor.

6 MR. DANIELS: Thank you, Your Honor.

7 THE COURT: Submit the proposed order after giving it
8 to Mr. Clark.

9 MR. DANIELS: Absolutely. Thank you, Your Honor.

10 MR. CLARK: Thank you, Your Honor. Have a good day..

11 THE COURT: All right.

12 (Whereupon, the proceedings were concluded at
13 10:42 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 22nd day of August, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

October 14, 2016

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

COUNTY OF RICHLAND

CIVIL ACTION NO.: 2015-CP-40-3235

Cedric Young,

Plaintiff,

v.

Valerie Poole,

Defendant.

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

2015 MAR 25 PM 12:59
JEROME W. McBRIDE
S.C.P. & G.S.
RICHLAND COUNTY
FILED

Defendant Valerie Poole submits this Memorandum of Law in support of her Motion for Summary Judgment. For the reasons set forth herein and in the Motion previously filed and served, Defendant asserts that there is no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

Plaintiff asserts this negligence action under the S.C. Residential Landlord and Tenant Act (hereafter, "the Act" or "Landlord-Tenant Act") arising out of an injury occurring on August 17, 2012 when Plaintiff walked directly on the insulation, rather than the beams, of an attic in a rental unit owned by Defendant Valerie Poole. At the time of the alleged injury, Plaintiff was a tenant who lived in Defendant's rental unit. Plaintiff testified that he accessed the attic space for the first time on June 8, 2012, on his move-in date, and "more than ten times" after his initial move-in before the date of his alleged injury. (Young Depo. 26:15-22; Attached hereto as Exhibit A). Plaintiff testified that every time he accessed the attic prior to the alleged injury, he walked directly on the insulation and not on wooden beams. (Young Depo. 48:1-3). Despite the regular access, Plaintiff did not call to request the Defendant landlord modify or repair the attic space in any way prior to the alleged injury. (Poole Depo. 38:1-3; Attached hereto as Exhibit B; Young Depo. 27:1-21). Indeed, Plaintiff testified that there was nothing different about the Defendant's attic than any other attic he has ever been in. (Young Depo. 40:4-6).

On the date of the alleged injury, Plaintiff lowered the access ladder into the attic, and while inside the attic the Plaintiff, weighing 220 pounds, elected to walk directly on the insulation of the unfinished attic wearing steel toed boots. (Young Depo. 77:20-22; 34:6-14; 39:10-14). Plaintiff admitted that walking directly on the insulation was his common practice, and that he did not believe there was anything wrong with this practice. (Young Depo. 67:5-10; 40:1-3). Plaintiff picked up two hedge clippers and one rolled up extension cord, and, with the lawn equipment in hand, Plaintiff walked directly on the insulation towards the hatch door. With the attic hatch door open, Plaintiff threw the cord down to the second floor carpet, and, as he continued to walk on the insulation, Plaintiff testified that his foot pushed through the second floor ceiling and he suffered a foot injury.

Plaintiff executed a Lease prior to moving in to the rental property. (Residential Lease Agreement; Attached hereto as Exhibit C). By the terms of the Lease, Plaintiff agreed to "properly use the premises." (Lease at 14(i)). Plaintiff testified that walking directly on the insulation was "properly using the premises." (Young Depo. 69:11-18). Through the Lease, the Plaintiff also agreed to "notify the landlord in writing upon discovery of any dangerous condition on the premises." (Lease at 14(iv)). Plaintiff did not provide notice of any "dangerous condition" to the landlord any time before the alleged injury. (Young Depo 26:12-27:21). Further, Plaintiff testified that he inspected the "entire interior and exterior of the premises" prior to moving in, and that he found it to be in "good, safe, and clean condition and repair." (Young Depo: 71:8-72:11).

On May 15, 2015, Plaintiff filed his Complaint, alleging negligence under the Landlord-Tenant Act. Written discovery and party depositions are complete. On September 10, 2015, Defendant Poole filed her Motion for Summary Judgement. Ms. Poole submits this Memorandum of Law in support of that Motion, scheduled to be heard before this Honorable Court on August 22, 2016.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002). Summary judgment is appropriate where "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." Rule 56(c), SCRCP; *see also* *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997); *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002).

A court should grant summary judgment when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000). "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). "In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. American Tel. & Tel. Co.* 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

ARGUMENT

I. BECAUSE THE PLAINTIFF TENANT FAILED TO GIVE THE DEFENDANT LANDLORD NOTICE OF ALLEGED CONDITION, PLAINTIFF'S ACTION IS BARRED UNDER THE LANDLORD-TENANT ACT, AND DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

"Traditionally, under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition." *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426, 428 (1985). The Landlord-Tenant Act, enacted in 1986, was passed "to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants." S.C. Code Ann. § 27-40-20(b)(1) (2007). The Act "requires a landlord to comply with applicable housing codes materially affecting health and safety, and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann. § 27-40-440(a)(1)-(2) (2007). The Act defines the duties and obligations a landlord owes its tenant, and, in so abrogating the common law, provides a statutory cause of action for a tenant against its landlord where those duties are breached. *Id.* § 27-40-30; *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630, 632 (1996). Under the Act, "[a]s with any negligence action, plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Id.* at 633.

The Landlord-Tenant Act has been consistently applied to "require that the tenant provide the landlord notice of a defective condition before liability attaches under the SCRLTA." *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010). In applying the Act, the Fourth Circuit looked to consistent rulings from the South Carolina Court of Appeals, which:

"pointed to two provisions of the SCRLTA that buttress such a conclusion. First, the Act mentions the delivery of "a written notice to the landlord specifying the acts and omissions constituting the breach." S.C. Code Ann. § 27-40-610(a). In addition, the SCRLTA states that the tenant's rights "do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time." S.C. Code Ann. § 27-40-630(d)." *Id.*

In 1989, three years after the Act's passage, the South Carolina Court of Appeals held that the Act "by express words creates a cause of action in tort in favor of a tenant of residential property against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010); referencing *Watson v. Sellers*, 299 S.C. 426, 432, 385 S.E.2d 369, 372 (Ct. App. 1989). The Court of Appeals in *Watson* was clear in its emphasis on the notice requirement:

We hold that the preamble and the Act clearly convey an intent on the part of the Legislature to provide for a cause of action for injuries resulting from the failure of the landlord, after notice, to keep rented residential premises in repair.

(emphasis added) *Watson v. Sellers*, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989). The *Watson* reading of the Act has been applied without exception in South Carolina courts for more than twenty-five years.

In 2009, the South Carolina Court of Appeals affirmed the requirement that a tenant must notify its landlord of an alleged defective condition before negligence is actionable under the Act. *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 496 (Ct. App. 2009). In *Code*, the death of a tenant was allegedly attributable to a landlord's failure to install smoke detectors, a violation of state law. The S.C. Court of Appeals nonetheless concluded that "because the plaintiffs failed to allege that they notified the owner of the lack of smoke detectors, they could not state a claim under the SCRLTA." *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010) citing *Code* at 498.

More recently, the Fourth Circuit, in applying the Landlord-Tenant Act, cited the consistency of decisions handed down by the South Carolina courts in determining that "the South Carolina Supreme Court would require that a landlord have notice of a defect before being liable to the tenant under the SCRLTA." (emphasis added) *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010). In *Thompson*, a tenant was severely injured after falling from a second floor balcony when he leaned against the railing that parties agreed did not satisfy safety standards, and the railing gave way. *Id.* The U.S. District Court, applying the Act, granted summary judgement in favor

or the landlord without a hearing because the tenant failed to provide notice to the landlord prior to the alleged harm. *Id.* The Fourth Circuit Court of Appeals reviewed the grant of summary judgement *de novo*, and affirmed the District Court's decision. *Id.*

The facts of this case with respect to notice are not in dispute. The Plaintiff and the Defendant agree that the Plaintiff tenant failed to provide notice of the alleged condition to the Defendant landlord at any time prior the alleged injury:

Q [H]ow many times during the course of what you believe was close to a year did you access the attic before you were hurt?

A I don't know, but it had to be probably double digits.

Q Okay. More than ten times?

A Yeah.

Q During those ten times you visited [the attic] before you were injured, did you report to Ms. Poole that there was anything in the attic that needed to be repaired?

A I didn't -- no, I didn't see anything that needed repaired. I didn't know.

Q Okay.

A I didn't notice anything.

Q And so you -- to be clear, you never verbally reported to Ms. Poole at any time before you felt that the attic was in a dangerous condition or that the attic needed to be repaired?

A I didn't notice anything wrong, no.

Q Okay. Did you ever notify your landlord in writing at any time before you felt that the attic was either in a dangerous condition or that it needed to be repaired?

A I never noticed that it was in a dangerous condition.

Q Okay. So you did not notify her in writing at any time?

A Never, no.

(Young Depo. 26:12-27:21). A plausible reason the Plaintiff never notified the Defendant landlord is that the Plaintiff testified the attic was not in a dangerous condition:

Q Okay. And you agreed to notify Ms. Poole of any dangerous condition on the property as soon as you discovered it, is that right?

A Yes.

Q And do you believe the attic was in a dangerous condition?

A Not at that time, no.

Q Okay. So not -- at no time before your injury did you believe --

A No time.

Q -- it was in a dangerous condition, is that right?

A No time. I had been up there many times and walked it -- walked the same way I walked.

Q Okay. And, accordingly, you never notified your landlord in writing that the attic was in any dangerous condition, is that right?

A It wasn't in any dangerous condition. Not as I know of, no.

Q Okay. So you don't believe that the attic was in a dangerous condition before you fell?

A As far as I know. I never noticed it.

(Young Depo. 70:7 - 71:2)

The Defendant landlord, Ms. Valerie Poole, also testified that the Plaintiff failed to provide notice to the Defendant in any way prior to the alleged injury:

Q Okay. And we heard from the plaintiff earlier today that he had been in the attic at least ten times before the day that he fell. After any of those ten visits to the attic, had he ever told you that the attic was in dangerous condition?

A No, he did not.

Q Did he ever ask you to make any modifications to the attic?

A No, he did not.

Q Did he ever ask you to lay any plywood down for him to walk on?

A No, he did not.

Q Did he ever ask you if he could walk on insulation?

A No, he did not.

Q At any time before the date that the plaintiff fell, did he notify you verbally that there was any condition in the attic that he wanted you to repair?

A No, he did not.

Q At any time before the date that he was injured, did the plaintiff notify you in writing that there was anything wrong with the attic or that there was anything in the attic that he wanted you to repair?

A No, he did not.

(Poole Depo. 33:4-17; 38:6-15).

Because the Plaintiff failed to report any condition to the Defendant landlord at any time prior to the alleged injury; the Plaintiff's claim is barred under the Landlord-Tenant Act. As state and federal courts in South Carolina have consistently held, the Landlord-Tenant Act requires tenants provide a landlord notice of a defective condition and a reasonable opportunity to repair the same before liability attaches under the Landlord-Tenant Act. There is no dispute that the Plaintiff failed to provide notice in any way to the Defendant prior to the alleged injury. Accordingly, as courts in South Carolina have consistently held, Plaintiff has not pled an actionable claim, and the Defendant landlord Valerie Poole is entitled to judgment as a matter of law.

II. THE CONDITION OF AN UNFINISHED ATTIC WAS OPEN AND OBVIOUS, AND, THEREFORE, NO DUTY TO WARN IS OWED TO THE PLAINTIFF BY THE DEFENDANT.

South Carolina courts have consistently held that there is no duty to warn of dangers that are open and obvious. *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 42, 674 S.E.2d 500, 504 (Ct.App. 2009); *Anderson v. Green Bull, Inc.*, 322 S.C. 268, 271-72, 471 S.E.2d 708, 710 (Ct.App. 1996); *Dema v. Shore Enterprises, Ltd.*, 312 S.C. 528, 530, 435 S.E.2d 875, 876 (Ct.App. 1993). As a result, a property owner is "not required to warn of dangers or potential dangers that are generally known and recognized." *Anderson*, 322 S.C. at 270, 471 S.E.2d at 710. Further, in the landlord-tenant context, landlord has no duty to warn of an open and obvious natural condition on his property. *Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 529, 469 S.E.2d 630, 633 (Ct. App. 1996) (citing *Meadows v. Heritage Village Church & Missionary Fellowship, Inc.*, 305 S.C. 375, 378, 409 S.E.2d 349, 351 (1991) (affirming a landlord's grant of summary judgement because "mud was open and obvious natural condition and owners could not foresee tenant would choose to walk on mud rather than taking other routes.")).

Here, even if the statute did not bar Plaintiff's claim – which it does – the danger of walking directly on insulation is a danger that is "generally known and recognized." As in *Pryor*, an unfinished attic is an ordinary, open, and obvious condition. Property owners and/or landlords cannot foresee that

a tenant would choose to walk directly on the insulation – much less with steel toed boots and lawn equipment – rather than taking the safer route of walking on the beams. Further, even if the Defendant did owe such a duty, Plaintiff admitted to accessing the attic “more than ten times” prior to the date of the alleged injury, demonstrating Plaintiff’s full knowledge that the attic was unfinished. Moreover, Plaintiff testified that the attic was not in a dangerous condition, and that it appeared no different from any other attic he had ever been in. (Young Depo. 70:11-13; 40:4-6). Indeed, Plaintiff failed to articulate any condition that Defendant had a duty to warn the Plaintiff of. Accordingly, even if Plaintiff’s claim was actionable under the Landlord-Tenant Act, the defendant would be entitled to judgement as a matter of law because the Defendant landlord owed no duty to warn the Plaintiff that the attic was unfinished.

CONCLUSION

Courts in South Carolina have consistently applied the Landlord-Tenant Act to require that the tenant give a landlord notice of an alleged defect before being liable to the tenant under the Act. Plaintiff admits to failing to give the Defendant landlord the required notice. Accordingly, Plaintiff does not state a claim that is actionable under the Landlord-Tenant Act. In the alternative, even if the Plaintiff’s claim was not barred by the statute, the Defendant owed no duty to warn that the attic was unfinished, a condition that was open, obvious, and admittedly apparent to the Plaintiff. Therefore, Defendant respectfully asks this Court to grant its Motion for Summary Judgment.

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Columbia, South Carolina
August 19, 2016

Exhibit A:

Deposition Testimony of
Plaintiff Cedric Young

CONDENSED TRANSCRIPT
WORD INDEX

Deposition
of
CEDRIC YOUNG

CEDRIC YOUNG v. VALERIE POOLE
2015-CP-40-3235

10/13/2015

WILLIAMS REPORTING
803.730.4700
www.williamsreporting.com

Cedric Young,

C/A NO.:2015-CP-40-3235

Plaintiff,

Deposition

vs.

Of

Valerie Poole,

Cedric Young

Defendant.

Deposition of Cedric Young, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 10:27 a.m., Tuesday, October 13th, 2015, at Murphy & Grantland, P.A. 4406-B Forest Drive, Columbia South Carolina.

Reported by

Cheri B. Williams, CVR-M

Exhibits

Defendant's Exhibit No. 1, Hand-drawn diagram; one page	35
Defendant's Exhibit No. 2, Hand-drawn diagram; one page	67.
Defendant's Exhibit No. 3, Residential Lease Agreement; four pages	68
Defendant's Exhibit No. 4, Copies of Color Photographs; nine pages	74

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Appearances

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Cheri B. Williams, CVR-M

Also Present:

Valerie Poole

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Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Cedric Young, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Direct Examination

By Mr. Daniels:

Q Mr. Young, my name is Elliott Daniels, and I represent Ms. Poole. And we met briefly before going on the record this morning. And as I explained, today is my opportunity to ask you questions about what happened the day that you were in the attic, a bit about you beforehand and a bit about what happened afterwards, okay?

A Okay.

Q There's a few rules I'm required to go over with you before your deposition starts. One of the rules is that you always have an opportunity to ask for clarity. If I ask a question that does not make sense, please ask me to rephrase it. It does happen. Please ask me to ask the question again.

1	But if you go ahead and answer the question, is it	1	A	No.
2	fair to assume you understood what I asked?	2	Q	Okay. Do you have children?
3	A Yes.	3	A	Yes.
4	Q Okay. And you always have the opportunity to	4	Q	And how many kids do you have?
5	correct your testimony. At the end if you say I	5	A	I have three kids.
6	didn't say something right, I need to correct that,	6	Q	Are they over the age of 18?
7	you always have that opportunity, okay?	7	A	Yes.
8	A Okay.	8	Q	And what are their names and ages?
9	Q And you're doing great at this, but one rule that's	9	A	Shawn Young. Shawn is 26. Alana Ponder, she is
10	important for us because we're taking a record is	10		32. And Steven Young. Steven is probably 23,
11	that you need to answer in the affirmative or the	11		somewhere around there.
12	negative, a yes or a no. I can see you nodding	12	Q	And do any of them live here in South Carolina?
13	your head and it makes sense to me, but it won't	13	A	No. They all live in New Jersey.
14	show up on a transcript, okay?	14	Q	Okay. What brought you from New Jersey to South
15	A Okay.	15		Carolina?
16	Q And you're doing great. And, finally, I'll try to	16	A	My sister. She's been teaching down here since
17	let your answers finish and if you could let my --	17		1998.
18	the questions finish. When we speak over each	18	Q	Okay. Where does she teach?
19	other I understand what you're saying, but it	19	A	Orangeburg High School.
20	becomes difficult to read and follow, okay?	20	Q	All right. And when did you move to South
21	A Yes.	21		Carolina?
22	Q All right. You can take a break any time you like.	22	A	I would say at the end of 2006.
23	This isn't a marathon. Just stand up, get some	23	Q	All right. And where did you move?
24	water, go to the restroom. But now that you're	24	A	I moved to Winnsboro.
25	sworn in it's my opportunity to ask questions. You	25	Q	All right. And is that where you live today?

6

1 can't speak with your attorney about your

2 testimony, okay?

3 A Yes.

4 Q All right. Do you have any questions before we get

5 started?

6 A No, I don't.

7 Q Okay. Can you state your full name for the record?

8 A Cedric E. Young.

9 Q And what do you go by?

10 A Cedric.

11 Q Okay. Are you married?

12 A No.

13 Q Ever been married?

14 A Yes.

15 Q Tell me about that. When were you married?

16 A I got married in mid 80s, somewhere around there.

17 Q And how long were you married?

18 A Probably 13 -- 12, 13 years.

19 Q And what's your former spouse's name?

20 A Andrea Young.

21 Q And what does Andrea do?

22 A Postal worker.

23 Q Here in Richland County?

24 A No. New Jersey.

25 Q Okay. And did you ever marry again?

8

1 A No.

2 Q All right. From 2006 to today, let me -- can you

3 tell me where you've lived?

4 A When I first came down here I lived on Tenth Street

5 in Winnsboro and then I moved after that. I moved

6 to Birch Street, E-I-R-C-E, in Winnsboro. And then

7 I moved to Columbia for a couple of years where I

8 still live right now.

9 Q Can you give me your Columbia addresses?

10 A 1028 -- before -- before that was -- where I was

11 living at Ms. Poole's address and then I moved to

12 1028.

13 Q 1028 what?

14 A 1028 Hamilton Square Place.

15 Q All right. And is that where you still live today?

16 A Yes.

17 Q All right. And you've lived there since, I guess,

18 2013?

19 A I think. I don't know when I moved out of Ms.

20 Poole's place. So it was right after I moved out

21 of Ms. Poole's. It had to be somewhere around --

22 probably '13 because I -- '12, '13, yeah.

23 Q Did you only have a single year lease with Ms.

24 Poole?

25 A Yes.

2 of '13 then.
 3 A I think it was the -- yeah, might have been the
 4 summer because I -- yeah, I was there -- moved in
 5 on the 12th of the year of 2012.
 6 Q Where were you born?
 7 A New Brunswick, New Jersey.
 8 Q And what is your date of birth?
 9 A 4/29/59.
 10 Q And I'm going to ask you for your Social Security
 11 number and we'll only record the last four digits.
 12 A 3842.
 13 Q Do you have any relatives in Richland County?
 14 A Yes.
 15 Q And what are their last names?
 16 A Young, and I have a relative named Lundy.
 17 Q Last name is Lundy?
 18 A Yes. L-U-N-D-Y.
 19 Q Is that it?
 20 A Yes.
 21 Q Okay. And is Young your sister?
 22 A Yes.
 23 Q And what about Lundy?
 24 A Lundy is my cousin.
 25 Q All right. Tell me about your educational

1 background.
 2 A High School, New Brunswick High School. After that
 3 I went to the service, U.S. Army. I did two years
 4 there. Got out and then I did -- went to the post
 5 office. Worked at the post office.
 6 Q And how long did you work at the post office?
 7 A Probably seven years.
 8 Q Okay. And generally after that tall -- walk me
 9 through your work history. It doesn't have to be
 10 in exact detail, but you spent seven years at the
 11 post office. What came after that?
 12 A I went to bail bond.
 13 Q Okay. And is that what you do today?
 14 A Yes.
 15 Q All right. Are you currently working?
 16 A Yes.
 17 Q And who is your employer?
 18 A Metro Bail Bond.
 19 Q When did you start that job?
 20 A I would say last year, September.
 21 Q September 2014?
 22 A Yes.
 23 Q Okay. And what about before September 2014, where
 24 did you work?
 25 A I didn't. I didn't work -- I was out of work for

1 two years from the injury. And before that I
 2 worked at Al Bonding.
 3 Q Okay. Tell me about your two year gap in work for
 4 the injury.
 5 A I was just trying to rehab my foot and I couldn't
 6 do too much with it. I was just back and forth and
 7 to the doctors and just trying to rehab it.
 8 Q What was the injury?
 9 A To my foot.
 10 Q Was it the injury related to the attic?
 11 A Yes.
 12 Q Okay. Were you working at the time of this
 13 accident?
 14 A No, I wasn't.
 15 Q Okay. And why were you not working at that time?
 16 A I had just -- I got laid off probably -- I want to
 17 say maybe a month prior to the accident.
 18 Q Was that from Al Bonding?
 19 A Yes.
 20 Q Who was your supervisor at Al?
 21 A Supervisor was Thomas Brunson.
 22 Q Okay. And you were laid off of Al before this
 23 accident and when did you go back to work?
 24 A September.
 25 Q Okay. So this accident was in August of 2012. Did

1 you -- were you laid off in July of 2012?
 2 A No. August. Like I said, right before the
 3 accident so it had to be within that month. I
 4 think it was, yeah, the end of -- somewhere around
 5 August.
 6 Q Okay. So you did not work from August 2012 through
 7 September of 2014, is that right?
 8 A I did a part-time job as security for AFLAC.
 9 Q Tell me about that job. When did it begin?
 10 A I don't know. I don't know when it begin exactly,
 11 but it ended right before -- a week before I got
 12 the bail bond job.
 13 Q Before you got your present job with Metro Bail
 14 Bonds?
 15 A Yes.
 16 Q How long did you work with AFLAC?
 17 A I can't exactly -- I know it's under a year.
 18 Probably six months, somewhere around there.
 19 Q And what did you do for AFLAC?
 20 A I did security work for them.
 21 Q And what does that mean? What is security work?
 22 A A security guard.
 23 Q Okay. Is there an AFLAC facility here in the
 24 Midlands?
 25 A It's one down on -- I think on Huger Street.

1 Q And is that where you were a security guard?	15
2 A Yes.	1 Q Okay. Have you ever been involved in a lawsuit at
3 Q All right. Okay. But you testified earlier that	2 all? And I'm not referring to any divorce action.
4 you missed that two-years-of-work-because-of-the	3 A No, not as I recall. No.
5 injury to your foot, is that correct?	4 Q This is your first time giving testimony?
6 A Yes.	5 A Yes.
7 Q Okay. Did a doctor ask you to not work during that	6 Q Okay. In general, how was your health before this
8 time?	7 incident?
9 A No.	8 A Very good.
10 Q And what were you unable to do? Why did you miss	9 Q Any hospitalizations in the ten years prior?
11 that time?	10 A No.
12 A Well, my foot was still bothering me. I couldn't	11 Q Do you have a regular family doctor?
13 do too much walking on it. My activities had	12 A No.
14 changed so --	13 Q If something goes wrong here in the Midlands, where
15 Q Were you able to walk during that time?	14 do you go?
16 A I was able to walk, but it was just still bothering	15 A It's a clinic on Monticello. I'm not sure of the
17 me. So I was just still trying to do what they	16 name, but that's where I was going.
18 told me to do as far as the therapy with the	17 Q Do you know what intersection it's at?
19 machines they gave me and everything else they told	18 A No. All I know is probably across from that Family
20 me to do.	19 Dollar.
21 Q Okay. Are you claiming a loss of income in this	20 Q Okay. How is your eyesight?
22 case?	21 A It's good.
23 A No.	22 Q Do you require any corrective lens?
24 Q Okay. So you did not miss any income or any wages	23 A Yes.
25 because of this accident, is that correct?	24 Q Okay. Are those seeing glasses or reading glasses?
	25 A These are reading glasses.
14	7
1 A No.	16
2 Q Okay. I'm sorry. Is that correct?	1 Q Okay. And when you're not reading, do you require
3 A Yes.	2 contacts or glasses?
4 Q Okay. Thank you. Are you a member of any social	3 A No, I don't.
5 organizations or churches in the area?	4 Q Okay. Had you ever treated for any back or neck
6 A No.	5 pain before this incident?
7 Q Okay. And you have two years of military service?	6 A No.
8 A Yes.	7 Q What about for head pain?
9 Q Okay. Have you ever been arrested?	8 A No.
10 A No.	9 Q What about for left foot pain?
11 Q Okay. Do you have a criminal record? Ever been	10 A No.
12 charged with a crime?	11 Q Had you ever experienced loss of consciousness?
13 A No.	12 A Yes.
14 Q Okay. Have you ever treated with a psychiatrist or	13 Q Tell me about that.
15 psychologist?	14 A When I had -- when I fell from the attic I was out
16 A No.	15 for a few. I don't know how long. All I know is
17 Q Okay. And what about for drug or alcohol abuse?	16 that I was out for a few.
18 A No.	17 Q And what do you mean by a few?
19 Q Okay. Have you ever made a personal injury claim	18 A I can't determine what -- the minutes or the time
20 before this case?	19 on it. All I know I was out and when I -- my
21 A No.	20 brother came home, he woke me up and took me to the
22 Q Have you ever made a workers' compensation claim?	21 hospital.
23 A No.	22 Q Okay. Where did he find you?
24 Q Have you ever filed a lawsuit before this case?	23 A On the floor.
25 A No.	24 Q On the second story?
	25 A Yes.

2 A Yes.

3 Q -- through the drywall ceiling and landed on the

4 second-story floor, is that correct?

5 A Yes.

6 Q Okay. And before this incident, had you ever

7 experienced a loss of consciousness?

8 A No.

9 Q Okay. What areas were injured as a result of this

10 incident?

11 A My -- my left foot and my left knee.

12 Q Anywhere else?

13 A Just -- just the head. I had a headache after.

14 That's it.

15 Q Okay. So your left foot, your left knee and a

16 temporary headache. Are those your only injuries?

17 A Yes.

18 Q Okay. And as you know, I represent Ms. Poole, who

19 is the owner of the house on 16 Thornberry where

20 you were renting. I want to talk about your

21 experience at that house and the attic space, okay?

22 A Yes.

23 Q I understand you don't live at 16 Thornberry

24 currently?

25 A No, I don't.

18

1 Q When did you move in?

2 A I don't remember exactly the date.

3 Q Did you live there for one 12 month period?

4 A No, I didn't.

5 Q How long did you live there?

6 A I don't know exactly. I don't know exactly how

7 many months.

8 Q You seem sure it wasn't a year. Was it something

9 shorter?

10 A I think it -- it might have been longer. It might

11 have been longer than a year. I don't know. It

12 might have been longer than a year or shorter than

13 a year. I don't know. I'm not exactly fixed on

14 how many months it was. I don't know. It might

15 have been over a year. It might have been right

16 under a year. I stayed there for a while.

17 Q Okay. Do you know when you moved out?

18 A It had to be during the summer. I don't know what

19 month. I know it was warm outside. It was the

20 summertime.

21 Q The summer of what year?

22 A I don't know what year.

23 Q How long did you live at the house before this

24 incident occurred?

25 A I don't know. I don't know. She would know that.

19

1 I don't know that.

2 Q Was it a matter of days? Was it an entire year?

3 Can you estimate?

4 A It might be close to a year.

5 Q Okay. So you had lived at the house for close to a

6 year before this injury occurred, is that right?

7 A I'm not sure.

8 Q Did you ever miss any rent payments?

9 A I'm trying to figure. No.

10 Q Okay. So all of your rent payments were made on

11 time, is that correct?

12 A Yes.

13 Q Was the house generally in good condition?

14 A Yes.

15 Q Were there any problems with any part of the house

16 when you moved in?

17 A As far as I could see when I moved in, no.

18 Q Okay. Before this accident, did you ever report

19 any dangerous conditions to Ms. Poole?

20 A No.

21 Q Okay. Do you agree that she kept the house in

22 generally good condition?

23 A I would say yes, except the attic.

24 Q Okay. Was it in a state of good repair or were

25 things falling apart at the house?

20

1 A I think the only problem I had was something with

2 the air conditioner one time I had to call her

3 about. Everything else seemed to be kept up.

4 Q Okay. Was she generally a responsive landlord? If

5 something happened, would she respond to you?

6 A Yes.

7 Q And if you requested anything on the house, she

8 would respond and perform that work?

9 A I don't know because I never requested anything get

10 fixed but the air conditioner and she sent somebody

11 out to fix that.

12 Q Okay. So anything that you did request --

13 A Yes.

14 Q -- she took care of, is that right?

15 A Yes.

16 Q All right. How many bedrooms were in the house?

17 A Three.

18 Q And how many tenants lived there?

19 A Me and my brother.

20 Q And what's your brother's name?

21 A Antwon Young.

22 Q And where does he live now?

23 A I don't know what street. He lives in Columbia,

24 but I don't know what street. I know how to get

25 there, but I don't know what street.

2 A Yes.
3 Q What's his phone number?
4 A Get out my phone. Still trying to come up. Okay.
5 803.629.9907.
6 Q Okay. Did Antwon live with you the entire time you
7 were at that house?
8 A Yes.
9 Q Okay. So between the two of you, you had a three
10 bedroom house?
11 A Yes.
12 Q Was there enough room to store your things in that
13 house?
14 A No.
15 Q Okay. Did each bedroom have a closet?
16 A Yes.
17 Q Were there -- could you use those bedrooms for
18 storage?
19 A Clothes, yes.
20 Q And did the house have shared storage space or
21 closets in the common areas?
22 A No.
23 Q Okay. Did the house have a shed?
24 A It had -- yes, it had a shed, but the shed was
25 never cleaned out. It had old tires and old stuff

name of Angel.
2 A Yes.
3 Q And tell me exactly what he told you with respect
4 to the attic.
5 A Okay. When me and my brother moved in, I asked
6 him. I said where are we going to store the rest
7 of our stuff because we both had a lot of stuff.
8 And he told me that someone was going to come clean
9 the shed outside up, but the guy was -- I guess the
10 guy was -- wasn't available right now. But he told
11 us we can store our stuff up in the attic and he
12 showed us where to store it at.
13 Q And what do you mean by he told you -- he showed
14 you. How did show you?
15 A He pulled the string down because it was a string
16 where you pulled the door down. It comes down and
17 then it's a ladder that comes down too. So he
18 pulled that down and showed us.
19 Q Did he go up there in front of you?
20 A I don't remember him going up there in front of us.
21 Q Did you go up there when he pulled the ladder down?
22 A Yes.
23 Q Okay. So when Angel pulled the ladder down, you
24 walked to the top, right?
25 A Yes.

22
1 in there from the people that lived there in the
2 past.
3 Q Okay. Was it big enough to walk in? Was it a
4 large walk in shed?
5 A Yes. I never went back there, but I think it was.
6 I just seen it.
7 Q Did you ever go in that shed?
8 A No.
9 Q Okay. Were you told that you could use the shed?
10 A No.
11 Q Okay. Did you ever ask if you could use the shed?
12 A Yes. She had a maintenance worker there. I asked
13 was it going to be cleaned out. Where were we
14 going to store our stuff at. He said we could
15 store it in the attic and he showed us where we
16 could store it at.
17 Q And who said that?
18 A His name was Angel. I'm going to have to go in my
19 phone again. I don't know his last name. Angel.
20 He was the guy doing work for her over there when
21 we moved in. Angel. What's Angel's last name?
22 Q And when that comes on, you can -- you can remind
23 us of his last name.
24 A Okay.
25 Q Okay. So there was a maintenance man by the first

24
1 Q Okay. And what did you see?
2 A I seen just a storage spot. There's plenty of
3 space to put stuff at.
4 Q And was this on the day that you moved in?
5 A I would say yes. Okay. His name is DeLeon.
6 DeLeon. I don't know how you spell it. Let me see
7 if I can pull it up. I know it's DeLeon. If I
8 have it -- have his last name on here. No. I just
9 have his first name. Angel.
10 Q Do you have his phone number?
11 A 319 -- 391.1405.
12 Q Okay. So on the day you moved in, Angel pulled
13 that attic ladder down --
14 A Uh-huh.
15 Q -- in front of you and your brother --
16 A Yes.
17 Q -- and you went up and looked around, is that
18 right?
19 A Yes.
20 Q Did you actually step off the ladder onto the
21 platform?
22 A No.
23 Q Okay. Did you just stand on the ladder and look
24 around?
25 A Yes.

3 Q Okay. Did your brother go up too?

4 A I don't remember him going up. I don't know.

5 Q And from when you walked up the ladder, were you

6 able to get a good look at the attic? Was it easy

7 for you to look around?

8 A Yes.

9 Q Okay. And you were pretty aware of the condition

10 and where you could step from the position where

11 you walked up?

12 Mr. Clark: Object to the form. You can

13 answer the question.

14 A Ask that again.

15 Q Sure. Let me ask a better question. When you

16 walked up on that first day when you moved in and

17 Angel showed you where the ladder was, did you have

18 a good vantage point? Were you able to see the

19 attic from where you were at the top of the ladder?

20 A Yes.

21 Q Okay. Was there anything obstructing your view of

22 the platform?

23 A No.

24 Q Okay. Was there anything obstructing your view of

25 the rest of the attic?

26

1 A No.

2 Q Okay. Okay. Before your -- so the first time you

3 pulled down that ladder and looked in the attic

4 space was the day you moved in, is that right?

5 A Yes.

6 Q All right. When was the first time you actually

7 entered the attic, accessed that space?

8 A It probably was the same day.

9 Q Okay. Did you store things that very first day in

10 the attic?

11 A Yes.

12 Q Okay. And how many times during the course of what

13 you believe was close to a year did you access the

14 attic before you were hurt?

15 A I don't know, but it had to be probably double

16 digits.

17 Q Okay. More than ten times?

18 A Yeah.

19 Q Okay. And so you were in the attic more than ten

20 times from the time you moved in through the day

21 that you were injured, is that correct?

22 A Yes.

23 Q Okay. And during those ten times, did you see

24 anything dangerous about the attic?

25 A No, I didn't notice anything dangerous.

2 during those ten times you visited before you were

3 injured, did you report to Ms. Poole that there was

4 anything in the attic that needed to be repaired?

5 A I didn't -- no, I didn't see anything that needed

6 repaired. I didn't know.

7 Q Okay.

8 A I didn't notice anything.

9 Q And so you -- to be clear, you never verbally

10 reported to Ms. Poole at any time before you fell

11 that the attic was in a dangerous condition or that

12 the attic needed to be repaired?

13 A I didn't notice anything wrong, no.

14 Q Okay. Did you ever notify your landlord in writing

15 at any time before you fell that the attic was

16 either in a dangerous condition or that it needed

17 to be repaired?

18 A I never noticed that it was in a dangerous

19 condition.

20 Q Okay. So you did not notify her in writing at any

21 time?

22 A Never, no.

23 Q Okay. Were you familiar with the layout of the

24 attic before you went up that day that you were

25 injured?

A I had been up there, yeah. Many times, yes.

28

1 Q What did you store in the attic?

2 A Stuff to cut the grass, some other boxes that we

3 had, maybe some workout equipment. I think -- I

4 don't know what my brother stored up there. He had

5 boxes, though. I know he had some suitcases up

6 there. A few things.

7 Q And how often did you access that attic to access

8 those things?

9 A I don't know. I mean, ...

10 Q Was it a weekly basis?

11 A No, not -- maybe -- I don't know.

12 Q Every month?

13 A I couldn't tell you. I don't know. If I needed

14 something, I would go up there. If I don't ...

15 Q Did you cut your grass at this rental property?

16 A Yes.

17 Q And what do you mean by stuff to cut the grass?

18 What did you keep in the attic for that?

19 A The hedge cutters. I think we kept a hose up there

20 to water the lawn. And it was two different hedge

21 cutters. It was an electric hedge cutter and the

22 other one, just a manual one.

23 Q Did you have access to the shed during that time?

24 A No. The stuff was still full up in there. No.

25 Q Did you have access to it? Was it open?

1 A It was open, yes. 2 Q And did you have access to it? 3 A Yes, I had access to it. 4 Q You could have stored -- 5 A No. You couldn't store nothing in there. It was filled with old tires and everything. 7 Q Was it filled to the brim? 8 A Yes. 9 Q Okay. Do you have any pictures of the attic? 10 A No, I don't. No, I don't have any pictures. 11 Mr. Clark: He had some on his phone. He sent them to me. I may have misplaced them, but we're trying to get -- well, I don't know if we're going to be able to get them, but he did have some. 16 Q Do you have them on your phone today? 17 A No. That phone I had service -- no service with it no more. That's been three years. 19 Q When did you take those pictures? 20 A My brother took the pictures right after I fell. 21 Q How many pictures do you think your brother took? 22 A I would say under ten, but over five. 23 Q Okay. And did he take pictures of the actual attic space? 24 A No. He didn't take from going up there looking	31 1 A Yes. 2 Q Okay. So we're talking probably the month of the accident is when you emailed those pictures out? 4 A Actually, I think the accident was near the end of the month so it might have been the next month over. 7 Q Okay. Okay. Have -- has your or your attorney accessed this unit to inspect it or take pictures since the lawsuit was filed? 9 A I have. I couldn't retrieve the pictures on it. I have a different service now so it wouldn't pull the pictures back up. 13 Q Okay. Let me ask a better question. Since the lawsuit was filed, have you been to the property to look at it again? 15 A No. 17 Q Has your attorney? 18 A I don't know. 19 Q Okay. And so today you have no pictures of what the attic looks like, is that right? 21 A No, I don't. 22 Q Okay. Well, I'm going to need you to describe what the attic looks like, okay? 23 A Okay. 24 Q So you get to the top of the drop down ladder,
30 1 down. He took it from looking up. 2 Q So he took pictures from the second floor looking towards the ceiling? 3 A Yes. 5 Q And was it on the same day that you fell? 6 A Yes. 7 Q Okay. And when do you think you emailed those to your attorney? 8 A Right after I seen him. After I seen him. He asked me for them and I emailed them. 11 Q Okay. And I also want to be clear. I don't want to ask any questions about what you and your attorney spoke about. When did you first retain your attorney? Was it within a week of the wreck? Was it this year? 15 A I think it might have been within a couple weeks of the wreck or somewhere around there. 18 Q Okay. 19 A Within that time period somewhere. 20 Mr. Clark: The wreck? 21 Q I'm sorry. The accident. 22 A Yeah. Accident, yeah. 23 Q Yeah. Absolutely. And it was in one of those early meetings with your attorney that you emailed it to him, is that right?	32 1 You're at the top step. 2 A Uh-huh. 3 Q What do you see? 4 Mr. Clark: This is a little diagram that we drew actually that we planned on using and -- 7 A This was the ladder right here. 8 Q Okay. Did you draw this? 9 Mr. Clark: I actually drew it. 10 A I draw better than that. 11 Mr. Clark: I hope you do. You can draw your own. 13 A No. I was letting him do his own thing. 14 Q We won't question John's artistry. Did you -- were you with him when you two drew this together or is this something that John completely drew? 16 A Yes. I was together, yes. Yes. 18 Q Okay. So tell me what we're looking at. We're looking at a yellow piece of paper. 20 A Okay. These were the steps. This was the pull down. You pull it down, comes down with a string. This was the steps you go on. Okay. And this was where I fell through right here and this was the rest of the attic. I guess you had enough paper, but this was the rest of it back there.

2 to exactly the point where you fell? Here, I'll
3 give you this Sharpie. It will make a better mark.
4 Why don't you put an X exactly where you fell?
5 A (Complies).
6 Q Okay. And what is that rectangle where the X is?
7 Is that a platform?
8 A Where, right here?
9 Q You drew an X inside a rectangle.
10 A That's where -- because I fell through a hole right
11 there.
12 Q Tell me what that -- what does this rectangle look
13 like? What is that? Is that a floor? Is that
14 insulation?
15 A It was a -- I thought it was a floor, but it was
16 insulation over a floor. I walked up there many
17 times so I thought it was a floor. I never fell
18 through the floor.
19 Q Okay. So was it that pink insulation?
20 A I seen pink, but it was pink all over the whole
21 place.
22 Q Sure. Okay. And -- okay. So where that red X is,
23 there was insulation and you had walked on that
24 insulation before and been okay, is that right?
25 Mr. Clark: Object to the form.

34

1 Q Go ahead.
2 A Yes. Well, as far as I know. I've never fell
3 through it and so I just walked up there. I didn't
4 ever notice it, you know. I had no problem. Like
5 I said, I've been up there many times.
6 Q Okay. And to be clear, the flooring that you were
7 walking on where you drew that red X, it was pink
8 insulation, is that correct?
9 A Yes.
10 Q Okay. And is that the -- is that the material that
11 you would walk on when you accessed the attic?
12 A Yes. I walked on it before. I just -- I didn't
13 notice it. You know, I just walked on it before so
14 I didn't -- I didn't notice it.
15 Q Okay.
16 A I never -- I never detoured and go around it or
17 over it.
18 Q Okay. And it was -- on the date of your injury you
19 had stepped on insulation and that's when you fell
20 through the ceiling, is that correct?
21 A Yes.
22 Q Okay. All right.
23 Mr. Daniels: We'll mark this as Exhibit
24 Number One. And this is a diagram that --
25 we'll just say has been drawn.

Defendant's Exhibit No. 1, Hand-drawn diagram,
one page.

2 Q Okay. All right. Mr. Young, let's look at this
3 diagram one more time. And it's clear where there
4 are vertical ladder rungs --
5 A Uh-huh.
6 Q -- headed up towards the X --
7 A Yes.
8 Q -- where you fell through the insulation.
9 A Uh-huh.
10 Q Tell me what the rest of the attic floor looks
11 like.
12 A It was mixed. It was insulation and wood.
13 Q Are there wooden beams with insulation between? Is
14 that what it looks like?
15 A I don't think I seen on that side wooden beams with
16 insulation on it. I know it was on the other side
17 it was. I noticed that.
18 Q Tell me what you mean by what you noticed on the
19 other side.
20 A On the other side it had insulation with the beams
21 like you're talking about. It was an empty spot.
22 Just empty. You could look right across the whole
23 house and it was beams with insulation on it.
24 Q Okay. And now what about on the side where you
25

36

1 fell? What did that side look like?
2 A It had the air conditioning up there and everything
3 and the boiler and everything. So I never went
4 behind there to see what was behind there.
5 Q Was there any actual flooring over top of the
6 joists or was it all beams and insulation?
7 A I don't understand that, over the joists. What --
8 Q Sure. Did the attic appear to be only beams with
9 insulation between or was it finished with a floor
10 over top of the beams?
11 A On the side that I was it had wood on it. On the
12 other side it didn't -- it wasn't finished at all.
13 Q Okay. I'm going to do a second drawing. That
14 first one was so good. I don't want you to compare
15 me with John's drawing. So this is the floor plan
16 of the house, is that right? It's a rectangular
17 house, is that fair?
18 A Uh-huh.
19 Q Can you show me -- draw me a square where you would
20 have accessed the door, where the ladder would have
21 come up on this attic space?
22 A Okay. Well, actually, the ladder -- it's like
23 here. It came up this way and there would have
24 been a ladder coming up.
25 Q Okay. If this is looking down at the floor plan, -

2 A Uh-huh.
3 Q -- put a square where the ladder would pop up on
4 this attic floor plan.
5 A What you mean? It would pop right here. But the
6 attic didn't come all the way up. I mean, the
7 ladder didn't come all the way up there. It just
8 pulled down. It didn't go over the floor.
9 Q Sure. I understand.
10 A Yeah.
11 Q Can you draw a square on this floor plan where the
12 ladder would come up into the floor? Was it here?
13 Was it here? Was it here?
14 A It never came up into the floor.
15 Q Okay.
16 A It never came up to the floor. It came up to where
17 the opening was, but it never came onto the floor.
18 Q Okay. And what did the opening look like right
19 here?
20 A The opening looked like -- right here -- right here
21 is where I fell.
22 Q And that was insulation, is that correct?
23 A Well, it looked like insulation. Like I said, it
24 looked like insulation.
25 Q And that dot right there, I'm going to put an X.

1 over top of that dot. And that's where you fell,
2 is that correct?
3 A Yes.
4 Q And it looked like insulation to you. Where was
5 the floor on this attic -- in this attic? Can you
6 show me with the pen where was there flooring?
7 A The flooring was all -- right there. All over the
8 whole -- the whole thing was flooring.
9 Q Okay. So there was actually flooring over top of
10 the wooden beams?
11 A I didn't see any beams.
12 Q Okay.
13 A I never seen any beams. Like I said, the other
14 side I seen beams, but it had so much stuff up
15 there. They had the air conditioning system up
16 there. They had the boiler up there. They had
17 everything up there.
18 Q Sure.
19 A So I never -- I never went back that far.
20 Q Yeah.
21 A Our stuff was right out -- my stuff was right here.
22 Q Okay.
23 A Right on this side right here. We just came up
24 there and put it on the side right there. We
25 didn't put it over back to the back.

1 Q And what did you put it on? What did you set your
2 stuff on?
3 A On beams and insulation. I mean, on the wood.
4 Q Okay. So you had to set your things on either
5 insulation or the wooden beams, is that correct?
6 A Yes. Yes.
7 Q And there was not a hard floor that was put on top
8 of those, is that correct?
9 A Can you rephrase that?
10 Q Sure. When you accessed the attic either to walk
11 or to store things, you only had wooden beams and
12 pink insulation to either store things or walk on,
13 is that correct?
14 A Yes. Yeah.
15 Q Okay. And when you stored things, you would store
16 your things either on top of the insulation or on
17 those wooden beams, is that correct?
18 A Wherever it was a space at, yes.
19 Q Okay. I understand. And I'm not trying to be
20 confusing or difficult. Without pictures I'm
21 trying to get you to --
22 A Yes.
23 Q -- kind of give us a picture of what it looked like
24 and that was helpful. Okay. Did this attic look
25 any different than any other unfinished attic you

1 had seen?
2 A I don't know. I've never seen an unfinished attic
3 so I don't know.
4 Q Is there anything about this attic that looked
5 different than any other attic you've been in?
6 A No.
7 Q Okay. And you were aware of the way the attic was
8 designed the day you went up into the attic and you
9 were injured, is that correct?
10 A No. I just peeked up there. I didn't know how it
11 was designed. I didn't go all the way through the
12 attic.
13 Q Sure. Well, let me ask a better question. The day
14 that you did fall, you had been up there plenty of
15 times before, is that right?
16 A Yes.
17 Q Okay. And so you were aware of the layout and you
18 were aware of where to step and where not to step,
19 is that correct?
20 A No, I wasn't aware of where to step because I
21 stepped anywhere. I never looked to -- I was never
22 cautious to step anywhere.
23 Q And what do you mean by you were never cautious to
24 step anywhere?
25 A Because I didn't know that she hadn't finished the

1 attic, that it was an opening there or it wasn't
2 stable enough to step on. Like I said, I've
3 stepped up there many times and I had no problem.
4 I was never cautious.
5 Q And so you were never cautious when you stepped on
6 the insulation?
7 A Never.
8 Q Okay. And on the day that you fell, you stepped on
9 the insulation and it came through the ceiling, is
10 that correct?
11 A I -- what I did is when I came out, I had the
12 equipment in my hand. I just stepped. You know, I
13 didn't see anything. I just stepped as I usually
14 do and the next thing I know I just went through.
15 Q Okay. What did you have in your hand?
16 A I had the hedge cutters and a cord to hook them up.
17 Q Electric --
18 A Yes.
19 Q -- hedge cutters?
20 A I had the electric and I had the manual.
21 Q So you had two hedge cutters and a rolled up cord
22 in your hand?
23 A Well, the rolled up cord, I had that but I threw
24 that down.
25 Q Okay.

42

1 A. Okay. Then I had just the hedge cutters, the two
2 hedge cutters.
3 Q So you had two hedge cutters in your hands?
4 A Yes.
5 Q Were you looking at your feet when you were
6 walking?
7 A I might have been. Like I said, I wasn't cautious.
8 I just was walking. You know, wasn't no reason to
9 look at my feet. I just was walking.
10 Q Okay. So you were just -- were you looking forward
11 towards the exit?
12 A Yes.
13 Q And were you looking at your feet?
14 A No.
15 Q Okay. Why don't you walk up through step by step
16 what happened after you got to the top of the
17 ladder the day that you fell.
18 A After I got to the top of the ladder, I just walked
19 over. Walked, picked up what I had to pick up.
20 Then proceeded to walk back down.
21 Q Okay. And you picked up three things; a cord and
22 two hedge clippers, is that correct?
23 A Uh-huh.
24 Q Is that a yes?
25 A Yes. Yes. Sorry about that. Yes.

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1 Q Did you throw the cord down the ladder?
2 A Yes. I threw the cord to the floor, yes.
3 Q Okay. And you had two hedge clippers, one in each
4 hand, is that correct?
5 A No. I had them both in one hand.
6 Q Both in one hand?
7 A Yes.
8 Q And were you wearing shoes?
9 A Actually, I was wearing boots.
10 Q What kind of boots?
11 A Just regular steel-toe boots. I was getting ready
12 to cut the grass so I had boots on.
13 Q All right. How heavy do you think those two hedge
14 clippers are?
15 A Five pounds. Maybe five pounds. Not even five
16 pounds a piece.
17 Q Okay. Do you still have those two hedge clippers?
18 A I think my brother has them because they were his.
19 I think he has them.
20 Q Okay. How close to the hatch door were you when
21 you fell?
22 A I don't know. I can't approximate how far I was.
23 Q Was it a few inches or was it 30 feet?
24 A I don't know. I don't know by inches. I know I
25 was close enough to get ready to go down the steps.

44

1 Q Okay.
2 A Grab the steps and go down.
3 Q Which foot -- which foot went through the
4 insulation in the ceiling?
5 A I couldn't tell you. It happened so fast.
6 Q You don't know if it was your left foot or your
7 right foot?
8 A I don't know. Yeah, it happened so fast. I don't
9 know.
10 Q Did your foot catch on anything as you were walking
11 up in the attic?
12 A No.
13 Q And you indicated that you stepped onto the
14 insulation where you ordinarily walked, is that
15 correct?
16 A Yes.
17 Q Was there wood on either side of the insulation?
18 A I can't remember right now.
19 Q Were there wood beams in the attic that framed
20 those insulations in the attic space?
21 A I seen the ones. Like I said, I seen the ones on
22 the other side of the house.
23 Q But you can't remember if there was any wood beams
24 on the side where you fell?
25 A No. I can't remember because like she had

conditioner, everything. Big units up there in the basement. I mean, the attic.

Q Okay. Could you have instead stepped on wooden beams instead of the insulation as you're walking?

A I don't think so. That was the way to get down.

Q Was it an option for you to walk on beams instead of insulation?

A I don't think it was an option. That's the way I always went. I always stepped that way.

Q What was the initial position of your body when your fall began?

A It happened so fast. I don't know. All I know I was up and I went through.

Q Standing up?

A Standing up straight.

Q And your body went through?

A And went through. Feet first went through.

Q Did both feet go through the ceiling?

A Yes.

Q And then your entire body went through the ceiling, is that correct?

A Yes.

Q And you ended up where?

A On the floor below.

look at the clock before I fell so I really don't know.

Q Okay. Do you believe that you stepped in the wrong place on the day that you fell?

A No.

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.

Q Okay. So do you think that they intentionally camouflaged it to make it look finished?

A No. I think they didn't do their job.

Q Okay.

A I don't know if she went up there and reviewed it after the fact. She would have seen that, you know what I mean, okay, you have to finish this and finish that because she's the owner. But to me it looked like it was all right, but it wasn't.

46.

Q And what is that flooring? Is it a carpet floor?

A It was carpet, yes.

Q Okay. Did you hit anything as you went through the ceiling?

A I think I hit my head. I think I hit my head. It happened so fast.

Q Okay. And tell me about your -- the position where your body came to a rest.

A When I woke up, I was just laying on the floor. Like I said, right through the hole, below the hole just laying across the floor.

Q Okay. And how long were you in that position on the floor?

A I really don't know. I really don't know how long I was on the floor. I don't know.

Q Was your brother home at the time of this incident?

A No. He was -- he had came in the house and found me on the floor.

Q Okay. Did he find you unconscious?

A Yes.

Q Okay. Do you know how long you were unconscious?

A No. I don't know how long.

Q Do you know if it was very brief or if it was a matter of hours?

A I couldn't even tell you. I didn't -- I didn't

48.

Q Okay. How many times do you think you had stepped on that spot before the day you fell?

A Probably every time I went up there.

Q How many times do you think that would have been?

A Could have been anywhere between probably ten times. Maybe more than that.

Q And did you notice anything wrong with that area on those ten times that you stepped there before the day you were hurt?

A No. I didn't because I would have told her.

Q And did you ever let her know that there was anything wrong with the area where you fell after those ten times you had stepped over it prior to the impact?

A I didn't know anything was wrong with that.

Q Okay. So the answer is no, that you did not let her know?

A No. No, I didn't let her know because I didn't know anything was wrong with it.

Q Okay. If we are able to go up there and take pictures of the attic, would the condition that you've described be obvious in the photographs?

A I don't know. See, I don't know the work they did. You know what I mean? She had people come do work after that, but I don't know what they did, if they

2 they did. But they did it pretty fast so I don't
3 know what they did up there. I didn't go back up
4 there after I fell.
5 Q Okay. What about when you moved out, how did you
6 get your things down from the attic?
7 A I had my brother and I had family members come over
8 to help me move.
9 Q And they went to the attic for you?
10 A Yes.
11 Q Okay. Was there anyone else at the house at the
12 time of this accident?
13 A I had a cousin that went to the house, but he came
14 after. He came after. My brother might have
15 called him. I don't know, but when I woke up and
16 got up he was there and he took me to the hospital.
17 Q Okay. So when you came to you had a brother and a
18 cousin at the house?
19 A No. My brother -- my cousin wasn't there yet. He
20 came after the fact so my brother must have called
21 him.
22 Q Okay. And what's that cousin's name?
23 A Alterick Lundy.
24 Q How do you spell that?
25 A A-L-T-E-R-I-C-K Lundy, L-U-N-D-Y.

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1 Q And can you give us his phone number too?
2 A 732.421.4442.
3 Q And he lives here in Columbia? Alterick does?
4 A I don't know where Alterick lives at now. I know
5 he's a truck driver so he's back and forth. So I
6 don't know where he's at now.
7 Q Okay.
8 A He's around the area somewhere.
9 Q Do you know if -- so it's your testimony that you
10 were not aware of the condition in the attic before
11 you fell, is that right?
12 A Yes.
13 Q Do you know if anyone was aware of the condition in
14 the attic before you fell?
15 A I don't think my brother was aware because he was
16 back and forth up there too and he never said
17 nothing to me about it.
18 Q Are you aware of any other tenant that knew of any
19 dangerous condition in the attic?
20 A Nobody else went up there but me and my brother.
21 Q Are you aware if the landlord knew about any
22 dangerous condition in the attic?
23 A I don't know. I don't know if she knew or not.
24 Q Okay. Okay. When you came to, tell me -- did you
25 notice any injuries right away?

51

1 A I felt -- I felt like I couldn't move my foot. I
2 thought it might have been broke because I couldn't
3 move my toes. I couldn't move anything and it was
4 a lot of pain.
5 Q Which side?
6 A My left.
7 Q Okay. Had you had anything to drink that day, any
8 alcohol to drink?
9 A No.
10 Q Were you on any medication that day?
11 A No.
12 Q Okay. Have you given any statements about what
13 happened since the accident, either to law
14 enforcement or any companies? I'm not talking
15 about what you've discussed with your lawyer.
16 A No. Nothing but the doctors.
17 Q Okay. All right. And so you came to and you
18 noticed some pain in your left foot. What happened
19 next?
20 A Before I came to I heard my brother calling me. He
21 was calling me, calling my name. Got up, get up.
22 And then I came to. I noticed the pain in my foot
23 and I couldn't get up at all and I couldn't move my
24 foot. And he helped me up and took me to the couch
25 and sit me down, asked me did I want an ambulance

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1 to come, but my cousin had just came and he said
2 I'll take you to the hospital. He took me.
3 Q All right. And your cousin took you to the ER?
4 A Yes.
5 Q And what hospital did you go to?
6 A I'm not familiar with hospitals. It might have
7 been --
8 Q Was it Providence?
9 A It might have been Providence. I'm not -- I wasn't
10 familiar with the area really.
11 Q Okay. And so you went to the hospital and what did
12 you report?
13 A I told them that -- they asked me what happened. I
14 told them what happened and I told them that I hurt
15 my foot and my knee was bothering me and I think I
16 was out for a few. And they asked me the same
17 thing you asked, how long. I didn't know. I
18 didn't know.
19 Q Okay. Did you receive any diagnoses from the ER?
20 Did they tell you what was wrong with you?
21 A All they told me that it wasn't broken.
22 Q Okay. Did they take any imaging?
23 A No. They took x-ray.
24 Q And what areas did they take x-rays?
25 A Of the foot, my left foot.

1 Q And did that image show any injuries?
 2 A It showed no broke -- nothing was broke.
 3 Q Okay. Did they take imaging anywhere else?
 4 A No.
 5 Q All right. And did they provide any treatment for
 6 you?
 7 A No. They didn't provide no treatment, no.
 8 Q Okay. Did they refer -- what did they do for you?
 9 Did they release you? Did they refer you to
 10 anyone?
 11 A They released me. Yeah, they released me.
 12 Q Okay. The same day?
 13 A Yes. Same night.
 14 Q And at the ER your primary complaint was what?
 15 A My foot.
 16 Q Left foot?
 17 A Yes.
 18 Q Okay. At the ER, explain to me what your left foot
 19 condition was.
 20 A I couldn't move anything. I couldn't move any of
 21 my toes or -- and the foot -- I couldn't move my
 22 foot either. It was a great amount of pain.
 23 Q On a scale of one to ten at the ER, what was your
 24 pain level in your level foot?
 25 A Ten. Ten.

1 A I think I went to Doctors Care two times maybe.
 2 Maybe more. Maybe three at the most.
 3 Q Okay. And what did they do for you?
 4 A He looked at the foot and just asked me where the
 5 pain was and everything and that's about it.
 6 Q Did they provide any treatment? Did Doctors Care
 7 actually treat your pain?
 8 A No. He didn't -- he didn't treat the pain. He
 9 just referred me to somebody else.
 10 Q Okay. Did they take any additional imaging?
 11 A Not at that time. I don't think so, no.
 12 Q What did they tell you your injuries were? Did
 13 they give you any diagnoses?
 14 A They just told me I had an injury. It wasn't
 15 broke. I had an injury to the foot, a traumatic
 16 injury to the foot, and that was about it.
 17 Q Okay. And why did you go back two or three times?
 18 A Kapt bothering me.
 19 Q But when you were there you said they didn't treat
 20 your pain, did they?
 21 A No, they didn't treat the pain.
 22 Q Okay. And so what did they do for you when you did
 23 go?
 24 A They looked at the foot. They looked at the foot
 25 again. That's all.

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1 Q Okay. And how long did that pain of a ten out of
 2 ten last?
 3 A I couldn't say. It was a while. I still have pain
 4 to this day so ...
 5 Q Did it last for a number of months?
 6 A It had to be months. A while, yeah. I can't count
 7 how many months, but it last for a long time.
 8 Q Okay. To be clear, your pain stayed at a level of
 9 a ten out of ten for a number of months?
 10 A Yes.
 11 Mr. Clark: Object to the form.
 12 Q Okay. Did they ask you to follow up with a primary
 13 care doctor?
 14 A They asked me did I have a doctor and they told me
 15 I should go see a doctor if I had -- or find one to
 16 ...
 17 Q Did you do that?
 18 A Yes.
 19 Q And where did you go?
 20 A I think I went to some kind of care place.
 21 Q Was it Doctors Care?
 22 A Yes.
 23 Q Okay. And when did you go there?
 24 A Probably within that week.
 25 Q Okay. How many times did you go to Doctors Care?

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1 Q Was it just diagnostic imaging and sort of
 2 diagnostic treatment when you went, like just go to
 3 diagnose you and tell you what was wrong with you,
 4 or did they provide any actual treatment?
 5 A They didn't provide no treatment.
 6 Q Okay. Where else did you treat?
 7 A That's it.
 8 Q Did you ever receive any physical therapy?
 9 A Yes.
 10 Q Okay. Did you ever see an orthopaedist?
 11 A I don't know. I seen a lot of doctors. I don't
 12 know. I might have went to an orthopaedist. It
 13 was so many doctors. I don't know.
 14 Q Okay. So far you've told me you went to the
 15 emergency room and Doctors Care.
 16 A Uh-huh.
 17 Q We also note -- we haven't spoken about your
 18 physical therapy yet. Was there another treatment?
 19 Did you go to an orthopaedist or not?
 20 A I don't know.
 21 Q Okay. And did you ever receive a TENS unit? Do
 22 you ever treat with a TENS unit at home?
 23 A Yes.
 24 Q Okay. What is a TENS unit? What did it do for
 25 you?

2 that. It sends pulses to the pain areas, like
3 massaging inside the foot. And I still use that
4 still.
5 Q Okay. So you have it today?
6 A Yes.
7 Q Have you had to use it consistently since the
8 accident?
9 A Yes, I do.
10 Q How often?
11 A Probably three to four times a week.
12 Q Okay. And you've used it that consistently since
13 the injury?
14 A Yes.
15 Q Okay. And who prescribed the TENS unit to you?
16 A I think the therapy. I think the therapy. Yes,
17 they prescribed it.
18 Q Does it help?
19 A I don't know if it helped because it's not getting
20 better yet, my foot, but it tells me that it's
21 still got pain in it because it send pulses. It
22 vibrates inside and the foot still bother me. I
23 can tell it's still hurting.
24 Q Okay. Finally, let's talk about your physical
25 therapy. You indicated you treated with a physical

1 period. I don't -- I don't exactly ...
2 Q How many times did you go?
3 A I don't know.
4 Q Was it a couple times or was it 50 times?
5 A It wasn't a couple times. It was more than a
6 couple times, but I think I was going maybe --
7 maybe once or twice a week.
8 Q Okay. And what did the physical therapist treat
9 you for?
10 A The foot pain. They put heat on the foot. They
11 put cold on the foot. They tried to describe some
12 -- some kind of exercise for the foot. Different
13 kind of exercise that I can do.
14 Q Okay.
15 A And -- yeah.
16 Q Were you having trouble walking when you were
17 treating with the physical therapist?
18 A Yes. It was bothering me more after.
19 Q And what do you mean by it was bothering more
20 after?
21 A After -- because it was aggravating my foot. I
22 felt like it was because when I went there it was
23 bothering me already, but through them bending the
24 foot and making me do this and do that it was
25 starting to hurt more.

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1 therapist, is that right?
2 A Yes.
3 Q How did you find that physical therapist?
4 A I'm trying to think that they gave it to me, the
5 Doctors Care. I think they sent me because it was
6 right on the side of the building.
7 Q Okay. Were you referred by your attorney?
8 A I don't think so.
9 Q Okay. When did that treatment begin, the physical
10 therapy treatment?
11 A I don't know the exact time.
12 Q Was it very soon after the accident? Did you wait
13 some time?
14 A I don't think I waited that long because I was
15 always complaining about my foot hurt. I don't
16 know how long it was, though.
17 Q Was it within a week or two or was it several
18 months later?
19 A No. It wasn't seven months. Yeah.
20 Q Okay. And when did the physical therapy treatment
21 end?
22 A Maybe a month.
23 Q Okay. So you went -- you treated for about one
24 month, is that right?
25 A Maybe a month. Maybe two months. It was in that

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1 Q Okay. And so when you were released from the
2 physical therapist, was your foot better?
3 A No.
4 Q Did physical therapy help?
5 A No.
6 Q Had you ever received physical therapy before?
7 A No, I don't think so.
8 Q Okay. And did you treat with any other provider
9 that we haven't discussed yet?
10 A No.
11 Q Okay. Is -- has your foot condition resolved
12 today?
13 A No.
14 Q Okay. Well, I'm going to walk you through a time
15 line since the accident. You can let me know the
16 level of pain. You indicated that it was a ten out
17 of a ten on the date of the accident, is that
18 right?
19 A Yes. Uh-huh.
20 Q Okay. And what about a month later?
21 A I can't tell you the level, but it was still
22 bothering me a whole lot.
23 Q Was it still a ten out of ten?
24 A I can't tell you it was a ten out of ten. I don't
25 know what level then. All I know is it's still

bothering me.
 2 Q Okay. And what about two months afterwards?
 3 A I couldn't tell you. All I know it still bother
 4 me.
 5 Q And what about six months afterwards?
 6 A I couldn't tell you. Now, as far as the level, you
 7 know, I couldn't tell you at that point.
 8 Q Okay. What about today? We're now -- today in
 9 October of 2105?
 10 A I can't tell you a level, but I can probably tell
 11 you that my foot is probably 75 percent. You know,
 12 it bother me. Some days I get up, I can't walk.
 13 The cold weather is bothering me. It's aching like
 14 a toothache. The raining weather, it's hurting.
 15 Can't use a treadmill. Can't run. Can't jump
 16 rope.
 17 Q And what do you mean by your foot is 75 percent?
 18 A It's -- it feel like -- some days it feel like it's
 19 feeling better. Then another -- I get up one day,
 20 another day, and it's hurting.
 21 Q Okay. Describe the pain. Where exactly is the
 22 pain?
 23 A The pain is over on the lefthand side of the foot.
 24 It runs from the heel on that side up to the small
 25 toe and under the toes.

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 1 A Yes.
 2 Q Did it show any injuries?
 3 A No, it didn't.
 4 Q Has any image ever shown any injuries in your left
 5 foot?
 6 A I don't know how to read the image so I don't know.
 7 Q You've talked to your doctors after the images are
 8 taken, right?
 9 A I talked to them, yes, and I was told that -- that
 10 it was something -- I think it's a metatarsal. I
 11 had injury to my metatarsal and I had -- and my
 12 arch was messed up.
 13 Q And what doctor told you your arch was messed up?
 14 A I think that was the last doctor I seen. Like I
 15 said, it's downtown somewhere off Bull Street.
 16 Q Okay. And when did -- I know when your -- the
 17 course of your physical therapy treatment. When
 18 did that treatment with the other doctors who you
 19 can't remember the names, when did that take place?
 20 A I don't know. It was a series of treatments. I
 21 don't know. I was going from one doctor to the
 22 other.
 23 Q Was it within six months of the accident?
 24 A I think it was going into the next year so it might
 25 have been six months. From August -- yeah, it was

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 1 Q Okay. And how often do you feel that pain?
 2 A Every day.
 3 Q Okay. And have you felt it every day since the
 4 accident?
 5 A Yes.
 6 Q When was the last time you sought treatment?
 7 A I haven't seen any treatment. I do my own
 8 treatment like they told me. Just use the machine
 9 and they gave me rubber bands and different kind of
 10 exercises to do.
 11 Q When -- was the physical therapist the last time
 12 you sought treatment for your foot?
 13 A No. I went to -- I think a couple more doctors to
 14 get shoes and to get an MRI.
 15 Q Okay. Who did you go see for that?
 16 A I don't know. I don't know. I just know it's
 17 downtown somewhere.
 18 Q Did you get an orthopaedic shoe?
 19 A Yes. I got shoes with inserts.
 20 Q Do you use those?
 21 A Well, I still do use them, but they're pretty old
 22 now. But I still do use them, yes.
 23 Q And you also had an MRI, is that right?
 24 A Yes.
 25 Q Of your left foot?

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 1 into the next year.
 2 Q Okay. When was your last treatment?
 3 A I don't know.
 4 Q When was the last time you treated after this
 5 accident?
 6 A I don't remember.
 7 Q Did you treat more than six months?
 8 A I don't even know. I don't know. I didn't keep
 9 track of, you know, how many times I went.
 10 Q Okay. Did you treat at any time in 2014?
 11 A I treat it every day through my machine and through
 12 my -- what I do, what they told me to do. What the
 13 therapy told me to do.
 14 Q You treat it every day where?
 15 A Every day at home.
 16 Q Okay.
 17 A I put the machine. I do the exercise.
 18 Q Okay. Do you have any limitations today?
 19 A Yes.
 20 Q And what are those?
 21 A I can't run. I can't get on the treadmill and jog.
 22 I can't jump rope. If I do anything else -- I
 23 think I went to -- I really found out it was
 24 really, really bothering me when I went to a flea
 25 market. But the doctor told me that you might --

2 and you might think it's well
3 you again. So when I was at the flea market
4 walking, I guess the uneven ground, I couldn't even
5 finish walking.
6 Q And how did you get home?
7 A My car. I walked -- I stopped from the flea -- I
8 stopped walking. I didn't finish walking through
9 the whole flea market. Then I just got in my car
10 and went home.
11 Q All right. Do you know what your medical expenses
12 are that you're claiming is related to this
13 accident?
14 A No. I don't know.
15 Q Do you have health insurance?
16 A No.
17 Q Did you have health insurance at the time of this
18 accident?
19 A No.
20 Q Are your medical bills paid?
21 A I don't know.
22 Q Can you tell me why you're suing your landlord?
23 A Because this is an injury that I'm going to have
24 probably for the rest of my life. I'm 56 years
25 old. And it hasn't got well within three years.

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1 I'm having this trouble with my foot. You know, I
2 might have to have surgery later on if this foot
3 continue to bother me. I've never had a foot
4 injury.
5 Q And I guess the question is can you explain why
6 it's your landlord that you're suing?
7 A It's her house. She should have took
8 responsibility of having it right.
9 Q Okay. So is it your testimony that you're suing
10 the landlord because the injury happened in her
11 house?
12 A I'm suing -- I'm suing her because she didn't have
13 her house done right, okay? Because I don't think
14 she even probably envisioned that they didn't
15 finish the job right.
16 Q Okay. Can you tell me what you think that she did
17 wrong?
18 A Well, when you get somebody to -- and you're paying
19 somebody to do work, you have to make sure that
20 work is done before you pay them.
21 Q Are you referring to those who constructed the
22 attic?
23 A Whoever came and fixed it. Excuse me. Whoever
24 came and fixed it. That's what I'm talking about,
25 yes. I don't know who fixed the attic.

67
1 Q Do you have any information that she did anything
2 to cause your fall?
3 A Yes. She didn't -- she didn't fix -- get the attic
4 fixed right.
5 Q Looking back, do you acknowledge that you may have
6 stepped in the wrong place?
7 A No.
8 Q Do you acknowledge that you may have made a mistake
9 when you were walking in the attic?
10 A No.
11 Q Okay. All right.
12 Mr. Daniels: And we'll mark the drawing
13 that we did earlier as Exhibit Number Two and
14 we'll mark this as Exhibit Number Three.
15 Defendant's Exhibit No. 2, Hand-drawn diagram;
16 one page.
17 Q Finally, Mr. Young, I'm going to show you a copy of
18 what I believe is your lease for the property --
19 A Okay.
20 Q -- that you resided on at the time of the accident.
21 A Uh-huh.
22 Q Do you recognize that lease?
23 A Yes.
24 Q Okay. And take your time, as long as you'd like to
25 look through it, and let me know if you see your

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1 signature to that lease.
2 A Yes.
3 Q Okay. Is this a fair and accurate copy of the
4 residential lease that you executed with your
5 landlord?
6 A Yes. As far as I know, yes.
7 Q Okay.
8 Mr. Daniels: And we'll mark that as
9 Exhibit Number Three then.
10 Defendant's Exhibit No. 3, Residential Lease
11 Agreement; four pages.
12 Q And there's a couple quick sections I want to look
13 through with you.
14 A Can I go to the bathroom real fast?
15 Mr. Daniels: Absolutely. We'll take a
16 quick break.
17 (Off the record from 11:45 a.m. to 11:47 a.m.)
18 Examination continues
19 By Mr. Daniels:
20 Q Mr. Young, have you had a chance to look at the
21 lease?
22 A Yes.
23 Q Okay. And marked as Exhibit Number Three. And is
24 that a representation of the residential lease you
25 signed with Ms. Poole?

2 Q Okay. There's a couple quick sections I'm going to
3 ask you about and then we'll be done, okay?

4 A Uh-huh.

5 Q Starting at the bottom of page two, you'll see
6 Section 14 is titled Condition of the Premises.

7 A Uh-huh.

8 Q Subsection One indicates that the tenant -- and
9 that's you, correct?

10 A Uh-huh.

11 Q Tenant agrees to properly use and operate --
12 properly use the premises. Do you believe that the
13 manner in which you were walking in the attic was a
14 proper use of the premises?

15 A Yes.

16 Q Okay. Do you think that you made any mistake by
17 walking where you did in the attic?

18 A No.

19 Q Okay. And you believe walking on the insulation
20 was a proper use of the attic?

21 A I have done it before, yes, many times.

22 Q Okay. Let's look at the next section. The same
23 section, Section 14 Subsection 4, it's going to
24 begin at the top of the next page. It says the
25 tenant agrees to -- can you read that out loud,

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1 starting Subsection 4?

2 A I don't know where you're at right here.

3 Q Sure.

4 A "Notify the landlord in writing upon discovery of
5 any damages, defects or dangerous conditions and
6 about the premises."

7 Q Okay. And you agreed to notify Ms. Poole of any
8 dangerous condition on the property as soon as you
9 discovered it, is that right?

10 A Yes.

11 Q And do you believe the attic was in a dangerous
12 condition?

13 A Not at that time, no.

14 Q Okay. So not -- at no time before your injury did
15 you believe --

16 A No time.

17 Q -- it was in a dangerous condition, is that right?

18 A No time. I had been up there many times and walked
19 it -- walked the same way I walked.

20 Q Okay. And, accordingly, you never notified your
21 landlord in writing that the attic was in any
22 dangerous condition, is that right?

23 A It wasn't in any dangerous condition. Not as I
24 know of, no.

25 Q Okay. So you don't believe that the attic was in a

1 dangerous condition before you fell?

2 A As far as I know. I never noticed it.

3 Q Okay. All right. And to be clear, you didn't
4 believe the attic was in a dangerous condition
5 before you fell, is that right?

6 Mr. Clark: Object to the form.

7 A I never noticed it.

8 Q Okay. And, finally, again at the top of page
9 three, I'm going to point you to a third section
10 beginning right here. Can you read that out loud?

11 A "Tenants acknowledge that they have examined the
12 entire interior and exterior of the premises,
13 including plumbing, heating, electrical,
14 appliances, smoke detectors, fixtures, carpet,
15 drapes, paint and have found them to be good, safe
16 and clean condition and repair with the following
17 exceptions."

18 Q Okay. And did you specify any exceptions?

19 A No.

20 Q Okay. In this lease, did you acknowledge that you
21 had examined the entire interior and exterior of
22 the premises?

23 A Yes.

24 Q And did you acknowledge that you had found it to be
25 in good condition and repair?

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1 A As far as I know, yes.

2 Q Okay. Did your landlord prohibit you from
3 inspecting any part of the house?

4 A No.

5 Q Did your landlord prohibit you from inspecting the
6 attic space?

7 A No. No.

8 Q Okay. And you signed off that the entire premises
9 was in good, safe condition and repair, is that
10 correct?

11 A I did, yes.

12 Q At any time after you signed that statement, did
13 you ever tell the landlord the attic space was
14 either damaged or that it needed repair?

15 A No.

16 Q Okay. Looking back, can you expect your landlord
17 to repair the attic without you notifying her of
18 that condition?

19 A Like I said, it wasn't any condition as far as I
20 know of. Now, I've been up there many times and
21 had no problem.

22 Q Okay. So you don't believe it was in a dangerous
23 condition before you fell?

24 Mr. Clark: Object to form.

25 A I don't know. Like I said, I've been up there many

1 times. I didn't know if it was dangerous or not
2 until I fell.
3 Q Okay. All right.
4 Mr. Daniels: And we can go off the record
5 for a moment.
6 (Off the record from 11:52 a.m. to 11:56 a.m.)
7 Examination continues
8 By Mr. Daniels:
9 Q Mr. Young, how many steps did you take in the attic
10 before you fell that day?
11 A I don't know how many steps.
12 Q Was it two steps or was it 20 steps?
13 A Wasn't no 20. Maybe -- maybe between three and
14 five maybe.
15 Q Okay. And was every one of those steps on the pink
16 insulation?
17 A I don't know. I wasn't looking down.
18 Q But is that where you would walk when you would
19 make those steps?
20 A Yes.
21 Q Okay. And, finally, I'm going to show you a series
22 of photos and ask you if these are a true and
23 accurate depiction of the house and the attic
24 ceiling -- rather the second floor ceiling as it
25 appeared after you fell, okay?

1 A Uh-huh.
2 Q And, if so, we'll mark that as Exhibit Number Four.
3 A Okay. That is the outside of the house. Okay.
4 That's before. Yeah, that's the hallway and
5 everything. Yes. And that's the pull down. How
6 does this go? Okay. Yes. I don't know. Okay.
7 That's a closet. Okay. Yes.
8 Q Okay. And those photographs, which we'll mark as
9 Exhibit Number Four, are those a fair and accurate
10 depiction of the property as it appeared after you
11 fell?
12 A Yes.
13 Q And before any repairs were done, is that correct?
14 A Yes.
15 Defendant's Exhibit No. 4, Copies of Color
16 Photographs, nine pages.
17 Mr. Daniels: Okay. Well, I don't have
18 any further questions.
19 Cross-examination
20 By Mr. Clark:
21 Q Mr. Young, Mr. Daniels asked you several questions
22 about the lease and there was one in particular
23 about inspection of the property. Where were you
24 physically when you actually signed this lease?
25 A I think I met her in a parking lot of a shopping

75
1 center.
2 Q Okay. All right. And had you -- so you weren't at
3 the house?
4 A No. Uh-uh. Not at the house.
5 Q Had you seen the house before then?
6 A I had seen the house from the outside, yes.
7 Q Had you been inside?
8 A I think I had looked around inside one time, yes,
9 with my brother. She said the door was open so I
10 could go inside.
11 Q All right. And I believe you testified you didn't
12 inspect the attic?
13 A No, I didn't inspect the attic.
14 Q All right. When you leased the house, did you
15 expect that Ms. Poole had inspected the house for
16 safety?
17 A Yes.
18 Q And you relied on that?
19 A Yes.
20 Q All right. All right. The diagrams that have been
21 admitted here, there was some talk about beams in
22 the attic and insulation. Do you remember he asked
23 you questions about that?
24 A Yes. I remember that, yes.
25 Q Do you know what plywood is?

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1 A A thin piece of wood.
2 Q Right. Okay. Do you remember whether there was
3 any plywood on top of the beams up there at all?
4 A In the back. I noticed that in the back.
5 Q Okay. And is that where you stored your stuff, on
6 top of the plywood?
7 A Yes.
8 Q And is that where you walked? That's where you
9 stood when you went up there on the plywood?
10 A Yes.
11 Q All right. And when you were standing on the
12 plywood, did you ever fall through on the plywood?
13 A No.
14 Q The area that you fell, was there any plywood
15 there?
16 A I didn't see any plywood. I walked on it many
17 times so I thought it might have been under --
18 under there.
19 Q Under the insulation?
20 A Yes. Because I'm weighing 220 so I thought if it
21 holds me when I walked over. I didn't have no
22 problem with it.
23 Q But you didn't see any on top of the insulation?
24 A No. No, I didn't at all.
25 Q Okay. But the other areas that you walked on,

2 A Yes.

3 Q All right. Now, the way these diagrams are drawn, it appears that the area that you fell was right in front of the staircase, is that correct?

4 A Yes.

5 Q To get down, was there any other route that you could have taken?

6 A No.

7 Q Did you have to cross this portion where there was no plywood?

8 A Yes, you had to.

9 Mr. Clark: I have to take this call.

10 (Off the record briefly at 12:02 p.m.)

11 Q So was there any other way that you could have gone --

12 A No.

13 Q -- to get down?

14 A You have to step -- you have to step that way to go down the ladder. It's right in front of that.

15 Q All right. Now, Mr. Daniels asked you a couple of questions about your pain level in the ER and at various times since this incident. Can you remember verbatim everything you said at each doctor's visit?

1 Q Okay. And the shed outside you couldn't store anything in?

2 A No. She had all kind of tires from the previous tenant.

3 Q Now, Mr. Daniels asked you about the TENS unit. I realize it may not have completely removed all of your pain, but did it help some?

4 A I think it bothers me more because it zeros in on the pain, you know, and it vibrates and it hits the pain. So it bothers -- it still bothers me.

5 Q All right. Does it help you some?

6 A The foot hasn't gotten well so I can't tell if it helps me some or not because it hasn't gotten well. Not to a point where I want it, to where I was before the accident.

7 Q That leads me to this question. Is your foot actually better than it was three years ago when you fell, though?

8 A No. No.

9 Q It's the same as it was three years ago?

10 A Well, after I fell, like I told him, it's a different percentage.

11 Q Right.

12 A You know what I mean? So it's better. I'm just still experiencing pain.

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1 A No.

2 Q Do you rely on the medical records for what was actually said and done during your visits?

3 A Yes.

4 Q In fact, have you actually read these medical records?

5 A I never looked at them.

6 Q Okay. All right. So as far as your pain level in the ER, do you remember exactly what it was?

7 A No, I don't.

8 Q Was it bad pain, though?

9 A Yes. It was bad pain, yes.

10 Q Okay. Now, did Ms. Poole ever speak about the attic?

11 A No. No. She didn't speak about the attic until I called her and told her that I fell through and she asked me what was I doing up there.

12 Q Okay. Did she ever tell you not to go up there?

13 A No, never.

14 Q And I believe you said her maintenance man told you --

15 A Yes.

16 Q -- that's where to store?

17 A That's where to store. He told me and my brother that's where to store stuff at.

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1 Q Right. Right. Okay. And when you -- now, you don't know if the TENS unit actually is helping it or not, do you?

2 A No. I just -- I'm just doing what they told me to do.

3 Q Okay. But the foot is better?

4 A It's getting better, yes, as times goes on.

5 Q All the medical treatment that you got, do you think it contributed to making your foot better?

6 A It's contributed to, yes, getting better. I'm on the road.

7 Q Okay. All right. And the physical therapy, did that help you with motion and being able to walk a little better?

8 A Yes. Because when I went there I couldn't move my toes. I couldn't do anything.

9 Q Okay. All right. Now, did you ever get an injection in your foot?

10 A No.

11 Q Did you ever get any pain medicine?

12 A I think I didn't want no pain medicine. I'm not -- I'm not a pill taker.

13 Q And when you left the ER, did you feel a little better?

14 A Not that night, no.

1 Q Okay. The next day?

2 A It started to feel a little bit better. A little

3 bit.

4 Q - Okay. But it -- but it's your testimony that at

5 this point your foot is 75 percent of a hundred

6 percent?

7 A Yeah. I have my good days and bad days.

8 Q What would you say it was right after the accident?

9 A It wasn't good at all. I couldn't do anything. I

10 couldn't stand on it. Nothing. I couldn't do

11 anything.

12 Mr. Clark: All right. Thank you, sir.

13 Those are all the questions that I have for

14 you.

15 Re-examination

16 By Mr. Daniels:

17 Q I have two final questions to follow up with what

18 we heard you discuss with John. You indicated that

19 your landlord never told you you were not allowed

20 to go in the attic, is that correct?

21 A Yes. I thought I was renting the whole house so

22 ...

23 Q Did she ever tell you to go in the attic?

24 A No. But I was renting the whole house so I didn't

25 have -- if I wasn't supposed to go in the attic,

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1 she probably would have specified that to me.

2 Don't go in the attic because this is not done

3 right or I don't want you to go there yet.

4 Q Did you ever ask her if you could access the attic?

5 A No, I never asked that.

6 Q Did you ever ask her if you could step on

7 insulation in her attic space?

8 A I didn't think I had to ask her, no.

9 Q Did you ever ask her if you could use the attic for

10 storage?

11 A No. I talked to the guy that was fixing the house

12 up, which was the guy that she trusted -- Angel --

13 the most. So he told me and my brother to store

14 stuff up there.

15 Q Okay. And, finally, you indicated that you had to

16 walk -- you had to travel across a part of the

17 attic that did not have plywood floors in order to

18 reach the area where the HVAC unit was sitting on

19 plywood, is that correct?

20 A No. That's the other way.

21 Mr. Clark: Objection.

22 Mischaracterization.

23 Q Sure. Let me ask a better question. When you were

24 speaking with your attorney I believe it was your

25 testimony that you had to cross over the areas with

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1 insulation in order to get to the ladder, is that

2 correct?

3 A Yes. To go back down, yes.

4 Q Were there also wooden beams leading to the access

5 door?

6 A I didn't notice that. Like I said, I just walked.

7 You know, I walked so many times. I didn't notice

8 that.

9 Q You did not notice it. Did you look for wooden

10 beams to walk on?

11 A No. I just -- I just walked right out all the

12 time. Like I said, it held me and, like I said,

13 I've been up there for -- many times so I didn't

14 think --

15 Q Yeah. But you did not look for wooden beams to

16 walk on?

17 A No. I didn't look for anything to walk around.

18 There wasn't any signs up there saying datour,

19 don't walk around that way. And the guy that told

20 me -- the maintenance guy that was up there all

21 over the house doing the painting, the fixing,

22 everything, he never told me to watch that, watch

23 your step up there.

24 Mr. Daniels: Okay. No further questions.

25 Thank you.

84

1 Mr. Clark: Nothing further. Thank you.

2 (Whereupon the deposition was concluded at

3 12:09 p.m.)

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Be it known that the foregoing deposition of
Cedric Young was taken before me;

That I was then and there a Notary Public in
and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 84 typewritten
pages represents a true, accurate and complete
transcription of the testimony so given at the time and
place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

Signed this 13th day of November, 2015.

Cheri B. Williams, CVR-M

Notary Public for South Carolina
My commission expires May 13, 2025.

Note: Recordings are retained for twelve (12) months
from date of certification.

Exhibit B:

Deposition Testimony of
Defendant Valerie Poole

CONDENSED TRANSCRIPT
WORD INDEX

Deposition
of
VALERIE POOLE

CEDRIC YOUNG v. VALERIE POOLE
2015-CP-40-3235

10/13/2015

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COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Cedric Young,

C/A NO.:2015-CS-40-3235

Plaintiff,

Deposition

vs.

Of

Valerie Poole,

Valerie Poole

Defendant.

Deposition of Valerie Poole, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 12:22 p.m., Tuesday, October 13th, 2015, at Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, South Carolina.

Reported by

Cheri B. Williams, CVR-M

Exhibits

Defendant's Exhibit No. 1, Hand-drawn diagram; one page.

Defendant's Exhibit No. 2, Hand-drawn diagram; one page.

Defendant's Exhibit No. 3, Residential Lease Agreement; four pages.

Defendant's Exhibit No. 4, Copies of Color Photographs; nine pages.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Appearances

For the Plaintiff:

John D. Clark, Esquire
The Clark Law Firm, LLC
22 East Liberty Street
Sumter, SC 29150

For the Defendant:

Elliott B. Daniels, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260

Reported By:

Cheri B. Williams, CVR-M

Also Present:

Cedric Young

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Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Valerie Poole, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Direct Examination

By Mr. Clark:

Q State your full name, please.

A Valerie Denise Poole.

Q Ms. Poole, my name is John Clark. I represent Mr. Cedric Young, and I'm actually responsible for filing this lawsuit against you in this case and I've noticed your deposition today and I appreciate you being here, okay?

A You're welcome.

Q Thank you. Now, a deposition is a question and answer session. I'm sure Mr. Daniels has explained some of the process. Have you ever had your deposition taken before?

A I have not.

Q Okay. Don't feel bad. Most people have not.

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2	deposition was so don't feel bad about that. It's	2	Richland County Court of Common Pleas. I have
3	a question-and-answer session. I'm going to ask	2	requested a jury trial. If the case does not
4	you some questions. You're under oath. You --	3	resolve by settlement, eventually we'll go to court
5	Mr. Clark: You want us to wait?	4	and pick a jury.
6	Mr. Daniels: No. Please go. I'm going	5	A Okay.
7	to grab a water.	6	Q I'm going to ask you about your background because
8	Q Okay. You're under oath. You're sworn to tell the	7	I don't want to pick anybody that you're related to
9	truth. And they tell me it's just like being in	8	or that you know well or you're friends because
10	court subject to the penalty of perjury, even	9	they'd probably favor you if we went to trial,
11	though I've never seen anybody prosecuted for a	10	okay?
12	deposition. But, anyway, so you're under oath,	11	A Okay.
13	sworn to tell the truth. Do you understand that?	12	Q So having said that, what's your address?
14	A I do.	13	A 100 Pepper Grass Drive.
15	Q All right. A couple other background issues. Now	14	Q And where is that?
16	that the deposition has started, if you have any	15	A Elgin.
17	questions about my questions you have to direct	16	Q Now, is there two Elgins or just one?
18	them to me. You are not permitted to ask Mr.	17	A Just one Elgin as far as I know of. I'm not ...
19	Daniels any questions --	18	Q Now, Elgin is between Camden and Columbia or is it
20	A Okay.	19	between Camden and Lancaster?
21	Q -- now that the deposition has started, okay?	20	A I think it's Pontiac and Richland.
22	A All right.	21	Q It's near Pontiac?
23	Q Thank you. I don't think this will be a long	22	A Yeah.
24	deposition. If you need to take a break, though,	23	Q Okay. All right. Okay. All right. Where are you
25	just let me know.	24	from originally?
		25	A Originally I was born in New York, but I was raised
	6		8
1	A Okay.	1	in Alabama by my grandmother so ...
2	Q And you don't have to even tell me why. You can	2	Q Okay. What part of Alabama?
3	just take a break. Take as long as you need.	3	A Mobile.
4	You're still not permitted to talk to Mr. Daniels	4	Q Okay. All right. Do you have any relatives in
5	during a break, okay?	5	Richland County?
6	A I understand.	6	A I do not.
7	Q All right. Because this is being recorded, it's	7	Q All right. What brought you to Columbia?
8	important that you give verbal responses because	8	Military?
9	what's going to happen when we're done, our court	9	A My husband was military.
10	reporter is going to make a transcript. It's a	10	Q Okay. We have the good fortune of having people
11	little booklet. Question, answer, question,	11	come here because of the military. How long have
12	answer. And she can't -- it's hard to -- it makes	12	you been in Richland County or you been in South
13	it difficult if you give head nods or you say uh-	13	Carolina?
14	huh and uh-uh because that might get misconstrued	14	A Since 1996.
15	and you might say uh-huh and she thinks it's uh-uh	15	Q Okay. So you actually live in Kershaw County, is
16	and we have a problem, okay?	16	that correct?
17	A Got it.	17	A It's Richland County.
18	Q And we all do that as a matter of habit. If you do	18	Q It's Richland County?
19	it, it's not the end of the world. I'll just	19	A It's designated -- zoned as Richland County, yes.
20	remind you and ask you to give us a verbal	20	Q All right. What's your husband's name?
21	response, okay?	21	A Douglas. He's my ex-husband.
22	A Okay.	22	Q Okay. He's ex. Okay. Douglas?
23	Q Now, I'm going to ask you some questions about your	23	A R. Poole. Ray Poole.
24	background. Before I do it, I'm going to tell you	24	Q Okay. And so what's your maiden name?
25	why I'm asking, though. This case is pending in	25	A Hughes.

3 Q -- H-E-S. Like the Hughes Corporation?
 4 A Yes.
 5 Q Do you remember those guys?
 6 A Yes.
 7 Q Okay. All right. All right. And so do you have
 8 any adult children that live in Richland County?
 9 A No. My son is attending college.
 10 Q Where does he go to school at?
 11 A University of Alabama.
 12 Q Okay.
 13 A And my daughter is in San Diego.
 14 Q Okay. So you just have the two children that are -
 15 -
 16 A Yes.
 17 Q -- college age or above?
 18 A Yes.
 19 Q All right. Does Douglas R. Poole still live in .
 20 Richland County?
 21 A No, he does not.
 22 Q Where does he live now?
 23 A He's in Alabama.
 24 Q Okay. He's from Alabama as well?
 25 A Yes.

1 your Social Security number. I'm going to record
 2 it in my notes and I'll tell you as an officer of
 3 the court for the past 25 years that I will not
 4 abuse your Social Security number. So would you
 5 please give me your Social Security number?
 6 A 6515.
 7 Q Thank you. Ms. Poole, have you ever been convicted
 8 of a crime? And I ask everybody this. My client
 9 was asked this earlier.
 10 A No, I haven't.
 11 Q Okay. Good. All right. And when you moved here I
 12 assume your kids were school age or at some point?
 13 A Yes.
 14 Q Or very young maybe. Very young. What school did
 15 they attend?
 16 A Killian Elementary.
 17 Q Killian, okay.
 18 A Uh-huh.
 19 Q What other school did they attend?
 20 A Bookman, Blythewood Middle, Spring Valley, Summit
 21 Mill.
 22 Q Okay.
 23 A Pontiac Elementary.
 24 Q Okay. All right. Go ahead. I didn't mean to
 25 interrupt you.

10
 1 Q Okay. All right. And you moved here in 1996, did
 2 you say? About 1996?
 3 A Yes. 1996.
 4 Q And Douglas was stationed at Fort Jackson?
 5 A That's correct.
 6 Q All right. I'm assuming you went to high school in
 7 Mobile?
 8 A I did.
 9 Q Okay. What high school did you go to down there?
 10 A It was Mobile County High.
 11 Q Okay. And what did you do after high school?
 12 A I got married.
 13 Q Okay. All right. And then you traveled as a
 14 military wife?
 15 A I did.
 16 Q All right. And I'm always hesitant to ask this
 17 question, but for legal purposes only, what's your
 18 date of birth? And I apologize in advance.
 19 A 1/24/68.
 20 Q Okay. All right. Now, this is also a very
 21 sensitive subject and there are special rules in
 22 place about this. I'm going to ask you your Social
 23 Security number, but the rule says that only the
 24 last four digits go in the transcript so that if
 25 anybody gets a hold of the document they won't have

12
 1 A Pontiac Elementary and Windsor Elementary.
 2 Q Okay. All right. Now, your husband -- or your ex-
 3 husband, Mr. Poole, did he retire from the
 4 military?
 5 A Yes, he did.
 6 Q He retired right here at Fort Jackson?
 7 A He did.
 8 Q Did he work somewhere after he retired?
 9 A Not to my knowledge.
 10 Q Okay. All right. Now, were you a stay-at-home
 11 mom?
 12 A No, I was not.
 13 Q Did you work?
 14 A I did.
 15 Q Tell me where you worked in Richland County.
 16 A I worked at REMG/NetBank Mortgage Company.
 17 Q Okay. All right. What else?
 18 A I worked at First Citizens Bank.
 19 Q Okay.
 20 A And now I'm at Richland County Public Works.
 21 Q Okay. Have you been busy this week, Richland
 22 County Public Works?
 23 A Yes. We have been since the flood, yeah.
 24 Q Okay. How long have you worked for them?
 25 A It'll be seven years on October the 20th.

2 A Administrative assistant.
3 Q Okay. Do you like working there? I won't tell
4 them.
5 A I do.
6 Q All right. Now, do you have any specialized
7 training in anything that's noteworthy? I mean,
8 accounting, nursing, anything like that? Any
9 particular field of study that you have training in
10 or expertise?
11 A No, I don't.
12 Q Okay. So you've always done administrative type
13 work, clerical work?
14 A No. I was a mortgage reviewer at NetBank.
15 Q Okay. Mortgage reviewer?
16 A Uh-huh.
17 Q All right. What -- do you attend a church?
18 A Church of Christ.
19 Q Which one?
20 A I attend the one off of Farrow Road.
21 Q Okay. Who is the pastor there? And I didn't mean
22 to put you on the spot.
23 A I don't remember.
24 Q Okay. That's fine. That's fine. Are you a member
25 of any clubs or organizations in Richland County,

14
1 like Links, golf clubs or anything like that or
2 yoga clubs or anything like that?
3 A No, I'm not.
4 Q Okay. What kind of hobbies do you have? What do
5 you do in your spare time?
6 A I watch plenty of football during football season.
7 Q Football fan? Okay.
8 A Yeah.
9 Q Who do you like?
10 A Dallas Cowboys.
11 Q So you were disappointed last night when the
12 Steelers won?
13 A No. I'm just a fan of Dallas. I don't --
14 Q You just like --
15 A -- dislike other teams because mine doesn't win.
16 Q Okay. So you were disappointed Sunday?
17 A Yeah. I watch college football.
18 Q Okay. All right. Okay. Now, so you still live at
19 Pepper Grass?
20 A I do.
21 Q And that's in Elgin?
22 A Yes. That's correct.
23 Q And where is your office now?
24 A My office?
25 Q At the public works. Where is that?

400 Farrow Road.
2 Q Where is that in Richland County?
3 A It's off of Farrow Road.
4 Q Okay. Okay. All right. The property that we're
5 here about today -- and what's been marked as
6 Exhibit Three -- is 16 Thornberry Court. Have you
7 ever lived there?
8 A I have.
9 Q When did you live there?
10 A 1998 to 2002. I can't remember the month we moved
11 in.
12 Q Was that your first home when you got here or first
13 house that you bought?
14 A We stayed on -- yeah, that's the first home we
15 purchased here.
16 Q Okay. All right. And so I guess you purchased
17 that in 1998?
18 A It was '98, yes, sir.
19 Q All right. So you lived there -- how long did you
20 say you lived there?
21 A From 1998 to 2002.
22 Q Okay. About four years, you think?
23 A Around about that, yes.
24 Q All right. And then did you lease it after you
25 moved out? Did you lease it to other people?

16
1 A Yes.
2 Q When you lived there, can I assume that you used
3 the attic or not?
4 A I didn't go up there.
5 Q You never went up to the attic?
6 A I went to the -- to the base of stairway.
7 Q Okay. So you climbed up the stairs?
8 A Yeah. And that's as far as I went because I was
9 scared of attics.
10 Q Okay. As you sit here today -- I think today is,
11 what, the --
12 A 13th.
13 Q October 13th of 2015. Have you ever been in the
14 attic at 16 Thornberry Court?
15 A Just went to the top of the stairway on the ground.
16 Q Okay. All right. So you've never stepped up
17 there?
18 A Never stepped up there.
19 Q All right. And so you've never been up there
20 before Mr. Young claims he fell or after?
21 A I went to the top of the stairwell. As far as I
22 got and looked around.
23 Q Okay. Did you go and look around after the fact,
24 after this incident?
25 A I didn't go up the stairs. No, I did not.

2 Young fell, did you have anybody specifically
3 inspect the attic?
4 A I did not.
5 Q Did you -- when he -- has the -- has the ceiling
6 been repaired since this incident?
7 A It was repaired, yes.
8 Q Who repaired it?
9 A I can't remember the contractor's name.
10 Q But you hired someone to repair it?
11 A I did.
12 Q Do you have any records of this repair?
13 A I may have. I'll have to look. I'm not sure.
14 Q All right. I'll show you -- well, it's marked as
15 Defense Exhibit Number Three. I guess we can call
16 it Plaintiff's Exhibit Number Three or we can call
17 it Defendant's.
18 Mr. Clark: Do you mind either way?
19 Mr. Daniels: I have no preference.
20 Whichever is easiest for you.
21 Mr. Clark: Yeah. Let's just keep it
22 Defendant's Exhibit Number Three.
23 Q Is that a lease agreement that you entered with Mr.
24 Young?
25 A It is.

1 Q All right. How was your relationship with Mr.
2 Young?
3 A It was kind of like distant.
4 Q Okay. Was it anything unpleasant about it or --
5 other than this fall, up until the time this fall
6 occurred, did you have any problems with him as a
7 tenant?
8 A I can't say that I did.
9 Q Were there any issues with him prior to this fall?
10 A I can't say that it was.
11 Q Did he always pay his rent on time?
12 A Not always, but he was only in the house a couple
13 of months, I think, before the accident occurred so
14 I really can't --
15 Q You can't say one way or the other?
16 A Yes. I cannot say.
17 Q Okay. But he was never late to the point where you
18 had to institute eviction proceedings, was he?
19 A Yeah.
20 Q When did you do that? Was it before or after the
21 fall?
22 A It was after. Way after the fall.
23 Q Okay. Okay. All right. Now, when you leased him
24 the house, did it include the attic, the lease?
25 A Well, it's a part of the home so yes.

19
1 Q Okay. Did you ever tell him not to use the attic?
2 A I never told him he could not use it, no.
3 Q Okay. All right. Did you have a maintenance man
4 that worked with you on this home?
5 A I did.
6 Q What was his name?
7 A Angel DeLeon.
8 Q Okay. Is -- do you still work with him?
9 A I do not.
10 Q You do not. Why not?
11 A Because I no longer own the home and we just don't
12 communicate. I haven't talked to him in a minute.
13 Q Did anything happen between y'all?
14 A Uh-uh.
15 Q Okay. Is that a no?
16 A I mean, no. I'm sorry.
17 Q Okay. That's all right. What kind of things did
18 Angel do for you?
19 A Angel repaired things that were broken. He helped
20 with the remodeling of the home in 2011. I hired
21 him to do some remodeling because the house was in
22 bad shape.
23 Q Okay. Did that remodeling include anything in the
24 attic?
25 A It did not.

20
1 Q Okay. Did you ever discuss storage space with Mr.
2 Young?
3 A Well, he knew there was a storage shed out there in
4 the back yard.
5 Q All right.
6 A And I told him he could use that for storing.
7 Q Did you inspect that storage space before he rented
8 the property?
9 A Angel did. He had looked at it. He said there was
10 some tires out there.
11 Q Okay. So Angel told you that something was in the
12 -- in the storage space?
13 A Uh-huh. That's correct.
14 Q Okay. All right. When was the first time you
15 heard about an incident in the attic?
16 A I can't remember the date, but when Mr. Young
17 called me.
18 Q Okay.
19 A I don't recall what day it was on.
20 Q What do you recall him saying to you?
21 A He told me he had fallen through the attic and had
22 sprained his ankle. I can't recall which foot. I
23 think it was right foot. I'm not sure.
24 Q Did you go to the house at all at that point?
25 A I can't remember if I did or didn't.

2 A I can't say that I did.
3 Q Okay. All right. When he told you that, what did
4 you say to him, if you remember?
5 A I asked him was he okay. How was his pain level.
6 Why -- first I asked him why did he go in the attic
7 when he had enough space out there in the storage
8 shed to store his items.
9 Q Okay.
10 A I asked him --
11 Q What did he say? I'm sorry. Go ahead. Finish.
12 A And I asked him why didn't he give me a call before
13 going in the attic.
14 Q Okay. And what did he -- tell me everything he
15 said.
16 A And he told me that -- let me see if I can think.
17 He said he had to store some things in the attic,
18 that he didn't have enough space out there in the
19 shed to store some items that he had.
20 Q Okay. Anything else?
21 A As far as what I want to tell you or as in as far
22 as what you're asking me?
23 Q What he said. I mean, what that conversation was
24 about.
25 A What transpired. I asked him -- I mean, I just

22
1 asked him why didn't he call me because I would
2 have let him know that the attic you can only step
3 in certain spaces. Well, certain areas within the
4 attic because they are dangerous.
5 Q Okay.
6 A I did communicate that to him.
7 Q After the fact?
8 A Well, when he called me, yes.
9 Q Okay. How did you know it was dangerous?
10 A Because I've seen TV shows plenty of times where
11 people have fallen through their attic and I've had
12 friends who have fallen through their attic.
13 Q Okay. All right. Do you rent other properties or
14 was this the only one?
15 A That was the only one.
16 Q And you've since sold the house now?
17 A Well, I couldn't afford it so it went bankrupt.
18 Q Okay. All right. As a landlord, did you believe
19 that you had a duty to provide a safe home or house
20 or premises for Mr. Young to live?
21 A Of course. Uh-huh.
22 Q All right. When you went in the attic -- or when
23 you went to the level of the attic --
24 A Uh-huh.
25 Q -- I think is what you were saying, right?

23
1 A. That's correct.
2 Q You climbed up on the stairs. Is there any
3 plywood surfaces up there?
4 A Right around the stairwell I saw that there was
5 some plywood right there.
6 Q Right. And you know -- and you agree -- and just
7 so we're talking about the same thing. Plywood is
8 the flat board that's laying down, right?
9 A That's correct.
10 Q That you can step on?
11 A That's correct.
12 Q All right. And then there's some areas that don't
13 have plywood, right?
14 A That's correct.
15 Q All right. Mr. Young has said that in an area just
16 by the stairs where the stairs lead into the attic
17 --
18 A Uh-huh.
19 Q -- there's a space there that doesn't have plywood
20 and then there's plywood. Do you know whether
21 that's the case or not?
22 A I just know what I saw when I peeped up there into
23 the attic that it was right around -- if you go up
24 the stairs and once you get to the top of the
25 stairs there's plywood right around there. Now,

24
1 beyond that, I cannot say.
2 Q Do you know whether the plywood meets the step?
3 A I can't recall that information.
4 Q Okay. All right. And is there any other way to
5 get down from the attic other than the stairs as
6 far as you know?
7 A Not that I'm aware of, no.
8 Q Okay. And, again, you didn't ever inspect the
9 attic before leasing the building? Or leasing the
10 home?
11 A I mean, it's an unfinished attic so, I mean, there
12 was no need for me to ever go up there and have it
13 inspected.
14 Q Okay. Is part of it finished, though?
15 A The only part that I saw was right there around the
16 base of the stairwell.
17 Q Okay. All right.
18 A I thought I saw some insulation back there.
19 Q Okay. All right. What's been marked collectively
20 as Plaintiff's Exhibit Number One -- or Defendant's
21 Exhibit Number One, is that the home we're talking
22 about? Number Four? Okay. Sorry. Yeah, Number
23 Four is a set of pictures here clipped together.
24 Is that -- the first one --
25 A Yes, sir.

2 A Uh-huh.
3 Q Is that the hallway?
4 A That's correct.
5 Q Where the attic was?
6 A That's correct.
7 Q And this second picture, is that -- is that the
8 damaged part of the ceiling?
9 A It appears to be.
10 Q Do you know if there was any plyboard right there
11 up top in the attic?
12 A You mean prior to?
13 Q Yes, ma'am.
14 A I mean, it was part -- whatever it is. I'm -- if
15 it was plywood you're asking me?
16 Q Yes, ma'am.
17 A I think whatever they did the home with up in the
18 ceiling. I can't say for sure.
19 Q Okay. All right. That appears to be a piece of
20 cardboard. Do you know who -- do you know where
21 that came from? Who put that there when they took
22 that picture?
23 A I believe it was there when I came to the home.
24 Someone had put it up there.
25 Q Okay. All right. Now, this third picture here

26

1 we're looking at that you can see the cardboard,
2 that's right by the ladder, right? Isn't that the
3 ladder right here in the corner of the picture?
4 A I believe it is. I'm not sure.
5 Q In what I'm going to call picture number five, is
6 that -- does that give you a better view?
7 A I'm trying to picture the home in my mind.
8 Q I understand. But do you see the attic door?
9 A I see the attic door.
10 Q And you see the cardboard area here?
11 A Uh-huh.
12 Q Do you know whether there's any plyboard right
13 there or was there at the time this accident
14 happened?
15 A I do not know. All I know is what's up there when
16 the ceiling was there when I lived in the home.
17 Q All right. Okay. Have you seen Mr. Young since
18 the accident?
19 A I did see him when I went to the home --
20 Q Okay.
21 A -- with -- for the man to fix the ceiling.
22 Q All right. And Mr. Young was there?
23 A I believe he was there, yes.
24 Q Did you notice whether he was injured or not?
25 A I -- he was limping.

27
1 Q Okay. All right. So you went there one time at
2 least with the maintenance -- with the repair guy,
3 right?
4 A Uh-huh.
5 Q Did you go back and see him at any other time?
6 A I called and checked on him.
7 Q What did he say when you checked on him?
8 A He said he was still experiencing some pain. He
9 had to go back to the doctor again.
10 Q Okay. How long did that go on, do you know?
11 A I can't recall.
12 Q Okay. Did you see anything that made you
13 disbelieve him when he said he was in pain?
14 A No, I did not.
15 Q Okay. All right. I'm almost done. I may have
16 asked you this already, but as a landlord, did you
17 believe it was your duty to provide a safe home,
18 house, for him?
19 A Yes, of course.
20 Q All right. Now, if there is no plyboard right --
21 if there's a gap in the plyboard when you get off
22 of the stairs, do you think that's a safe -- do you
23 think that's a safe area?
24 Mr. Daniels: Object to the form.
25 Q You can answer it. If there's no plyboard between

28

1 the -- right when you get off of the stair, do you
2 think that's -- that's a safe condition?
3 Mr. Daniels: Object to the form.
4 A It really -- if there's no plyboard there, I can't
5 say if it's safe or not. What I can say is that
6 the attic was an unfinished attic and whatever the
7 contractor, Mango, put up there was what was passed
8 by inspection when the home was built.
9 Q Okay. Did you ever tell Mr. Young it was an
10 unfinished attic?
11 A No, I did not.
12 Q Okay. All right. You had it repaired after the
13 fact?
14 A I did.
15 Q Do you know whether they put plyboard there when it
16 was repaired?
17 A I cannot say, no, sir.
18 Q Okay. Do you know of anything Mr. Young did wrong
19 in causing his accident?
20 A Well, as -- I'm not saying he was wrong when he
21 walked on an insulated floor, but typically as an
22 adult we look at things before we walk on it to
23 make sure if it's going to hold our weight. I know
24 there have been guys from SCE&G went up in the
25 attic. One of the guys that I know went and

2 and neither one of those fell through it because
3 they were stepping on beams. And I heard them tell
4 me well, you know, you have to be careful when you
5 go in the attic because you just can't step
6 anywhere.

7 Q Okay.

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

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

12 A I didn't expect for it to -- no, I did not.

13 Q Okay. Did you ever tell Angel that anybody
14 couldn't use the attic or that it was unsafe?

15 A I didn't tell Angel anything about anything. As
16 far as me being a landlord, I was the one
17 communicated, you know, when things need to be
18 done. I was notified and I'll communicate to Angel
19 go out there and take care of what needs to be
20 handled.

21 Q Other than the SCE&G people telling you that it's
22 dangerous or you had to be careful where you
23 stepped, are you aware of any other incidents that
24 occurred up there?

25 A No. No other than went up there and fixed the air

30

1 conditioning.

2 Q Is there anything else you want to tell me about
3 this case that you think is important to either Mr.
4 Young's complaint or your defense?

5 A I just know, you know, I provided a safe
6 environment for Mr. Young as far as what I was
7 notified of. If he had any complaints, I was right
8 there, you know, getting things repaired for him
9 and I deal with it to the best of my ability in a
10 timely manner. I prorated his rent when the air
11 conditioning went out. He said the sink wasn't
12 mounted to the floor properly. I had it replaced.
13 I had it fixed. The shower head, I had it fixed.
14 The home was a -- is a very nice home when I got
15 finished remodeling it or else he wouldn't have
16 been in it because he said he liked nice things.
17 So therefore I know according to how my home is for
18 myself, I like other people to be in nice
19 environments as well so I made sure the house was
20 really nice because just -- just what I provide for
21 myself, I want others to have the same kind of
22 enjoyment.

23 Q I understand that. I appreciate that. But just so
24 I'm clear, do you know what that area that he fell
25 in, what it looked like from inside the attic?

1 A No, I do not.

2

3 Mr. Clark: Give me just one second. Let
4 me speak with Mr. Young. I think I'm done.
5 (off the record briefly at 12:54 p.m.)

6 Mr. Clark: Ms. Poole, thank you so much
7 for coming. Mr. Young couldn't think of
8 anymore questions and I don't have anymore
9 questions to ask you, okay? Thank you. Have
10 a good day. Now, your lawyer might have a few
11 questions.

12 Cross-examination

13 By Mr. Daniels:

14 Q I have a couple of questions for you. We'll be
15 brief, okay? Ms. Poole, I'm going to look at the
16 lease that I believe is in front of you and is
17 marked as Defendant's Exhibit Number Three, okay?

18 A Uh-huh.

19 Q Do you recognize -- is that your handwriting at the
20 top? Is that your name?

21 A It is.

22 Q And this is the same lease that your tenant, the
23 plaintiff, signed, is that right?

24 A That's correct.

25 Q Okay. There's a couple sections I want to go
through with you very briefly. If you turn to the

32

1 second page at the bottom under Section 14 that's
2 titled Condition of the Premises.

3 A Okay.

4 Q It says tenant agrees to. Section Four which is at
5 the top of the third page, it says tenant agrees to
6 quote. Can you read that for us?

7 A "Notify landlord in writing upon discovery of any
8 damages, defects or dangerous conditions in and
9 about the premises."

10 Q Thank you. Did the tenant ever notify you in
11 writing of any damages to the property?

12 A No, he did not.

13 Q Okay. And other than, of course, the shower head
14 and the sink and the HVAC, which you repaired, is
15 that correct?

16 A That's correct.

17 Q Is it also true that the tenant did not notify you
18 at any time of any defects or dangerous conditions
19 on the premises?

20 A He did not.

21 Q And any time that he did notify you of any work to
22 be done, did you take care of that work?

23 A I did.

24 Q And did he ever complain that you did not take care
25 of it or that you took too long?

- 2 Q You took care of it in a timely way, is that right?
- 3 A Yes. Right.
- 4 Q Okay. And we heard from the plaintiff earlier
- 5 today that he had been in the attic at least ten
- 6 times before the day that he fell. After any of
- 7 those ten visits to the attic, had he ever told you
- 8 that the attic was in dangerous condition?
- 9 A No, he did not.
- 10 Q Did he ever ask you to make any modifications to
- 11 the attic?
- 12 A No, he did not.
- 13 Q Did he ever ask you to lay any plywood down for him
- 14 to walk on?
- 15 A No, he did not.
- 16 Q Did he ever ask you if he could walk on insulation?
- 17 A No, he did not.
- 18 Q Okay. The next section just below Section Five, it
- 19 says tenant acknowledges that they have examined
- 20 the entire interior and exterior of the premises,
- 21 including these various parts, and have found them
- 22 to be in good, clean condition and repair. Did the
- 23 tenant sign this document when you leased the
- 24 property to him?
- 25 A He did.

1 says that the tenant agrees to properly use the

2 premises. You've heard testimony today that the

3 plaintiff indicated that he's 220 pounds, was

4 wearing steel-toed boots and carrying two hedge

5 clippers while walking on the insulation. In your

6 view, was he properly using the premises?

7 Mr. Clark: Object to -- well, never mind.

8 Go ahead.

- 9 A Can you repeat that, please.
- 10 Q Sure. Based on what you've heard from the tenant
- 11 this morning, do you believe he was properly using
- 12 the premises when he was walking on the insulation?
- 13 A No, I do not.
- 14 Q Okay. Let's talk about the storage space briefly.
- 15 Now, we've heard that there was a storage shed on
- 16 the property. Can you tell us about that shed? Is
- 17 it a walk in shed?
- 18 A It's a walk in shed. I don't know -- I can't
- 19 recall the size of it, though.
- 20 Q Okay. And how many bedrooms does your house have?
- 21 A It's a three bedroom home.
- 22 Q And did you lease it to one person?
- 23 A One person.
- 24 Q Just the plaintiff, is that correct?
- 25 A That's correct.

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- 1 Q And did you give him the opportunity to look around
- 2 inside before he leased the property?
- 3 A I did. I told him to do a checklist of things that
- 4 he found that may be out of order.
- 5 Q And what did he tell you?
- 6 A He just said it was some blinds that was too short
- 7 and was no blinds in one part of the home.
- 8 Q Okay. So before he leased the property, you opened
- 9 the home and let him inspect it, is that right?
- 10 A Yes.
- 11 Q Did you tell him not to inspect any part of the
- 12 house?
- 13 A No, I did not.
- 14 Q Did you prohibit him from inspecting the attic?
- 15 A I did not.
- 16 Q Okay. And after you opened the home and allowed
- 17 him to inspect, he told you that one set of blinds
- 18 was too short and some other windows were missing
- 19 blinds, is that right?
- 20 A That's correct.
- 21 Q After his inspection, did he tell you that he had
- 22 any problem with the way the attic was designed?
- 23 A No, he did not.
- 24 Q Okay. In the same section on Subsection One of
- 25 Section 14, it's Condition of the Premises. It

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- 1 Q And you've later learned that there may have been
- 2 another tenant as well?
- 3 A That's correct.
- 4 Q And that's his brother?
- 5 A Correct.
- 6 Q Okay. So there's a three bedroom house for a
- 7 single tenant that you rented to that may have also
- 8 housed his brother, is that right?
- 9 A That's correct.
- 10 Q And he also had access to the storage shed?
- 11 A That's correct.
- 12 Q Did he ever ask you if he could access the attic
- 13 space?
- 14 A No, he did not.
- 15 Q Did he ever ask you if he could store his
- 16 belongings in the attic space?
- 17 A No, he did not.
- 18 Q Did he ever ask you if he could walk on insulation
- 19 in the attic space?
- 20 A No, he did not.
- 21 Q Okay. And, finally, we've heard about a repairman
- 22 who had been to your property at some time three to
- 23 five years ago doing some renovation work. His
- 24 name is Angel, is that right?
- 25 A Uh-huh. That's correct.

2 A He was at the time, yes.
 3 Q If you have a leaky faucet, you call Angel to fix
 4 the leaky faucet, is that right?
 5 A That's correct.
 6 Q Okay. Is Angel the property manager?
 7 A No, he's not.
 8 Q Is he the property owner?
 9 A No, he's not.
 10 Q Does he exercise any ownership or control over the
 11 property that you owned?
 12 A No, he does not.
 13 Q Did you give him permission to speak on your behalf
 14 as a property manager?
 15 A No, I did not.
 16 Q Okay. And based on your communications with the
 17 plaintiff when you leased your property to him, did
 18 you make it clear that you were the only landlord?
 19 A That's correct.
 20 Q Did you ever tell him to talk to Angel if he had
 21 questions about how to use the property?
 22 A No, I did not.
 23 Q Okay. And did he ever call you with any questions
 24 about the attic space?
 25 A No, he didn't.

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 1 Q And did he ever call you with any requests to
 2 modify or repair the attic space?
 3 A No, he did not.
 4 Q Okay. And the final two questions. And I know you
 5 may have answered this, but I just wanted to be
 6 clear, okay? At any time before the date that the
 7 plaintiff fell, did he notify you verbally that
 8 there was any condition in the attic that he wanted
 9 you to repair?
 10 A No, he did not.
 11 Q At any time before the date that he was injured,
 12 did the plaintiff notify you in writing that there
 13 was anything wrong with the attic or that there was
 14 anything in the attic that he wanted you to repair?
 15 A No, he did not.
 16 Mr. Daniels: Thank you. I don't have any
 17 further questions for you.
 18 Mr. Clark: No further questions.
 19 (Whereupon the deposition was concluded at
 20 1:02 p.m.)
 21
 22
 23
 24
 25

State of South Carolina)
 County of Lexington) Certificate

Be it known that the foregoing deposition of
 was taken before me;
 That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
 to administer an oath;
 That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;
 The foregoing transcript of 38 typewritten
 pages represents a true, accurate and complete
 transcription of the testimony so given at the time and
 place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.
 Signed this 13th day of November, 2015.

Cheri B. Williams, CVR-M

Notary Public for South Carolina
 My commission expires May 13, 2025.

Note: Recordings are retained for twelve (12) months
 from date of certification.

Exhibit C:

Residential Lease Agreement

RESIDENTIAL LEASE AGREEMENT

1. **IDENTIFICATION OF PARTIES AND PREMISES** This Agreement is made and entered into this 8th day of June, 2012 between the following named persons:

Valerie Poole
Valerie Poole

and

Cedric Young
Cedric Young

(herein called "Tenants") and Lessor (herein called "Landlord"). Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, the premises located at 16 Thornberry Court, Columbia, SC 29229, California (herein called "the premises"). The premises shall be occupied only by the above mentioned Tenants. Tenants shall use the premises for residential purposes only and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and shall be considered a breach of this Agreement.

2. **INDIVIDUAL LIABILITY** Each tenant who signs this Agreement, whether or not said person is or remains in possession, shall be jointly and severally liable for the full performance of each and every obligation of this Agreement, but not limited to, the payment of all rent due and the payment of costs to remedy damages to the premises regardless of whether such damages were caused by a Tenant or invitee of a Tenant.

3. **TERM OF THE TENANCY** The term of this Agreement shall commence on June 8th 2012 and shall continue from that date

D a. on a month-to-month basis. This Agreement will continue for successive terms of one month each until either Landlord or Tenants terminate the tenancy by giving the other thirty (30) days notice of an intention to terminate the premises. In the event such notice is given, Tenants agree to pay all rent up to and including the notice period.

D b. For a period of 12 months expiring on June 8th 2013 - Should Tenants

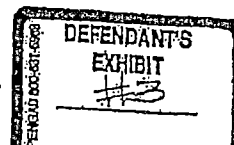
vacate before the expiration of the term, Tenants shall be liable for the balance of the rent for the remainder of the term, less any rent Landlord collects or could have collected from a replacement tenant by reasonably attempting to re-rent. Tenants who vacate before expiration of the term are also responsible for Landlord's costs of advertising for a replacement tenant. In the event Tenants fail to give written notice of an intention to vacate the premises at the end of the term, the tenancy shall become one of month-to-month on all terms specified in section (a) of this clause.

4. **PAYMENT OF RENT** Tenants shall pay Landlord rent of \$850 (cash only) per month, payable in advance or on the 3rd of each month. If that day falls on a weekend or legal holiday, the rent is due on the next business day. Rent shall be paid by cash only, to Valerie Poole at, said location _____, or at such other place as Landlord shall designate from time to time.

5. **LATE CHARGES** If rent is paid after the 3rd day of the month there will be Late charge of \$ 50.00 (Fifty Dollars) assessed.

6. **FAILURE TO PAY** As required by law, Tenants are hereby notified that a negative credit report reflecting on Tenants' credit history may be submitted to a credit reporting agency if Tenants fail to fulfill the terms of their credit obligations, such as their financial obligations under the terms of this Agreement.

7. **SECURITY DEPOSIT** Before the commencement of this Agreement, Tenants shall pay Landlord \$850 as a security deposit. Landlord may use there from such amounts as are reasonably necessary to remedy Tenants' default in the payment of rent, repair damages to the premises exclusive of ordinary wear and tear, and to clean the premises if necessary. Landlord shall refund Tenants the balance of the security deposit after such deductions within



twenty-one (21) days after the expiration of this Agreement. If deductions have been made, Landlord shall provide Tenants with an itemized account of each deduction including the reasons or and the dollar amount of each deduction.

Interest payments on security deposits accrue as follows:

- ☐ a. Local law does not require Landlord to pay interest on security deposits.
- ☐ b. Local law requires Landlord to pay Tenants interest payments on security deposits as follows:

N/A

8. **UTILITIES** Tenants shall pay directly for all utilities, services and charges provided to the premises, including any and all deposits required, except for the following, which shall be paid by Landlord:

- ☐ a. None.
- ☐ b.

N/A Tenants responsibility

9. **PARKING** Tenants are assigned parking as follows:

- ☐ a. None.
- ☐ b.

This space shall be used for the parking of 2 car(s) only. Tenants may not repair vehicles of any kind in any parking space or anywhere else on or about the property. Grease, oil and any other drippings must be cleaned by Tenants when they occur and at Tenants' expense. Cars are not to be washed on or about the premises. In addition to rent, Tenants shall pay Landlord a parking fee of \$ N/A per month. This fee is payable in advance along with the rent and shall be paid at the same address as designated by Landlord for payment of rent.

10. **PETS** No animal, bird or other pet shall be brought on or kept on the premises without Landlord's prior written consent, except for the following:

- ☐ a. None.
- ☐ b. **NO PETS ALLOWED**

11. **QUIET ENJOYMENT** Tenants shall be entitled to quiet enjoyment of the premises. Tenants shall not use the premises in such a way as to violate any law or ordinance, commit waste or nuisance, or annoy, disturb, inconvenience, or interfere with the quiet enjoyment of any other or nearby resident.

12. **ASSIGNMENT AND SUBLETTING** No portion of the premises shall be sublet nor this Agreement assigned without the prior written consent of the Landlord. Any attempted subletting or assignment by Tenants shall, at the election of Landlord, be an irremediable breach of this Agreement and cause for immediate termination as provided here and by law.

13. **POSSESSION OF THE PREMISES** The failure of Tenants to take possession of the premises shall not relieve them of their obligation to pay rent. If Landlord is unable to deliver possession of the premises for any reason not within Landlord's control, Landlord shall not be liable for any damage caused thereby, nor will this Agreement be void or voidable, but Tenants shall not be liable for any rent until possession is delivered. If Landlord is unable to deliver possession within 15 calendar days after the agreed commencement date, Tenants may terminate this Agreement by giving written notice to Landlord, and shall receive a refund of all rent and security deposits paid.

14. **CONDITION OF THE PREMISES** Tenants agree to
- (i) properly use, operate and safeguard the premises and all furniture and furnishings, appliances and fixtures within the premises,
 - (ii) maintain the premises in clean and sanitary condition, and upon termination of the tenancy, to surrender the premises to Landlord in the same condition as when Tenants first took occupancy, except for ordinary wear and tear,
 - (iii) if the surrounding grounds are part of the premises and for exclusive use of Tenants, Tenants agree to irrigate and maintain the surrounding grounds in a clean and safe manner, keeping the grounds clear of rubbish and weeds and trimming all grass and shrubbery as necessary to effect a neat and orderly appearance to the property.

- (iv) notify Landlord in writing upon discovery of any damages, defects or dangerous conditions in and about the premises; and
- (v) reimburse Landlord for the cost of any repairs to the premises of damages caused by misuse or negligence of Tenants or their guests or invitees.

Tenants acknowledge that they have examined the entire interior and exterior of the premises, including plumbing, heating and electrical appliances, smoke detector(s), fixtures, carpets, drapes and paint, and have found them to be in good, safe and clean condition and repair, with the following exceptions: (Specify "none" if there are no exceptions)

15. **REPAIRS, ALTERATIONS AND DAMAGES** Except as provided by law or as authorized by the prior written consent of Landlord, Tenants shall not make any repairs or alterations to the premises, including but not limited to, painting the walls, installing wallpaper, murals, paneling, tile, or hanging posters or pictures weighing in excess of twenty pounds.

If the premises are damaged or destroyed as to render them uninhabitable, then either Landlord or Tenants shall have the right to terminate this Agreement as of the date on which such damage occurs, through written notice to the other party to be given within fifteen days of occurrence of such damage. However, if such damage should occur as the result of the conduct or negligence of Tenants or Tenants' guests or invitees, Landlord only shall have the right to termination and Tenants shall be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

16. **EMERGENCY ENTRY AND INSPECTION** Tenants shall make the premises available to Landlord or Landlord's agents for the purposes of making repairs or improvements, or to supply agreed services or show the premises to prospective buyers or tenants, or in case of emergency. Except in case of emergency, Landlord shall give Tenants reasonable notice of intent to enter. For these purposes, twenty-four (24) hour written notice shall be deemed reasonable, and reasonable hours shall be defined as _____ to _____ Monday through Friday and _____ to _____ on Saturdays. In order to facilitate Landlord's right of access, Tenants shall not, without Landlord's prior written consent, add, alter or re-key any locks to the premises. At all times Landlord shall be provided with a key or keys capable of unlocking all such locks and gaining entry. Tenants further agree to notify Landlord in writing if Tenants install any burglar alarm system, including instructions on how to disarm it in case of emergency entry.

17. **EXTENDED ABSENCES AND ABANDONMENT** In the event Tenants will be away from the premises for more than 14 consecutive days, Tenants agree to notify Landlord in writing of the absence. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damages and needed repairs. Landlord

Abandonment is defined as absence of the Tenants from the premises, for at least 30 consecutive days without notice to Landlord. If the rent is outstanding and unpaid for fourteen (14) days and there is no reasonable evidence, other than the presence of the Tenants' personal property, that the Tenants are occupying the unit, Landlord may at Landlord's option terminate this agreement and regain possession in the manner prescribed by law.

18. **INSURANCE DISCLAIMERS** Tenants assume full responsibility for all personal property placed, stored or located on or about the premises. Tenants' personal property is not insured by Landlord. Landlord recommends that Tenants obtain insurance to protect against risk of loss from harm to Tenants' personal property. Landlord shall not be responsible for any harm to Tenants' property resulting from fire, theft, burglary, strikes, riots, orders or acts of public authorities, acts of nature or any other circumstance or event beyond Landlord's control.

19. **HOLD HARMLESS** Tenants expressly release Landlord from any and all liability for any damages or injury to Tenants, or any other person, or to any property, occurring on the premises unless such damage is the direct result of the negligence or unlawful act of Landlord or Landlord's agents.

20. **SMOKE DETECTORS** The premises are equipped with a smoke detection device(s), and Tenants shall be responsible for reporting any problems, maintenance or repairs to Landlord. Replacing batteries is the responsibility of Tenants.

21. **LEAD BASED PAINT DISCLOSURE** By initialing, Tenant acknowledges receipt of disclosure of information on lead-based paint and lead-based paint hazards. Landlord has no reports or knowledge of lead-based paint on the premises.
Tenants initial here: _____

22. **LIQUID-FILLED FURNITURE** Tenant shall not use or have any liquid-filled furniture on the premises without Landlord's prior written consent.

23. **ADDITIONAL PROVISIONS** (Specify "none" if there are no additional provisions)

24. **ENTIRE AGREEMENT** This document constitutes the entire Agreement between the Tenants and Landlord. This Agreement cannot be modified except in writing and must be signed by all parties. Neither Landlord nor Tenants have made any promises or representations, other than those set forth in this Agreement and those implied by law. The failure of Tenants or their guests or invitees to comply with any term of this Agreement is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

Valerie Poole
Landlord/Manager

100 pepper grass drive
Elgin SC 29045
Landlord/Manager's Street Address, City, State & ZIP

Adrian & Yung
Tenant

Tenant

Tenant

Tenant

6/8/12
Date

June 8, 2012
Date

Date

Date

Date

August 23, 2016

Honorable Jeanette W. McBride, Clerk
Richland County Clerk of Court
Post Office Box 2766
1701 Main Street
Columbia, SC 29202-2766

Re: Cedric Young vs. Valerie Poole
Civil Action No.: 2015-CP-40-3235
Claim No.: 15035062-6
Insured: Valerie Poole
Date of Loss: 08-17-12
Our File No.: 3250-0870

Dear Ms. McBride:

Enclosed please find an original and one copy of Defendant's Memorandum in Support of Motion for Summary Judgment in regards to the above-referenced matter. It would be most appreciated if you would file the original and return the clocked copy to my office in the enclosed envelope.

By copy of this letter to counsel of record, I am serving them with a copy of the Memorandum.

Thank you for your assistance in this matter.

With warm regards, I remain

Sincerely yours,

Elliott B. Daniels

EBD/dlb

Enclosures

CC: John D. Clark, Esquire
Dina M. Hester (via e-mail)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Timothy J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Han

*Member-American Board of Trial Advocates

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cedric E. Young,

Plaintiff,

-v-

Valerie Poole,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No.: 15-CP-40- 3235

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
JANETTE W. MCBRIDE
C.C.P. & G.S.
SEP -2 AM 11:52

This matter comes before the Court on August 22, 2016 on Defendant's Motion for Summary Judgment. Based on the evidence presented and the arguments of Counsel, Defendant's motion must be Denied.

Plaintiff filed this negligence action against Defendant on June 1, 2015 for injuries sustained by him on residential property leased to him by Defendant. In its Answer dated July 16, 2015 Defendant asserted a general and specific denial, that Plaintiff failed to state a cause of action and that Plaintiff's claims for punitive damages are unconstitutional. On September 10, 2015, Defendant filed the instant Motion for Summary Judgment on the basis that there is no issue of material fact.

FACTS

Plaintiff alleges that he entered a residential lease agreement with Defendant wherein Plaintiff leased a residence owned by Defendant located at 16 Thornberry Court Columbia, SC. During the lease term, the Plaintiff lived at the residence with his brother. The residence had a storage shed in the rear, but the previous resident had not

cleaned out their property from the shed when Plaintiff moved into the leased property.

Since the shed could not be used for storage, the Plaintiff asked Defendant's

maintenance worker, Angel DeLeon, who was present on the property when Plaintiff moved in, where Plaintiff could store his property. Angel DeLeon told Plaintiff that he could use the attic and showed Plaintiff the attic by pulling down the ladder. Defendant admits that use of the attic was included in the lease.

After moving in the leased premises, Plaintiff and his brother stored their personal property in the attic. On April 17, 2012 Plaintiff went into the attic of the residence to retrieve a set of hedge trimmers and a connecting cord that were stored there. As he proceeded to exit the attic, Plaintiff stepped into an area directly in front of the attic stairs that looked to Plaintiff to be a walking surface but was not, and the area beneath Plaintiff collapsed causing plaintiff to fall through the ceiling down to the floor.

Defendant testified that she has never actually been into the attic but admits that prior to Plaintiff's accident, she walked up the ladder and looked into the attic but did not step off of the ladder. A part of the attic was finished with a wooden walking surface where property could be stored and other parts of the attic only consisted of exposed wooden beams with insulation on top. Also, defendant admits that she was told the attic was dangerous by repairmen who went into the attic prior to Plaintiff's fall but did not tell Plaintiff of the dangerous conditions.

After the incident, when Plaintiff advised Defendant of the fall, Defendant asked Plaintiff why didn't he call her before going into the attic because she would have let

him know that "the attic you can only step in certain places. Well certain places within the attic because they are dangerous."

SUMMARY JUDGMENT STANDARD

Rule 56(c) SCRPC 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 triable 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)

DISCUSSION

- I. BECAUSE THE DANGEROUS CONDITION ON THE PREMISES WAS A LATENT DEFECT THAT EXISTED AT THE TIME THE PLAINTIFF TOOK POSSESSION OF THE PREMISES, PLAINTIFF WAS NOT REQUIRED NOTIFY DEFENDANT OF THE DANGEROUS CONDITION.

The Defendant argues that plaintiff cannot recover on its negligence claim for violations under the SC Residential Landlord-Tenant Act because Plaintiff failed to give the Defendant landlord notice of the violations constituting the dangerous conditions.

Plaintiff 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 Landlord-Tenant act during the term of the lease, but Plaintiff is not required to give notice of latent conditions that exist at the time Plaintiff takes possession of the premises under Plaintiff's traditional negligence claim independent of the Landlord-Tenant Act. In other words, Plaintiff may not be able to prove negligence for violations

under the Landlord-Tenant Act, but Plaintiff has pleaded and put forth evidence of negligence under a traditional negligence claim.

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. Morrissey, 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.

However, 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

In this case, the Plaintiff contends that there is a genuine issue of material fact of whether the Defendant knew or should have known that the dangerous conditions in the attic would not be obvious to the Plaintiff. The Defendant admits that while she has never been into the attic, she did climb the stairs of the attic before Plaintiff's accident and looked around. The Court notes that while Defendant stood at the top of the stairs and looked around she would have been directly in front of the area where Plaintiff fell. Defendant testified in her deposition that she looked around and saw plywood around the area. Defendant does not mention that there were any dangerous conditions obvious to her.

Defendant 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. (Poole Dep. 16:13-21, Oct. 13, 2015.)
- Q. You climbed up on the stairs. Is there any plywood surfaces up there?
- A. Right around the stairwell I saw that there was some plywood right there. (Poole Dep. 23:2-5.)

At some point prior to Plaintiff's accident, Defendant was told by repairmen who went into the attic that the attic was dangerous and that you "cannot step anywhere." Furthermore, Defendant testified that if she had known Plaintiff was going into the attic she would have told him that it was dangerous.

Defendant'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. (Poole Dep. 21:23-22:4.)

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? (Poole Dep. 28:18-29:12.)

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

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

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 Defendant knew or should have known that the dangerous condition would not be obvious to the Plaintiff and whether Defendant failed to use due care to discover and warn of the dangerous condition.

II. BECAUSE THERE IS A GENUINE ISSUE OF FACT ON THE ISSUE OF WHETHER THE CONDITON WAS OPEN AND OBVIOUS DEFENDANT IS NOT ENTITLED TO SUMMARY JUDGMENT.

Plaintiff submits that there is a genuine issue of material fact on the issue of whether the condition was open and obvious. Therefore, Defendant's Motion for Summary Judgment must be denied.

Plaintiff 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 question.

Plaintiff 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. (Young Dep. 47:6-16, Oct 13, 2015.)

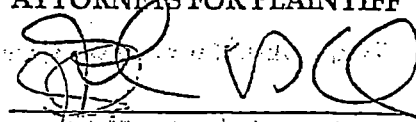
Considering all of the evidence and the inferences drawn therefrom in a light most favorable to Plaintiff, there is at least a scintilla of evidence warranting determination by a jury of whether the condition was open and obvious.

CONCLUSION

Based on the above, Plaintiff respectfully request that Defendant's Motion for Summary Judgment is denied.

(Signature Block on Next Page)

CLARK LAW FIRM, L.L.C.
ATTORNEYS FOR PLAINTIFF



JOHN D. CLARK, ESQUIRE

22 East Liberty Street

Post Office Drawer 880

Sumter, South Carolina 29151-0880

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jclark@theclarklawfirm.com

Sumter, South Carolina
August 22, 2016

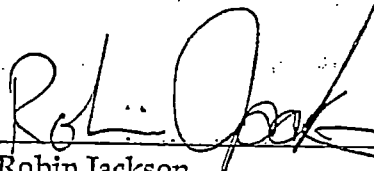
CERTIFICATE OF SERVICE

The undersigned employee of the Clark Law Firm, L.L.C., Attorney for the Plaintiff, do hereby certify that service of the Plaintiff's Memorandum in Opposition of Defendant's Motion for Summary Judgment in the above-referenced action was made upon all counsel of record by placing a copy of same in the United States Mail, first-class postage prepaid, to the following address:

Elliott B. Daniels, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia SC 29260

Dated: _____

8/31/16


Robin Jackson
Civil Litigation Paralegal

2016 SEP -2 AM 11:52
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

COUNTY OF RICHLAND

CIVIL ACTION NO.: 2015-CP-40-3235

Cedric Young,

Plaintiff,

v.

Valerie Poole,

Defendant.

Proposed Order Granting Defendant's
Motion for Summary JudgmentRICHLAND COURT
FILED
2016 OCT 24 AM 11:28
JEANETTE E. MCBRIDE
CLERK, S.C.

This matter came before the Court on Defendant Valerie Poole's Motion for Summary Judgment. Attorney John Clark of the Clark Law Firm appeared for the Plaintiff and attorney Elliott B. Daniels of Murphy & Grantland, PA appeared for the Defendant. The Court heard and considered oral arguments of counsel, and Plaintiff's and Defendant's memoranda of law. Because there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law, the Court hereby grants Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FINDING OF FACTS

The following facts are not in dispute, and are construed in a light most favorable to Plaintiff: Plaintiff asserts this negligence action under the S.C. Residential Landlord and Tenant Act (hereafter, "the Act" or "Landlord-Tenant Act") arising out of an injury occurring on August 17, 2012 when Plaintiff walked directly on the insulation of an attic in a rental unit owned by Defendant. At the time of the injury, Plaintiff was a tenant who leased and lived in Defendant's rental unit located at 16 Thornberry Court, Columbia. Through the Lease, executed before moving in, Plaintiff agreed to "properly use the premises" and to "notify the landlord in writing upon discovery of any dangerous condition on the premises."

Plaintiff accessed the attic space for the first time on his move-in date, and he accessed the attic space "more than ten times" before the date of the injury. Plaintiff testified that every time he accessed the attic prior to the injury, he walked directly on the insulation and not on wooden beams.

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Plaintiff did not request the Defendant landlord modify or repair the attic space in any way prior to the injury. Plaintiff testified that there was nothing different about the Defendant's attic than any other attic he had ever been in. Plaintiff did not provide notice of the alleged dangerous condition to the landlord at any time before the injury.

On the date of the injury, Plaintiff lowered the access ladder into the attic, and while inside the attic, Plaintiff, who weighs 220 pounds, walked directly on the insulation of the unfinished attic wearing steel toed boots. Plaintiff did not believe there was anything wrong with this practice. Plaintiff picked up two hedge clippers and one rolled up extension cord while in the attic, and, with the equipment in hand, Plaintiff walked on the insulation towards the hatch door. With the hatch door open, Plaintiff threw the cord down to the second floor carpet, and, as he continued to walk on the insulation, Plaintiff's foot pushed through the second floor ceiling sheetrock, and a foot injury resulted.

On May 15, 2015, Plaintiff filed his Complaint, alleging negligence under the Landlord-Tenant Act. Written discovery and party depositions are complete. On September 10, 2015, Defendant filed her Motion for Summary Judgement, which was heard on August 22, 2016. After considering all arguments of counsel, the Court hereby grants Defendant's Motion for Summary Judgement.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Flemming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002). Summary judgment is appropriate where "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." Rule 56(c), SCRCP; *see also*

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A court should grant summary judgment when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000). "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). "In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. American Tel. & Tel. Co.* 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

ANALYSIS

- I. ~~BECAUSE~~ **THE PLAINTIFF TENANT FAILED TO GIVE THE DEFENDANT LANDLORD NOTICE OF THE ALLEGED CONDITION, PLAINTIFF'S ACTION IS BARRED UNDER THE LANDLORD-TENANT ACT, AND DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

"Traditionally, under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition." *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426, 428 (1985). The Landlord-Tenant Act, enacted in 1986, was passed "to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants." S.C. Code Ann. § 27-40-20(b)(1) (2007). Principally, the Act "requires a landlord to comply with applicable housing codes materially affecting health and safety, and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann. § 27-40-440(a)(1)-(2) (2007). The Act defines the duties and obligations a landlord owes its tenant,

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and, in so abrogating the common law, provides a statutory cause of action for a tenant against its landlord where those duties are breached. *Id.*, § 27-40-30; *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630, 632 (1996).

In 1989, three years after the Act's passage, the South Carolina Court of Appeals held that the Act "by express words creates a cause of action in tort in favor of a tenant of residential property against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010); referencing *Watson v. Sellers*, 299 S.C. 426, 432, 385 S.E.2d 369, 372 (Ct. App. 1989). The Court of Appeals in *Watson* emphasized the notice requirement:

"We hold that the preamble and the Act clearly convey an intent on the part of the Legislature to provide for a cause of action for injuries resulting from the failure of the landlord, after notice, to keep rented residential premises in repair."

Watson v. Sellers, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989).

The notice requirement – even in cases where the residential unit fails to comply with safety standards – has been applied without exception in South Carolina courts for more than twenty-five years. See *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 496 (Ct. App. 2009) (holding that because tenant failed to notify property owner of the lack of smoke detectors, "they could not state a claim under the SCRLTA"); *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010) (citing decisions handed down by South Carolina Courts in determining that "the South Carolina Supreme would require that a landlord have notice of a defect before being liable to the tenant under the SCRLTA" where a tenant was severely injured after falling when a balcony railing gave way). Courts have made clear that "the SCRLTA states that the tenant's rights 'do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time.'" *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010).

Here, the parties agree that Plaintiff failed to provide Defendant with notice of the alleged condition at any time prior to the injury. Plaintiff testified that he visited the attic at least ten times before

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his injury, but that he "never" notified the landlord of any condition that needed to be repaired. The

Defendant landlord confirmed the same:

Q [W]e heard from the plaintiff earlier today that he had been in the attic at least ten times before the day that he fell. After any of those ten visits to the attic, had he ever told you that the attic was in dangerous condition?

A No, he did not.

Q Did he ever ask you to make any modifications to the attic?

A No, he did not.

Q Did he ever ask you to lay any plywood down for him to walk on?

A No, he did not.

Q Did he ever ask you if he could walk on insulation?

A No, he did not.

Q At any time before the date that the plaintiff fell, did he notify you verbally that there was any condition in the attic that he wanted you to repair?

A No, he did not.

Q At any time before the date that he was injured, did the plaintiff notify you in writing that there was anything wrong with the attic or that there was anything in the attic that he wanted you to repair?

A No, he did not.

(Poole Depo. 33:4-17; 38:6-15).

Because the Plaintiff tenant failed to notify the Defendant landlord the alleged condition at any time prior to the injury, the Plaintiff's claim is barred under the Landlord-Tenant Act. As state and federal courts in South Carolina have consistently held, the Landlord-Tenant Act requires tenants provide a landlord (1) written notice of a defective condition and (2) a reasonable opportunity to repair before liability attaches under the Act. Plaintiff failed to provide either, and, accordingly, Plaintiff has not pled an actionable claim under the Act. Defendant is entitled to judgment as a matter of law.

Plaintiff's argument that a common law cause of action for negligence exists fails: the Court of Appeals has held that the Landlord-Tenant Act "is designed to abrogate the well-defined and established common law and embark on a course totally divergent from existing precedent in this area as to the duty of the landlord." *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). In so doing, the common law remedy for negligence by a tenant against its landlord in this

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context was abrogated in favor of an exclusive remedy under the Landlord-Tenant Act. The Plaintiff tenant's exclusive remedy for negligence against the Defendant landlord is under the statute, and Plaintiff's cause of action is fails as a matter of law under the statute.

Also, Plaintiff argued that because the condition – that it was unsafe for Plaintiff to walk directly on the attic insulation – was hidden and because Plaintiff had no knowledge of the condition prior to the injury, Plaintiff owed no duty under the statute to notify the landlord before liability attaches. The statute, however, requires notice and a reasonable opportunity to repair irrespective of Plaintiff's knowledge of the condition before liability attaches to a landlord under the Act.

Moreover, although Plaintiff's claim is barred for failure to provide notice alone, Plaintiff articulated a condition that was open and obvious – an unfinished attic – and South Carolina Courts have consistently held that there is no duty to warn of dangers that are open and obvious. *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 42, 674 S.E.2d 500, 504 (Ct.App. 2009); *Anderson v. Green Bull, Inc.*, 322 S.C. 268, 271-72, 471 S.E.2d 708, 710 (Ct.App. 1996); *Dema v. Shore Enterprises, Ltd.*, 312 S.C. 528, 530, 435 S.E.2d 875, 876 (Ct.App. 1993). As a result, the defendant landlord is “not required to warn of dangers or potential dangers that are generally known and recognized.” *Anderson*, 322 S.C. at 270, 471 S.E.2d at 710; *See also Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 529, 469 S.E.2d 630, 633 (Ct. App. 1996) (citing *Meadows v. Heritage Village Church & Missionary Fellowship, Inc.*, 305 S.C. 375, 378, 409 S.E.2d 349, 351 (1991) (affirming a landlord's grant of summary judgement because “mud was open and obvious natural condition and owners could not foresee tenant would choose to walk on mud rather than taking other routes”).

Here, the danger of walking directly on insulation is “generally known and recognized,” and, as in *Pryor*, the defendant landlord could not foresee that the Plaintiff tenant would choose to walk directly on the insulation – much less with steel toed boots and lawn equipment – rather than taking the safer route of walking on the beams. Moreover, Plaintiff testified that he accessed the space where he was injured more than ten times before his injury, demonstrating knowledge of the attic's condition,

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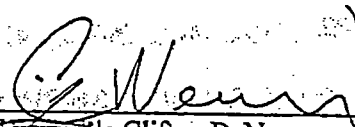
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and Plaintiff testified that the unfinished attic appeared no different from any other attic he had ever been in. Accordingly, even if Plaintiff's claim was actionable under the Landlord-Tenant Act, which it is not, the Defendant landlord owed no duty to warn the Plaintiff that the attic was unfinished, a condition that open, obvious, and "generally known and recognized."

CONCLUSION

Considering the above, and all arguments of counsel, the Defendant is entitled to judgement as a matter of law. Because the Plaintiff tenant failed to give the Defendant landlord notice of the alleged dangerous condition, Plaintiff's action is barred under the Landlord Tenant Act. The Act requires written notice and a reasonable time to repair before a landlord is liable in a premises liability action under the statute. Because Plaintiff failed to provide either, the Court hereby grants Defendant's Motion for Summary Judgement. **IT IS SO ORDERED.**


Honorable Clifton B. Newman
South Carolina Circuit Court Judge

Columbia, South Carolina
Oct 24, 2016

Cedric E Young

Valerie Poole

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$ _____
		\$ _____
		\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code **2127**

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of NOV, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of NOV, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

John Derrick Clark

John Martin Grantland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. Bride

SCRPC Form 4C (10/2011)

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COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-40-03235

Cedric E. Young

Plaintiff,

vs.

Valerie Poole

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

John D. Clark, Esquire, Bar No. 64296

Address:

22 E. Liberty St./P.O. Drawer 880, Sumter, SC
29151

Phone: (803) 775-1234 Fax (803) 775-8590

E-mail: jclark@theclarklawfirm.com Other: _____

Defendant's Attorney:

Elliott B. Daniels, Esquire, Bar No. _____

Address:

4406-B Forest Drive, Columbia, SC 29206

Phone: (803) 782-4100 ext. 1256 Fax (803) 782-
4140

E-mail: edaniels@murphygrantland.com Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend Judgment

Estimated Time Needed: 15

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted: 11/14/16

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____RICHLAND COUNTY
FILED

2016 NOV 18 AM 9:15

JEANETTE M. MCPERDIE
C.C.F. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cedric E. Young,

Plaintiff,

-v-

Valerie Poole,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No.: 15-CP-40- 3235

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND A JUDGMENT
(Rule 59(e) SCRPC)

JANETTE W. MCBRIDE
C.P. & G.S.

2016 NOV 18 AM 9:15

RICHLAND COUNTY
FILED

TO: THE HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE, FIFTH
JUDICIAL CIRCUIT AND ELLIOTT B. DANIELS, ESQUIRE, ATTORNEY
FOR THE ABOVE NAMED DEFENDANT:

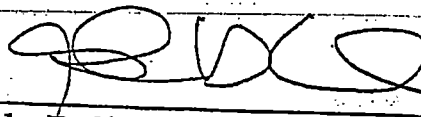
YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South
Carolina Rules of Civil Procedure, the Plaintiff by and through its undersigned Counsel,
will move before this Court, ten (10) days after service hereof, or as soon thereafter as
Counsel may be heard, for an Order Altering or Amending its Judgment granting
summary judgment to Defendant on October 24, 2016 and received by Plaintiff on
November 4, 2016.

The basis for said motion is that the Court did not issue ruling on certain issues
presented at the hearing by Plaintiff and that the said ruling is based on an error of law.

The undersigned Counsel affirms pursuant to SCRPC 11 that consultation with
opposing Counsel will serve no useful purpose.

(Signature Block on Next Page)

CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF



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Sharon B. Clark, Esquire, SC Bar No. 8626
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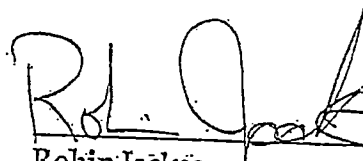
Sumter, South Carolina
November 14, 2016

CERTIFICATE OF SERVICE

The undersigned employee of the Clark Law Firm, L.L.C., Attorney for the Plaintiff, do hereby certify that service of the NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT in the above-referenced action was made upon all counsel of record by placing a copy of same in the United States Mail, first-class postage prepaid, to the following address:

Elliott B. Daniels, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia SC 29260

Dated: 11/14/16


Robin Jackson
Civil Litigation Paralegal

RICHLAND COUNTY
FILED
2016 NOV 18 AM 9:15
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Cedric E Young

Valerie Poole

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☒ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code 2127

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of Jan, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of Jan, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

John Derrick Clark

John Martin Grantland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette M. McRide

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cedric E. Young,

Plaintiff,

v.

Valerie Poole,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-40-3235

ORDER DENYING MOTION TO
ALTER OR AMEND A JUDGMENT

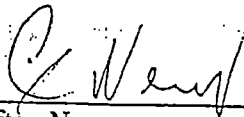
2017 JAN 18 AM 10:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

The Court issued an Order granting the Defendant's Motion for Summary Judgment on October 24, 2016. The Plaintiff subsequently filed a Motion to Alter or Amend a Judgment pursuant to Rule 59(g) of the South Carolina Rules of Civil Procedure. After careful consideration of the motion, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting the Motion to Alter or Amend a Judgment.

It is therefore, ORDERED that the Motion to Alter or Amend a Judgment is hereby DENIED.

AND IT IS SO ORDERED.


Clifton Newman
Presiding Judge

January 5, 2016
Columbia, South Carolina.

RESIDENTIAL LEASE AGREEMENT

1. IDENTIFICATION OF PARTIES AND PREMISES This Agreement is made and entered into this 8th day of June, 2012 between the following named persons:

Valerie Poole
Valerie Poole
100 PEPPER GRASS DR
ELGIN SC 29845

and Cedric Young
Cedric Young

(herein called "Tenants") and Lessee and Lessor (herein called "Landlord"). Subject to the terms and conditions set forth in this Agreement, Landlord rents to Tenants, and Tenants rent from Landlord, the premises located at 16 Thornberry Court, Columbia, SC 29229, California (herein called "the premises"). The premises shall be occupied only by the above mentioned Tenants. Tenants shall use the premises for residential purposes only and for no other purpose without Landlord's prior written consent. Occupancy by guests for more than ten days in any six-month period is prohibited without Landlord's written consent and shall be considered a breach of this Agreement.

2. INDIVIDUAL LIABILITY Each tenant who signs this Agreement, whether or not said person is or remains in possession, shall be jointly and severally liable for the full performance of each and every obligation of this Agreement, but not limited to, the payment of all rent due and the payment of costs to remedy damages to the premises regardless of whether such damages were caused by a Tenant or invitee of a Tenant.

3. TERM OF THE TENANCY The term of this Agreement shall commence on June 8th 2012 and shall continue from that date

D a. on a month-to-month basis. This Agreement will continue for successive terms of one month each until either Landlord or Tenants terminate the tenancy by giving the other thirty (30) days notice of an intention to terminate the premises. In the event such notice is given, Tenants agree to pay all rent up to and including the notice period.

D b. For a period of 12 months expiring on June 8th 2013 - Should Tenants vacate before the expiration of the term, Tenants shall be liable for the balance of the rent for the remainder of the term, less any rent Landlord collects or could have collected from a replacement tenant by reasonably attempting to re-rent. Tenants who vacate before expiration of the term are also responsible for Landlord's costs of advertising for a replacement tenant. In the event Tenants fail to give written notice of an intention to vacate the premises at the end of the term, the tenancy shall become one of month-to-month on all terms specified in section (a) of this clause.

4. PAYMENT OF RENT Tenants shall pay Landlord rent of \$850 (cash only) per month, payable in advance or on the 3rd of each month. If that day falls on a weekend or legal holiday, the rent is due on the next business day. Rent shall be paid by cash only, to Valerie Poole at, said location _____, or at such other place as Landlord shall designate from time to time.

5. LATE CHARGES If rent is paid after the 3rd day of the month there will be Late charge of \$ 50.00 (Fifty Dollars) assessed.

6. FAILURE TO PAY As required by law, Tenants are hereby notified that a negative credit report reflecting on Tenants' credit history may be submitted to a credit reporting agency if Tenants fail to fulfill the terms of their credit obligations, such as their financial obligations under the terms of this Agreement.

7. SECURITY DEPOSIT Before the commencement of this Agreement, Tenants shall pay Landlord \$850 as a security deposit. Landlord may use there from such amounts as are reasonably necessary to remedy Tenants' default in the payment of rent, repair damages to the premises exclusive of ordinary wear and tear, and to clean the premises if necessary. Landlord shall refund Tenants the balance of the security deposit after such deductions within _____

twenty-one (21) days after the expiration of this Agreement. If deductions have been made, Landlord shall provide Tenants with an itemized account of each deduction including the reasons or and the dollar amount of each deduction.

Interest payments on security deposits accrue as follows:

- ☐ a. Local law does not require Landlord to pay interest on security deposits.
- ☐ b. Local law requires Landlord to pay Tenants interest payments on security deposits as follows:

N/A

8. **UTILITIES** Tenants shall pay directly for all utilities, services and charges provided to the premises, including any and all deposits required, except for the following, which shall be paid by Landlord:

- ☐ a. None.
- ☒ b.

N/A Tenants responsibility

9. **PARKING** Tenants are assigned parking as follows:

- ☐ a. None.
- ☒ b.

This space shall be used for the parking of 2 car(s) only. Tenants may not repair vehicles of any kind in any parking space or anywhere else on or about the property. Grease, oil and any other drippings must be cleaned by Tenants when they occur and at Tenants' expense. Cars are not to be washed on or about the premises. In addition to rent, Tenants shall pay Landlord a parking fee of \$ N/A. per month. This fee is payable in advance along with the rent and shall be paid at the same address as designated by Landlord for payment of rent.

10. **PETS** No animal, bird or other pet shall be brought on or kept on the premises without Landlord's prior written consent, except for the following:

- ☐ a. None.
- ☒ b. NO PETS ALLOWED

11. **QUIET ENJOYMENT** Tenants shall be entitled to quiet enjoyment of the premises. Tenants shall not use the premises in such a way as to violate any law or ordinance, commit waste or nuisance, or annoy, disturb, inconvenience, or interfere with the quiet enjoyment of any other or nearby resident.

12. **ASSIGNMENT AND SUBLETTING** No portion of the premises shall be sublet nor this Agreement assigned without the prior written consent of the Landlord. Any attempted subletting or assignment by Tenants shall, at the election of Landlord, be an irremediable breach of this Agreement and cause for immediate termination as provided here and by law.

13. **POSSESSION OF THE PREMISES** The failure of Tenants to take possession of the premises shall not relieve them of their obligation to pay rent. If Landlord is unable to deliver possession of the premises for any reason not within Landlord's control, Landlord shall not be liable for any damage caused thereby, nor will this Agreement be void or voidable, but Tenants shall not be liable for any rent until possession is delivered. If Landlord is unable to deliver possession within 15 calendar days after the agreed commencement date, Tenants may terminate this Agreement by giving written notice to Landlord, and shall receive a refund of all rent and security deposits paid.

14. **CONDITION OF THE PREMISES** Tenants agree to

- (i) properly use, operate and safeguard the premises and all furniture and furnishings, appliances and fixtures within the premises,
- (ii) maintain the premises in clean and sanitary condition, and upon termination of the tenancy, to surrender the premises to Landlord in the same condition as when Tenants first took occupancy, except for ordinary wear and tear,
- (iii) if the surrounding grounds are part of the premises and for exclusive use of Tenants, Tenants agree to irrigate and maintain the surrounding grounds in a clean and safe manner, keeping the grounds clear of rubbish and weeds and trimming all grass and shrubbery as necessary to effect a neat and orderly appearance to the property,

- (iv) notify Landlord in writing upon discovery of any damages, defects or dangerous conditions in and about the premises; and
- (v) reimburse Landlord for the cost of any repairs to the premises of damages caused by misuse or negligence of Tenants or their guests or invitees.

Tenants acknowledge that they have examined the entire interior and exterior of the premises, including plumbing, heating and electrical appliances, smoke detector(s), fixtures, carpets, drapes and paint, and have found them to be in good, safe and clean condition and repair, with the following exceptions: (Specify "none" if there are no exceptions)

15. **REPAIRS, ALTERATIONS AND DAMAGES** Except as provided by law or as authorized by the prior written consent of Landlord, Tenants shall not make any repairs or alterations to the premises, including but not limited to, painting the walls, installing wallpaper, murals, paneling, tile, or hanging posters or pictures weighing in excess of twenty pounds.

If the premises are damaged or destroyed as to render them uninhabitable, then either Landlord or Tenants shall have the right to terminate this Agreement as of the date on which such damage occurs, through written notice to the other party to be given within fifteen days of occurrence of such damage. However, if such damage should occur as the result of the conduct or negligence of Tenants or Tenants' guests or invitees, Landlord only shall have the right to termination and Tenants shall be responsible for all losses, including, but not limited to, damage and repair costs as well as loss of rental income.

16. **EMERGENCY ENTRY AND INSPECTION** Tenants shall make the premises available to Landlord or Landlord's agents for the purposes of making repairs or improvements, or to supply agreed services or show the premises to prospective buyers or tenants, or in case of emergency. Except in case of emergency, Landlord shall give Tenants reasonable notice of intent to enter. For these purposes, twenty-four (24) hour written notice shall be deemed reasonable, and reasonable hours shall be defined as _____ to _____ Monday through Friday and _____ to _____ on Saturdays. In order to facilitate Landlord's right of access, Tenants shall not, without Landlord's prior written consent, add, alter or re-key any locks to the premises. At all times Landlord shall be provided with a key or keys capable of unlocking all such locks and gaining entry. Tenants further agree to notify Landlord in writing if Tenants install any burglar alarm system, including instructions on how to disarm it in case of emergency entry.

17. **EXTENDED ABSENCES AND ABANDONMENT** In the event Tenants will be away from the premises for more than 14 consecutive days, Tenants agree to notify Landlord in writing of the absence. During such absence, Landlord may enter the premises at times reasonably necessary to maintain the property and inspect for damages and needed repairs. Landlord

Abandonment is defined as absence of the Tenants from the premises, for at least 30 consecutive days without notice to Landlord. If the rent is outstanding and unpaid for fourteen (14) days and there is no reasonable evidence, other than the presence of the Tenants' personal property, that the Tenants are occupying the unit, Landlord may at Landlord's option terminate this agreement and regain possession in the manner prescribed by law.

18. **INSURANCE DISCLAIMERS** Tenants assume full responsibility for all personal property placed, stored or located on or about the premises. Tenants' personal property is not insured by Landlord. Landlord recommends that Tenants obtain insurance to protect against risk of loss from harm to Tenants' personal property. Landlord shall not be responsible for any harm to Tenants' property resulting from fire, theft, burglary, strikes, riots, orders or acts of public authorities, acts of nature or any other circumstance or event beyond Landlord's control.

19. **HOLD HARMLESS** Tenants expressly release Landlord from any and all liability for any damages or injury to Tenants, or any other person, or to any property, occurring on the premises unless such damage is the direct result of the negligence or unlawful act of Landlord or Landlord's agents.

20. **SMOKE DETECTORS** The premises are equipped with a smoke detection device(s), and Tenants shall be responsible for reporting any problems, maintenance or repairs to Landlord. Replacing batteries is the responsibility of Tenants.

21. **LEAD BASED PAINT DISCLOSURE** By initialing, Tenant acknowledges receipt of disclosure of information on lead-based paint and lead-based paint hazards. Landlord has no reports or knowledge of lead-based paint on the premises.
Tenants initial here: _____

22. **LIQUID-FILLED FURNITURE** Tenant shall not use or have any liquid-filled furniture on the premises without Landlord's prior written consent.

23. **ADDITIONAL PROVISIONS** (Specify "none" if there are no additional provisions)

24. **ENTIRE AGREEMENT** This document constitutes the entire Agreement between the Tenants and Landlord. This Agreement cannot be modified except in writing and must be signed by all parties. Neither Landlord nor Tenants have made any promises or representations, other than those set forth in this Agreement and those implied by law. The failure of Tenants or their guests or invitees to comply with any term of this Agreement is grounds for termination of the tenancy, with appropriate notice to Tenants and procedures as required by law.

Valerie Poole
Landlord/Manager

100 pepper grass drive
Elgin SC 29045

Landlord/Manager's Street Address, City, State & ZIP

Adrian & Jay
Tenant

Tenant

Tenant

Tenant

6/8/12
Date

June 8, 2012
Date

Date

Date

Date

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235

Cedric E. Young, Appellant,

v.

Valerie Poole, Respondent,

RECEIVED

JUN 27 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 16, 2017



John D. Clark, Esquire, S.C. Bar No.: 64296
Clark Law Firm, LLC
22 East Liberty Street
P.O. Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234 /
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235

Cedric E. Young, Appellant,

v.

Valerie Poole, Respondent.

RECEIVED

JUN 27 2017

SC Court of Appeals

BRIEF OF APPELLANT

John D. Clark, Esquire, S.C. Bar No.: 64296
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22 East Liberty Street
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(803) 775-1234
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT BECAUSE THE DANGEROUS CONDITION ON THE PREMISES WAS A LATENT DEFECT KNOWN BY RESPONDENT AT THE TIME THE APPELLANT TOOK POSSESSION OF THE PREMISES, APPELLANT WAS NOT REQUIRED TO NOTIFY RESPONDENT LANDLORD OF THE DANGEROUS CONDITION?

2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE WAS A GENUINE ISSUE OF MATERIAL FACT OF WHETHER RESPONDENT FAILED TO WARN APPELLANT OF THE LATENT DEFECT KNOWN BY RESPONDENT AT THE TIME APPELLANT TOOK POSSESSION OF THE PREMISES?

STATEMENT OF THE CASE

On June 1, 2015 Cedric Young brought this action alleging negligence against Valerie Poole. 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 Summary Judgment in favor of Poole. Young filed a Motion to Alter or Amend Judgment on November 18, 2016 which was denied on January 18, 2017. On January 26, 2017 Young served the Notice of Appeal on Poole.

FACTS

This case involves a dispute between a residential landlord and tenant. Cedric Young was leasing the residence from Valerie Poole. (R. p. 23, lines 9-10 and p. 32, lines 18-22). The residence included an attic that he was told he could use with the lease of the residence. (R. p. 38, lines 3-12). Cedric Young was seriously injured on August 17, 2012 when he fell through the ceiling of the attic. He was in the attic retrieving personal property and as he

...to exit, he stepped into an area directly in front of the attic stairs that looked to be a walking surface but was not, and the area beneath him collapsed causing Young to fall through the ceiling down to the floor. (R. p. 55, line 13- p. 61, line 11). At the time that he took possession of the property, Valerie Poole knew that certain areas in the attic were "dangerous" but did not inform Young of the dangerous conditions. (R. p. 141, line 18-p. 142, line 12).

ARGUMENTS

I. BECAUSE THE DANGEROUS CONDITION ON THE PREMISES WAS A LATENT DEFECT KNOWN BY RESPONDENT AT THE TIME THE APPELLANT TOOK POSSESSION OF THE PREMISES, APPELLANT WAS NOT REQUIRED TO NOTIFY RESPONDENT OF THE DANGEROUS CONDITION.

The Appellant brought this action for 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 Appellant took possession of the premises. The Trial Court granted Summary Judgement to Respondent and held that in order to prove negligence under the SC Residential Landlord Tenant Act "RLTA", Appellant was required to notify Respondent of the defect prior to the injury.

In this appeal, Appellant 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 and granted summary judgement on Appellant's common law negligence claim.

In essence, the court held that with the establishment of the RLTA, tenants in South Carolina, including Appellant cannot bring an action for negligence against its

landlord for common law negligence. Appellant submits that this constitutes an error of law and the lower court's order should be reversed.

The lower court's holding on the common law claim is in direct conflict with the statutory frame work of RLTA. 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 this court 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).

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).

Appellant 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 Appellant is not required to give notice of latent conditions that exist at the time Appellant takes possession of the premises under Appellant's traditional negligence claim independent of the RLTA. In other words, Appellant may not be able to prove negligence for violations under the RLTA, but Appellant has pleaded and put forth evidence of negligence under a traditional negligence claim.

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). 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. Morrissey, 285 S.C. 236, 329 S.E.2d 426 (1985) (landlord owes no duty to maintain leased premises in a safe condition). 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. 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 RLTA does not completely abrogate common law negligence in landlord tenant matters, but only supplements existing principles of law and equity and provides additional remedies.

II. BECAUSE THERE WAS A GENUINE ISSUE OF MATERIAL FACT OF WHETHER RESPONDENT FAILED TO WARN APPELLANT OF THE LATENT DEFECT KNOWN BY RESPONDENT THAT EXISTED AT THE TIME APPELLANT TOOK POSSESSION OF THE PREMISES, THE LOWER COURT ERRED AS A MATTER OF LAW IN GRANTING RESPONDENT SUMMARY JUDGEMENT.

STANDARD OF REVIEW

Rule 56(c) SCRCF 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 triable 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).

Respondent submits 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 Appellant. The Respondent admits that while she has never been into the attic, she did climb the stairs of the attic before Appellant's accident and looked around. It could 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

- Appellant. 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 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. (R. p. 129, lines 13-21)

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

A. Right around the stairwell I saw that there was some plywood right there. (R. p. 136, lines 2-5)

At some point prior to Appellant's accident, Respondent 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 Appellant was going into the attic she would have told him that it was dangerous.

Respondent'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. (R. p. 134, line 23-p. 135, line 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? (R. p. 141, line 18-p. 142, line 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 Appellant's

accident that they almost slipped in the attic, and that you "cannot step anywhere."

Respondent did not advise Appellant 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 Appellant since the dangerous conditions were not obvious to Respondent when she looked around the attic.

Appellant 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. Appellant 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. (R. p. 62, lines 6-16)

Considering all of the evidence and the inferences drawn therefrom in a light most favorable to Appellant, 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 Appellant and whether Respondent failed to use due care to discover and warn of the dangerous condition.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

June 22 2017

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No.: 2015-CP-40-3235

Cedric E. Young, Appellant,

v.

Valerie Poole, Respondent.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

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

June 22, 2017



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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2017-000167

Cedric Young, Appellant

Valerie Poole, Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court correctly applied the Landlord-Tenant Act to Appellant's claim and properly held that because Appellant tenant failed to give Respondent landlord notice of any alleged dangerous condition, Appellant's claim is barred by the Landlord-Tenant Act.

STATEMENT OF THE CASE

This appeal follows an Order of the Circuit Court correctly applying the South Carolina Residential Landlord-Tenant Act (hereinafter "Landlord-Tenant Act" or "the Act") – as it has been applied for over twenty-five years in South Carolina – requiring the tenant to put the landlord on notice of an allegedly defective condition before liability may be triggered under the Act. (R. p. 272). Appellant Cedric E. Young ("Young" or "Appellant") lived as a tenant in a residential rental home in Richland County, which he leased from owner and Respondent Valerie Poole ("Poole" or "Respondent"). (R. p. 23, lines 9-25). On August 12, 2012, Appellant, weighing approximately two hundred and twenty pounds, elected to walk directly on the insulation of the unfinished attic of the rental home wearing steel toed boots and carrying garden equipment and a rolled up extension cord. (R. p. 90B, lines 20-22; p. 49, lines 6-14; p. 54, lines 10-14). Appellant testified that his boot pushed through the sheetrock of the second-floor ceiling and that he suffered a foot injury. (R. p. 59, lines 3-9; p. 68, lines 14-17). As a result, Young filed a complaint in the Richland County Court of Common Pleas against Respondent on June 1, 2015.

Discovery revealed the following undisputed facts: (1) Appellant tenant lived in the rental home for over two months before the date of his alleged injury; (2) during that time, Appellant tenant walked directly on the insulation of the attic more than ten times, rather than on the wooden joists; and (3) at no time prior to the alleged injury did Appellant tenant request that Respondent landlord modify or repair the attic space in any way. (R. pp. 101-

104; p. 41, line 12-p. 42, line 21). Relying on application of the Landlord-Tenant Act to these facts, Poole moved for summary judgment on August 19, 2016. (R. p. 13; pp. 207-2011). Young filed an opposing memorandum on August 22, 2016. (R. pp. 255-264).

The Honorable Judge Clifton Newman held a hearing on Poole's motion on August 22, 2016. After considering the arguments of both parties, Judge Newman granted Poole's Motion for Summary Judgment in a written Order dated October 24, 2016. (R. p. 272). In its Order, the Circuit Court held that: (1) Young's action was barred under the Landlord-Tenant Act because he failed to give the landlord notice of the alleged dangerous condition and a reasonable time to repair; and (2) even if Young's action was not barred by the Act, the landlord had no duty to warn Young that the attic was unfinished, a condition that is "open, obvious and generally known and recognized." (R. pp. 271-272).

Appellant filed his Motion to Alter or Amend Judgment on November 18, 2016, which was denied on January 18, 2017. Appellant filed his Notice of Appeal on January 26, 2017.

STATEMENT OF FACTS

A. Events Prior to August 17, 2012

Appellant moved into the rental home on June 8, 2012, and testified that he first accessed the attic space on that date. (R. p. 41, lines 2-8). Appellant testified that thereafter he accessed the attic space "more than ten times" before the alleged injury on August 17, 2012. (R. p. 41, lines 19-22). Appellant testified that every time he accessed the attic, he walked directly on the insulation and not on the wooden joists. (R. p. 63, lines 1-3). Appellant also testified that he found nothing different about Respondent's attic than any other attic he had ever been in, that he found nothing wrong with his practice of walking

directly on the insulation rather than on the wooden joists, and that he would do it again today. (R. p. 55, lines 4-6; p. 82, lines 5-10; p. 84, lines 11-21). In contrast, Respondent landlord testified that she had never stepped inside the unfinished attic. (R. p. 129, lines 16-18). Appellant testified that despite regular access between June 8 and August 17, he did not call to request that Respondent landlord modify or repair the attic space in any way prior to the alleged injury. (R. p. 42, lines 1-21; p. 151, lines 1-3).

B. Events of August 17, 2012

On the date of the alleged injury, Appellant accessed the attic by ladder. (R. p. 38, lines 13-18). Once inside the attic, Appellant – weighing approximately two hundred and twenty pounds, wearing steel toe boots, and carrying garden equipment – elected to walk directly on the insulation of the unfinished attic rather than the wooden joists. (R. p. 90B, lines 20-22; p. 49, lines 6-14; p. 54, lines 10-14). After Appellant picked up two hedge clippers and one rolled up extension cord, Appellant walked directly on the insulation towards the attic hatch door with the lawn equipment in hand. (R. p. 56, lines 5-20). Appellant began to throw the equipment down to the second-floor carpet through the attic hatch door, and as he continued to walk on the insulation, Appellant testified that his boot pushed through the sheetrock of the second-floor ceiling and that he suffered a foot injury. (R. p. 56, line 23-p. 57, line 2; p. 59, lines 3-9; p. 68, lines 14-17).

C. Appellant's Lease with Respondent

Appellant executed a Lease prior to moving in to the rental property. (R. pp. 101-104). By the terms of the Lease, Appellant agreed to “properly use the premises.” (R. p. 102, ¶ 14(i)). Appellant testified that he believed walking directly on the insulation was “properly using the premises.” (R. p. 84, lines 11-18). Under the terms of the Lease,

Appellant also agreed to “notify the landlord in writing upon discovery of any dangerous condition on the premises.” (R. p. 102, ¶ 14(iv)). Appellant admitted that he failed to provide notice of any “dangerous condition” to the landlord any time before the alleged injury. (R. p. 41, line 12-p. 42, line 21). Further, Appellant testified that he inspected the “entire interior and exterior of the premises” prior to moving in, and that he found the premises to be in “good, safe, and clean condition and repair.” (R. p. 86, line 8-p. 87, line 11).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the Court of Appeals applies the same standard that governs the circuit court under Rule 56(c), SCRCP. *Nelson v. Piggly Wiggly Center, Inc.*, 390 S.C. 382, 387-88, 701 S.E.2d 776, 779 (Ct. App. 2010). “Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56(c), SCRCP.

“The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.” *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800. (Ct. App. 1999). “In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.” *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENT LANDLORD JUDGMENT AS A MATTER OF LAW BECAUSE APPELLANT TENANT FAILED TO PLEAD AN ACTIONABLE CLAIM UNDER THE COMMON LAW.

Under the common law, a landlord had no duty to turn over a rental property in a safe condition or to maintain the property. *See e.g., Williams v. Salmond*, 79 S.C. 459, 61 S.E. 79, 79 (1908) (“The lessor turns over the property, and the lessee takes it as it is turned over to him.”). Prior to the enactment of the Act, “the courts of this state have held that the relationship of landlord and tenant, by itself, imposes no legal duty on the part of the landlord to keep in repair leased residential premises under the control of the tenant.” *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 372 (Ct. App. 1989). As this Court recognized in *Watson*, “This has been the long-standing law of this state.” *Id.*

Under South Carolina law, a plaintiff must prove four elements to recover under a negligence theory: “(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) (emphasis added). “An essential element of the cause of action for negligence is the existence of a legal duty of care owed by the plaintiff to the defendant.” *Bishop v. S.C. Dep’t of Mental Health*, 331 S.C. 79, 502 S.E.2d 78, 81 (1998).

South Carolina did not recognize a common law cause of action against a landlord for conditions on the rental dwelling. “Traditionally, under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition.” *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426, 428 (1985) (emphasis added). In his Brief, Appellant cites a single case handed down in 1932 for the proposition that at common law

in South Carolina a landlord has a duty to discover and warn of dangerous latent conditions on its premises, but the Court in that case did not hold there was such a duty.¹ *See Timmons v. Williams Wood Products Corp.*, 164 S.C. 361, 162 S.E. 329 (1932). Appellant misinterprets that case.

In *Timmons*, the landlord and tenant contracted under the lease for the landlord to make repairs to the premises. 164 S.C. 361, 162 S.E. at 330. Even though the tenants twice requested for the landlord to repair the defective condition of a door hinge on the premises pursuant to the landlord's lease agreement, the landlord did not do so. *Id.* When the door eventually injured one of the tenants, the tenants brought suit for personal injuries. *Id.* The court held that tenants could not recover personal injury damages and could only recover contractual damages because the landlord's duty to repair arose only under the lease contract. 164 S.C. 361, 162 S.E. at 333. With regards to a landlord's duties at common law, the Court stated:

[I]n the absence of a contract to repair, the tenant takes leased premises for better or for worse, with no positive, legal duty on the part of the lessor to make repairs; that such an obligation or duty must be imposed by some contract apart from the mere lease of the land for a given term... While not directly in point here, these decisions firmly establish the principle that **there is no legal duty imposed upon a landlord merely by reason of the creation of the relationship of landlord and tenant...**

164 S.C. 361, 162 S.E. at 331-332 (citations omitted) (emphasis added).

¹ Further demonstrating the absence of support under South Carolina law for Appellant's common law duty argument, Appellant's only other citations in support of his primary argument, that there is a landlord duty to discover and warn of latent conditions, are: (1) a Corpus Juris section from an edition that is out of print and that does not state there is such a duty; and (2) a treatise that incorrectly cites the case of *Timmons v. Williams Wood Products Corp.*, 164 S.C. 361, 162 S.E. 329 (1932) (discussed in greater detail below). (See Appellant Initial Brief, p. 5 (citing 36 C.J. 204 § 874 and F.P. Hubbard & R.L. Felix, THE SOUTH CAROLINA LAW OF TORTS (4th Ed. 2011)).

Here, Appellant's attempt to reach back to the common law as it existed before the Landlord-Tenant Act is without merit because the common law rule before the Act was landlord immunity. *See also Thompson v. CDL Partners LLC*, 378 F. App'x 288, 293 (4th Cir. 2010) (affirming summary judgment against tenant on common-law negligence claim "because [tenant] cannot establish a duty on the part of [landlord]" apart from the Act). That is, there was no common law cause of action under which Respondent here would be liable.

Moreover, Appellant failed to preserve this question for appellate review. Appellant did not plead common law negligence, but rather a single cause of action under "SC Code Ann. § SC Landlord Tenant Act," and only attempted to amend his Complaint at motion argument after it became clear the Circuit Court was granting Respondent's Motion for Summary Judgment. Even if Appellant had properly preserved the issue, the Circuit Court properly refused his oral motion to amend on futility grounds because South Carolina does not recognize a common law duty: "I don't see how you can sue under common law." (R. p. 4; p. 200, line 14-p. 201, line 12). Accordingly, any attempt to reach back to the common law as it existed is futile and without merit and this court should affirm the Circuit Court's grant of judgment as a matter of law in Respondent's favor.

II. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENT LANDLORD JUDGMENT AS A MATTER OF LAW BECAUSE APPELLANT TENANT FAILED TO GIVE LANDLORD NOTICE OF THE ALLEGED DANGEROUS CONDITION, THEREBY BARRING ANY ACTION UNDER THE LANDLORD-TENANT ACT.

The Landlord-Tenant Act, enacted in 1986, "abrogated the well-defined and established [Landlord-Tenant] common law" and "was passed "to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants." *Watson* at 433; S.C. Code Ann. § 27-40-20(b)(1)

noncompliance is willful, the tenant may recover reasonable attorney's fees. . . .

S.C. Code Ann. § 27-40-610 (emphasis added).

Importantly, under the Act, "[a]s with any negligence action, plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach."

Pryor v. Northwest Apartments, Ltd., 321 S.C. 524, 528, 469 S.E.2d 630, 633 (1996). Any duty to repair is not triggered under the Act until a tenant gives written notice to its landlord.

Id. The same statute that creates the cause of action establishes the procedure that a tenant must follow to trigger the landlord's liability: A tenant must give the landlord written notice of a condition affecting the safety or physical condition of the property, and the landlord generally has at least fourteen days to remedy or begin repairs. Because the statute that creates the cause of action includes a written notice procedure, that procedure must be followed by a tenant before the tenant can have a cause of action under the Act. *Id.*

Because Appellant tenant failed to give Respondent landlord notice of the alleged dangerous condition, his negligence action is barred by the Act. The Landlord-Tenant Act has been consistently applied to "require that the tenant provide the landlord notice of a defective condition before liability attaches under the SCRLTA." *Thompson*, 378 F. App'x at 292. In applying the Act, the Fourth Circuit looked to consistent rulings from the South Carolina Court of Appeals, which:

pointed to two provisions of the SCRLTA that buttress such a conclusion. First, the Act mentions the delivery of 'a written notice to the landlord specifying the acts and omissions constituting the breach.' S.C. Code Ann. § 27-40-610(a). In addition, the SCRLTA states that the tenant's rights 'do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time.' S.C. Code Ann. § 27-40-630(d).

Id. Because the courts have consistently required notice of defective conditions before landlord liability is triggered under the Landlord-Tenant Act, lack of notice is fatal to Appellant's claim. Because Appellant admittedly failed to give Respondent notice of any alleged dangerous condition and an opportunity to repair, Appellant's claim is barred as a matter of law under the Act.

A. **Since its enactment, courts have consistently recognized and applied the Landlord-Tenant Act's notice requirement, barring actions where notice is lacking.**

In 1989, three years after the Act's passage, the South Carolina Court of Appeals held that the Act "by express words creates a cause of action in tort in favor of a tenant of residential property against his landlord for failure, **after notice**, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Watson*, 299 S.C. at 432, 385 S.E.2d at 372. This court in *Watson* was clear in its emphasis on the notice requirement:

We hold that the preamble and the Act clearly convey an intent on the part of the Legislature to provide for a cause of action for injuries resulting from the failure of the landlord, **after notice**, to keep rented residential premises in repair.

Id. at 436, 385 S.E.2d at 374 (emphasis added). The *Watson* reading of the Act has been applied without exception in South Carolina courts for more than twenty-five years.

In 2009, this court again affirmed the requirement that a tenant must notify its landlord of an alleged defective condition before a claim for negligence is actionable under the Act. *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 496 (Ct. App. 2009). In *Code*, the death of a tenant was allegedly attributable to a landlord's failure to install smoke detectors, a violation of state law. *Id.* at 585, 682 S.E.2d at 496. This court nonetheless concluded that "because the plaintiffs failed to allege that they notified the owner of the

lack of smoke detectors, they could not state a claim under the SCRLTA.” *Thompson*, 378 F. App’x at 292 (citing *Code*, 384 S.C. at 588, 682 S.E.2d at 498). In *Code*, the trial court granted the landlord summary judgment and this court affirmed.

More recently, the Fourth Circuit, in applying the Landlord-Tenant Act, cited the consistency of decisions handed down by South Carolina courts in determining that “the South Carolina Supreme Court would require that a landlord have notice of a defect before being liable to the tenant under the SCRLTA.” *Thompson*, 378 F. App’x at 292 (4th Cir. 2010) (*emphasis added*). In *Thompson*, a tenant was severely injured after falling from a second-floor balcony when he leaned against a defective. *Id.* at 290. The United States District Court, applying the Act, granted summary judgment in favor of the landlord without a hearing because the tenant failed to provide notice to the landlord prior to the alleged harm. *Id.* The Fourth Circuit affirmed. *Id.*

B. Appellant tenant failed to provide notice to Respondent landlord of the allegedly dangerous condition.

In this case, it is undisputed that Appellant tenant failed to provide notice of the alleged condition to the Respondent landlord at any time prior the alleged injury. Appellant testified that he visited the attic space more than ten times before his alleged injury and that he did not notify the Respondent landlord orally or in writing of any dangerous condition or any need to repair the attic. (R. p. 41, line 12-p. 42, line 21). A plausible reason Appellant failed to provide notice to the Respondent is that Appellant testified the unfinished attic at issue appeared the same as any other attic Appellant had been in and it did not appear to be in any dangerous condition. (R. p. 85, line 7-p. 86, line 2).

The Respondent landlord, Ms. Valerie Poole, also testified that Appellant failed to provide notice to of any condition that needed repair:

Q [W]e heard from the plaintiff earlier today that he had been in the attic at least ten times before the day that he fell. After any of those ten visits to the attic, had he ever told you that the attic was in dangerous condition?

A No, he did not.

Q At any time before the date that the plaintiff fell, did he notify you verbally that there was any condition in the attic that he wanted you to repair?

A No, he did not.

Q At any time before the date that he was injured, did the plaintiff notify you in writing that there was anything wrong with the attic or that there was anything in the attic that he wanted you to repair?

A No, he did not.

(R. p. 146, lines 4-7; p. 151, lines 6-15). It is undisputed that the Appellant tenant failed to provide notice, as required for liability to trigger under the Act, of the condition he alleges is dangerous.

C. The Act's notice requirement places the burden to notify on the party in the best position to discover a defect in the leased premises.

There are strong policy considerations that support the Act's notice requirement: a tenant in possession and control of the premises has the best opportunity to discover and inform the landlord of any dangerous conditions on the property. *See Dunbar v. Charleston & W.C. Ry. Co.*, 211 S.C. 209, 44 S.E.2d 314 (1947) (“[W]hen land is occupied by the 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... the lessor surrenders possession and control of the land to the lessee.”). These policy considerations are buttressed by the facts here, where Respondent landlord had never set foot in the attic, but Appellant tenant had walked in the attic “more than ten times” including “many times the same way” that he walked on the date of the alleged injury. (R. p. 41, lines 19-22; p. 63, lines 1-6; p. 136, lines 2-5).

Because Appellant failed to report any condition to the Respondent landlord at any time prior to the alleged injury, Appellant's claim is barred under the Landlord-Tenant Act. As state and federal courts in South Carolina have held without exception, the Landlord-Tenant Act requires tenants provide a landlord notice of a defective condition and a reasonable opportunity to repair the same before liability attaches under the Landlord-Tenant Act. Because Appellant failed to provide notice and failed to provide Respondent a reasonable opportunity to repair, as courts in South Carolina have consistently held, Appellant has not pled an actionable claim under the Act, and the Respondent landlord Ms. Valerie Poole is entitled to judgment as a matter of law.

III. THE CONDITION OF AN UNFINISHED ATTIC IS OPEN AND OBVIOUS, THEREBY NEGATING ANY DUTY RESPONDENT MAY HAVE TO WARN OF ITS CONDITION.

South Carolina courts have consistently held that there is no duty to warn of dangers that are open and obvious. *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 42, 674 S.E.2d 500, 504 (Ct. App. 2009); *Anderson v. Green Bull, Inc.*, 322 S.C. 268, 271-72, 471 S.E.2d 708, 710 (Ct. App. 1996); *Dema v. Shore Enterprises, Ltd.*, 312 S.C. 528, 530, 435 S.E.2d 875, 876 (Ct. App. 1993). As a result, a property owner is "not required to warn of dangers or potential dangers that are generally known and recognized." *Anderson*, 322 S.C. at 270, 471 S.E.2d at 710. Further, in the landlord-tenant context, a landlord has no duty to warn of an open and obvious condition on his property. *Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 529, 469 S.E.2d 630, 633 (Ct. App. 1996) (citing *Meadows v. Heritage Village Church & Missionary Fellowship, Inc.*, 305 S.C. 375, 378, 409 S.E.2d 349, 351 (1991) (affirming a landlord's grant of summary judgement because "mud was open and

obvious natural condition and owners could not foresee tenant would choose to walk on mud rather than taking other routes.”) (emphasis added).

Here, even if Appellant did have an actionable claim under the common law or the Landlord-Tenant Act (which he does not) the danger of walking directly on insulation in an unfinished attic is a danger that is “generally known and recognized.”³ As in *Pryor*, an unfinished attic is an ordinary, open, and obvious condition. Landlords cannot foresee that a tenant would choose to walk directly on the insulation – much less at two hundred twenty pounds with steel toed boots and lawn equipment – rather than taking the safer route of walking on the joists.

Further, Appellant admitted to accessing the attic “more than ten times” prior to the date of the alleged injury, demonstrating Appellant’s full knowledge that the attic was unfinished. Moreover, Appellant could not articulate any dangerous condition in the attic, but rather he testified that it appeared no different from any other attic he had ever been in. (R. p. 85, lines 11-13; p. 55, lines 4-6). Accordingly, even if Appellant’s claim was actionable under the common law or the Landlord-Tenant Act, Respondent would be

³ See *Meyer v. Tyner*, 709 N.Y.S. 2d 618, 620, 273 A.D.2d 364 (N.Y.A.D. 2 Dept. 2000) (holding, on summary judgment, that “[p]oor illumination and similarity of color between the insulation and the attic floor were insufficient to raise a triable issue of fact as to whether the unfinished nature of an attic floor was a dangerous condition” because the “unfinished floor was readily observable, in plain view, and easily discoverable by those employing the reasonable use of their senses”); *Scott v. Norman*, 391 S.W.2d 890, 895-96 (Mo. 1965) (finding that an attic with unfinished flooring and joists spaced twenty-four inches apart was an “open and obvious” condition and that “[t]he risk involved in going upon them was that a person would slip therefrom and fall through the thin plasterboard ceiling”); *Tracy v. Petrenas*, 2005 WL 1812671, p. *2 (Mich. Ct. App. 2005) (unpub.) (holding “the potential danger of walking in a darkened garage attic without a load-bearing floor should be apparent to an average person of ordinary intelligence”).

entitled to judgement as a matter of law because the Respondent landlord owed no duty to warn the Appellant that the attic was unfinished.

CONCLUSION

Courts in South Carolina have consistently recognized there is no duty under the common law for a landlord to maintain the premises in a safe condition outside of the provisions of the Landlord-Tenant Act. Further, courts in South Carolina have consistently applied the Act to require that tenant notify landlord in writing of any alleged defect before landlord liability attaches under the statute. Appellant admits he did not give Respondent the required notice. Accordingly, Appellant failed to present evidence necessary to support an essential element of his claim. Further, even if the Appellant's claim were not barred by the statute, Respondent owed no duty to warn that the attic was unfinished, a condition that was open, obvious, and apparent to Appellant.

Therefore, the Respondent landlord Ms. Valerie Poole respectfully requests that this Court affirm the Circuit Court's grant of summary judgment in Respondent's favor.

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Columbia, South Carolina
July 17, 2017

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2017-000167

Cedric Young, Appellant,

v.

Valerie Poole, Respondent.

CERTIFICATE OF COMPLIANCE

I, Elliott B. Daniels, Esquire, attorney for Respondent, certify that the Respondent's Brief and Designation of Matter comply with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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Columbia, South Carolina
July 17, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Cedric E. Young, Appellant,

v.

Valerie Poole, Respondent.

Appellate Case No. 2017-000167

Appeal From Richland County
Clifton Newman, Circuit Court Judge

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

AFFIRMED

John Derrick Clark, of Clark Law Firm, LLC, of Sumter,
for Appellant.

John Martin Grantland and Elliot Bishop Daniels, both of
Murphy & Grantland, PA, of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 56(c), SCRCP ("[Summary] judgment . . . shall 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."); *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) ("An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit court] under Rule 56(c), SCRCF."); *Watson v. Sellers*, 299 S.C. 426, 436-37, 385 S.E.2d 369, 375 (Ct. App. 1989) ("[T]he [South Carolina Residential Landlord and Tenant Act] explicitly creates a cause of action in tort for the failure of the landlord to repair a defect in the premises *after notice* is given as required by the Act." (emphasis added)); S.C. Code Ann. § 27-40-630(d) (2007) ("Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time . . ."); *Cole v. Boy Scouts of America*, 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011) ("Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law."); Rule 8(f), SCRCF ("All pleadings shall be so construed as to do substantial justice to all parties."); *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574, 743 S.E.2d 778, 785 (2013) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial." (quoting *S.C. Nat'l Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct. App. 1986))).

AFFIRMED.¹

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
In the Court of Common Pleas

Clifton Newman, Circuit Court Judge

RECEIVED

APR 26 2018

SC Court of Appeals

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

Cedric E. Young.....Appellant,

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: 
JOHN D. CLARK

Sumter, South Carolina

April 26th, 2018

The South Carolina Court of Appeals

Cedric E. Young, Appellant,

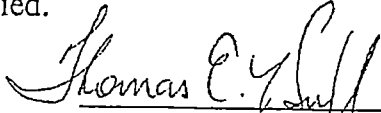
v.

Valerie Poole, Respondent.

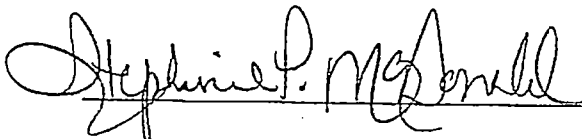
Appellate Case No. 2017-000167

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

John Derrick Clark, Esquire
Elliott Bishop Daniels, Esquire
John Martin Grantland, Esquire
The Honorable Clifton Newman

FILED

May 24, 2018