

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2016-CP-40-07394

James King,

Plaintiff,

v.

Order Granting Defendant's Motion for  
Partial Summary Judgment

Joseph H. Lanier, III a/k/a Joey Lanier, Lanier  
Tree Services,

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Defendants.

SC Court of Appeals

This matter came before the Court on October 10, 2018 on Defendant Joseph H. Lanier, III a/k/a Joey Lanier, Lanier Tree Services ("Lanier")'s Motion for Partial Summary Judgment. At the hearing, Lanier was represented by Rogers E. Harrell, III. Plaintiff was represented by Robert W. Dibble.

After consideration of the Motion, the arguments of counsel, and the various memoranda and exhibits submitted by all parties, and after a review of the record, for the reasons set forth below, the Court hereby GRANTS Lanier's Motion for Partial Summary Judgment. Lanier is entitled to summary judgment as to Plaintiff's alleged damages for bodily injuries because its conduct was not the proximate legal cause of the Plaintiff's alleged bodily injuries. This ruling in no way affects Plaintiff's claim for damages he is alleged to have suffered related to the contract itself, including any monies owed by Lanier for his alleged failure to perform according to the terms of the alleged contract.

BACKGROUND

This case arises out a Breach of Contract claim brought by Plaintiff when he filed his Summons and Complaint with this court on December 16, 2016. In that Complaint, Plaintiff alleged causes of action for Breach of Contract, Quantum Meruit/Unjust Enrichment, and Negligence.



Defendant concedes there are questions of fact as to each cause of action for a jury. However, as part of the damages Plaintiff seeks to recover, he includes damages for medical costs.

Lanier is an independently owned and operated tree removal business. Lanier was contracted by the Plaintiff to perform tree removal services at the Plaintiff's home located at 556 Lakeshore Drive in Chapin, South Carolina. Those services included the removal of debris from the Plaintiff's yard. The agreement was entered in mid-April 2015, and work began in late April 2015. In August 2015, Plaintiff claims Lanier's work was not being performed to his satisfaction and Plaintiff told Lanier his services were no longer needed. At the time Lanier was instructed by the Plaintiff not to come back, there were piles of debris from tree removal still in the yard. After Plaintiff instructed Lanier his services were no longer needed, the Plaintiff and a friend began to remove the debris on their own by hand.

Plaintiff and his friend continued removing the debris by hand using trucks, chains, and a pry bar from sometime in late July or early August of 2015 when Lanier was told not to come back until October or November of 2015. When the removal by hand was nearly complete, months after Lanier was ordered by the Plaintiff to stop work, Plaintiff claims he injured his back while using a pry bar to move a stump in his yard that was left behind by Lanier months earlier.

Plaintiff made the decision to move the stump on his own when he injured his back, and he was never instructed by Lanier to move the stump. Plaintiff claims Lanier caused his back to be injured only because Lanier left the stump in that location in Plaintiff's yard; however, King chose to move the stump on his own rather than wait for help or hire a professional to move it, and Plaintiff chose the means by which to move the stump.

suffer. These “lines” limit liability that might otherwise extend responsibility for arguably wrongful conduct “for all time.”

The problem of “causation in fact” without these limits is quintessentially illustrated in the well-known and oft-studied case of *Palsgraf v. Long Is. R.R. Co.*, 248 N.Y. 339 (N.Y. App. 1928). In *Palsgraf*, the New York Court of Appeals, with Chief Justice Benjamin Cardozo writing for the Court, addressed the doctrine of proximate cause where a railroad guard’s alleged negligence in pushing a passenger on to a train caused the passenger to drop a package of fireworks on the tracks which in turn, exploded, causing a set of scales on the platform to fall on the plaintiff. Reversing a verdict for the plaintiff, the Chief Justice Cardozo explained that “wrong is defined in terms of the *natural* or *probable*, at least when unintentional” and held that the negligent conduct could not reach the harm alleged. *Palsgraf*, 248 N.Y. at 345 (emphasis added).

Just as in *Palsgraf*, under South Carolina law “[l]egal cause is proved by establishing foreseeability. . . . A plaintiff . . . proves legal cause by establishing the injury in question occurred as a *natural* and *probable* consequence of the defendant’s negligence.” *Bramlette*, supra (emphasis added) (citations omitted). “[E]liability cannot rest on mere possibilities. [An] actor cannot be charged with that which is unpredictable or that which could not be expected to happen.” *Young v. Tide Craft, Inc.*, 270 S.C. 453, 463, 242 S.E.2d 671, 675-66 (1978) (emphasis added). Further, liability is not founded where one party fails to anticipate another’s negligence. See, e.g., *Still v. Blake*, 255 S.C. 95, 102, 177 S.E.2d 469, 473 (1970) (holding a defendant had no duty to anticipate that a driver would drive negligently).

South Carolina’s appellate courts have defined what is and what is not “natural,” “probable” and “expected” for decades. In one case the Supreme Court explained:

*A prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the*

*occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause of the injury, even though such injury would not have happened but for such condition or occasion. If no danger existed in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such subsequent act or condition is the proximate cause."*

*Driggers v. City of Florence*, 190 S.C. 309, 2 S.E.2d 790, 791 (1939) (citation omitted) (emphasis added). Thus, the Supreme Court held that a prior and remote cause does not support liability where the prior "cause" simply furnished the condition that made the injury possible.

Similarly, a defendant who remotely leaves debris in a yard *after being instructed by the Plaintiff not to return* cannot be held liable for bodily injuries the Plaintiff is alleged to have suffered months later while choosing to move the debris on his own. Here, Lanier's action was only leaving debris in Plaintiff's yard *after being instructed by the Plaintiff not to return*, and that action occurred months prior to the injury itself. The stump being left in the yard is at least two steps removed from the injury itself – Lanier being instructed not to come back and finish the job, and Mr. King making the decision to move the stump himself and choosing the means by which to move the stump himself. Lanier cannot be charged with anticipating Mr. King instructing him to stop work on the project and not return and Mr. King's poor decision to try to move a very large stump on his own by hand. Where our appellate courts have held no duty to anticipate another's negligence, the imposition of liability in this instance would require that Lanier have anticipated at least two actions and decisions by King.

As in *Driggers*, by placing the stump on the ground, Lanier "did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible." The mere presence of the stump did nothing to cause Mr. King's bodily injuries. No danger whatsoever existed by condition of the stump being placed on the ground. In fact, the stump laid

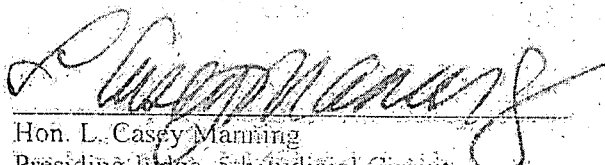
in place for months without causing any bodily injury. Lanier could not have anticipated he would be instructed to abandon the job by the Plaintiff. Lanier could not have anticipated the Plaintiff would make the very poor choice to move the large stump on his own by hand, causing injury to his back. It was the Plaintiff who should have foreseen the injury that could arise by his poor decision to attempt to move this large stump by hand months after he instructed Lanier not to return. Thus, Lanier's conduct is too remote, and thus not a proximate legal cause of Plaintiff's alleged bodily injuries.

CONCLUSION

The Plaintiff cannot establish a reasonable inference that Lanier's conduct was the proximate cause of the Plaintiff's alleged bodily injuries. Therefore, Lanier is entitled to summary judgment as to any claims for bodily injury brought by the Plaintiff. Therefore, Defendant Lanier's Motion for Partial Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

*Columbus*  
South Carolina  
NOV 2018

  
Hon. L. Casey Manning  
Presiding Judge, 5th Judicial Circuit