

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-7790

Richard Ciampanella,)
)
Plaintiff,)
)
vs.)
)
City of Myrtle Beach,)
)
Defendant.)
)

**ORDER GRANTING NEW TRIAL
PURSUANT TO SCRPC 59**

THIS MATTER is before the Court based on Plaintiff's Motion for a New Trial. This case was previously heard by the Court, and, at the close of the evidence, the Court granted Defendant's motion for a directed verdict. The Plaintiff then timely moved for a new trial pursuant to South Carolina Rule of Civil Procedure 59(a), which provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State[.]

The grant or denial of a new trial motion rests within the sound discretion of the trial court.

See Brinkley v. S.C. Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009).

After reviewing of the transcript and briefs of the parties and hearing arguments from counsel, this Court finds that a new trial is necessary as to any and all causes of action related to negligent design and/or construction. See Creech v. S.C. Wildlife & Marine Resources Dept., 328 S.C. 24, 491 S.E.2d 571 (1997) (allowing a claim against the S.C. Wildlife & Marine Resources Department for negligent design and construction of a public dock/fishing pier to survive directed verdict where enough evidence was presented for a jury to infer negligence). The Court denies Plaintiff's motion for a new trial as to any causes of action related to maintenance, security, or

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supervision of the walkover, as such claims are precluded by the South Carolina Tort Claims Act. Nothing in this ruling conflicts with the Court's previous ruling during trial, whereby partial summary judgment as to simple negligence was granted pursuant to the South Carolina Recreational Use Statute.

Accordingly, it is ORDERED that a new trial be granted pursuant to SCRCP 59(a) and (b) as to the causes of action related to negligent design and construction only; issues related to the City's inspection schedule, inspection methodology, and claims related to the adequacy of the City's preventative and corrective maintenance subsequent to original construction shall not be addressed during the new trial. It is further ORDERED that this matter be returned to the Horry County Court of Common Pleas for a new trial. The Clerk of Court is directed to place this matter on the docket for trial.

AND IT IS SO ORDERED.

The Honorable Thomas A. Russo
Presiding Judge, Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Richard Ciampanella VS Myrtle Beach City Of

Case Number: 2014CP2607790

Type: Order/Other

So Ordered

s/Thomas A. Russo