

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

) Civil Action No.: 2018-CP-40-00769  
Gayle Stephens, )  
 )  
Plaintiff, )

) **ORDER DENYING DEFENDANTS'**  
 ) **MOTION FOR SUMMARY**  
 ) **JUDGMENT**

vs.  
Colliers International South Carolina, Inc.  
and Lady Street Office Complex LLC,

**RECEIVED**  
**JAN 22 2019**  
**SC Court of Appeals**

Defendants

This matter comes before me upon the motion of Colliers International South Carolina, Inc.'s and Lady Street Office Complex LLC's renewed motion for summary judgment. After reviewing the record, legal memorandum, and after hearing from counsel for the parties, I make the following findings of fact and conclusions of law:

**Undisputed Factual Background**

Defendants Colliers International South Carolina, Inc. and Lady Street Office Complex, LLC own and maintain a for profit parking garage located at 1229 Marion Street in Columbia, South Carolina. On or around May 30, 2014, Plaintiff, as an invitee of Defendants, entered the parking garage located at 1229 Marion Street with the express and/or implied permission of the Defendants. On the same date, while proceeding across the premises, Plaintiff fell off of a landing that lacked any handrail and further lacked any visual cues or warning of a change in elevation in the walkway.

**Legal Standard**

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*,

S.C. 101, 115,410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e) SCRCP.

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331,333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

#### **Findings of Fact and Conclusions of Law**

**I. Sufficient evidence exist in the record to find that: (1) Defendants owed a duty of care to Plaintiff, (2) Defendants breached that duty of care by negligent act and/or omission, and (3) Plaintiff suffered damages proximately caused from the breach of duty.**

“Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Baird v. Charleston Cty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

At the time of Plaintiff’s injury, Defendant’s had completed construction of the landing. If, for the sake of argument, the Defendant’s had not yet completed construction, it lacked any barrier preventing foot traffic into and out of the construction zone. Regardless, Plaintiff’s expert, Bryan Durig, is a licensed engineer who unequivocally opines that the landing where Plaintiff fell was defective and constituted a dangerous condition at the time of her fall. Despite Defendants’ representation of Mr. Durig’s testimony in their Memorandum in Support of Summary Judgment, when asked directly on Page 60 of his Deposition, Mr. Durig states that the landing constituted an unsafe condition.

Q: You believe that this stairway or landing presented a dangerous or unsafe condition?

A: Yes.

In offering this opinion, Mr. During relies on several authorities, including the 2012 International Building Code (the “2012 IBC”), industry standard ASTM F1637, and the International Property Maintenance Code.

First, while the parties agree that the 2012 IBC was an applicable and enforceable code at the time of construction, there is dispute regarding which section of the 2012 IBC applies to the landing in question. In the opinion of Defendants’ expert, Alan O. Campbell, Section 1009, of the 2012 IBC, regarding stairways, is the applicable section. Mr. Durig, conversely, opines that that Section 1003, regarding areas of egress, is the applicable section. (Deposition Transcript p. 49 l. 10-p.50 l. 4.) As described by Mr. Durig in his deposition, Section 1003 of the 2012 IBC governs

general means of egress and requires a single step to have a handrail. *Id.* Mr. Durig further explains that Sections 1003 through 1013 of the 2012 IBC apply to areas of egress including, exit access, exit, and exit discharge. The landing in question is an exit discharge. Section 1003.5 requires that in areas of egress, “where changes in elevation of less than 12 inches exist in the means of egress, sloped surfaces shall be used.” Mr. Durig explains “if it’s less than 12 inch change in elevation, it should be a ramp.” (Deposition Transcript p.52 l. 12-25). Mr. Durig further explains exception 2 to this code section provides “that you can have a single step but you’re required to have a handrail.” (Deposition Transcript p.53 l. 1-3). There is no dispute that the landing central to this action was not sloped and lacked a handrail. Thus, the landing in question deviated from the requirements set forth in the 2012 IBC. Such a deviation is substantial evidence of a defective and dangerous condition and Defendant’s failure to eliminate or warn Plaintiff of this condition constitutes a breach of the duty of due care.

In addition to deviating the from the requirements set forth in Section 1003 of the 2012 IBC, the landing in question also deviated from the requirements set forth in Chapter 11 of the 2012 IBC which requires handrails. Mr. Durig testified that ANSI 117 is the Accessibility Act, which has the exact same requirements of the ADA. These requirements are codified in Chapter 11 of the 2012 IBC. While Section 1003 requires at least one handrail, Mr. Durig explains that Chapter 11 of the 2012 IBC is also applicable to the area where Plaintiff fell and that this Chapter requires two handrails. Specifically, Mr. Durig testifies, “The building code required one handrail, the ADA and the ANSI chapter 11, I think they required two handrails. There’s no exception in the ADA or the ANSI that a single step not have handrails. The way that those two codes or standards discuss it is that all ramps and stairs have handrails, then if the ramp is less than six inches change in elevation it does not have to have handrails at all. But there’s no exception listed

that I found that says stairs are not required to have handrails.” (Deposition Transcript p.60 l. 5-18). Defendant’s failure to provide handrails in the area of Plaintiff’s fall is a violation of Chapter 11 of the 2012 IBC and constitutes a breach of the duty of due care.

Plaintiff also relies on ASTM F1637 in further support of her claim that the landing in question constituted a dangerous condition. Defendants’ expert agrees that ASTM F1637 sets forth an industry standard. (Deposition Transcript p. 36 l. 3-10). ASTM F1637 Section 5.1.1 provides, “walkways shall be stable, planar, flush, and even to the extent possible.” Defendants’ expert agrees that the landing in question could have been made so it flowed gradually down to the level of the parking lot as opposed to having a step. (Deposition Transcript p. 38 p. 38 l. 14-17. To the extent it was not constructed in that manner, it is a deviation from an industry standard and constitutes a dangerous condition.

Further, ASTM F1637 Section 7.2.1 provides, “short flight stairs shall be avoided where possible.” Despite this industry standard, and despite the possibility of alternative options, Defendants constructed this area of egress with a short flight of stairs. Then, Defendants failed to follow industry standards for the construction of short flight stairs. ASTM F1637 Section 7.2.2 requires that “in situations where a short flight stair or single step transition exists or cannot be avoided, obvious visual cues shall be provided to facilitate improved step identification. Handrails, delineated nosing edges, tactile cues, warning signs, contrast in surface colors, and accent lighting are examples of some appropriate warning cues.” Defendants’ undisputed failure to provide any of these warning cues is substantial evidence of Defendant’s breach of the duty of due care.

Continuing, Mr. Durig testifies that the lack of painting on the edge of the step constituted a violation of the International Property Maintenance Code Chapter 302.3. This Code requires

that walkways be maintained free from hazardous conditions. Mr. Durig opines that Defendants' failure to paint the edge of the step and/or provide a handrail violated Chapter 302.3 and established a dangerous condition. (Deposition p. 64 l. 12-18).

**Conclusion**

Defendants' Renewed Motion for Summary Judgment is denied because sufficient evidence exist in the record to find that: (1) Defendants owed a duty of care to Plaintiff, (2) Defendants breached that duty of care by negligent act and/or omission, and (3) Plaintiff suffered damages proximately caused from the breach of duty.

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The Honorable Casey L. Manning  
Court of Common Pleas  
Fifth Judicial Circuit

\_\_\_\_\_, 2018  
Columbia, South Carolina



Richland Common Pleas

**Case Caption:** Gayle Stephens vs Colliers International South Carolina Inc ,  
defendant, et al  
**Case Number:** 2018CP4000769  
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So Ordered

s/L. Casey Manning, 2061