IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No.: 2015-002573

Opinion No. 2018-UP-011 (S.C. Ct. App. Filed January 10, 2018)

Charles Thomas Hobbs and Mary Hobbs,.....Petitioners

v.

Fairway Oaks Homeowners Association, ...Respondent

BRIEF OF RESPONDENT FAIRWAY OAKS HOMEOWNERS ASSOCIATION

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STATEMENT OF THE CASE

This appeal follows a Court of Appeals' Order affirming the Circuit Court's grant of summary judgment to Respondent Fairway Oaks Homeowners Association ("Fairway Oaks") and refusing to create a new exception to the independent contractor rule. (A. p. 8). The material facts are undisputed. Petitioner Charles Thomas Hobbs ("Hobbs") was the president of Fairway Oaks when he received a complaint about a dead limb on common areas maintained by Fairway Oaks. Historically, Fairway Oaks had hired a professional tree service to perform maintenance of trees. Instead of following Fairway Oaks' standard practice, Hobbs himself, acting as the president of Fairway Oaks, personally selected and hired his friend Lee Lambright to cut the limb. The parties agree that Hobbs hired Lambright as an independent contractor with no experience cutting limbs. Hobbs stood in close proximity to the tree while Lambright was performing his work, and one of the limbs Lambright cut struck Hobbs on the head. Instead of filing suit against Lambright, Hobbs and his wife Mary Hobbs filed a complaint in the Pickens County Court of Common Pleas against Respondent on May 15, 2014, alleging Fairway Oaks was liable to Hobbs for the negligence of Lambright – the independent contractor Hobbs himself hired.

Discovery revealed the following undisputed facts: (1) Lambright was an independent contractor; (2) Hobbs made the decision to hire Lambright; and (3) no other person acting on behalf of Fairway Oaks participated in the decision to hire Lambright or in the tree trimming activities on the date of the accident. Relying on these facts and application of the independent contractor rule,

Fairway Oaks moved for summary judgment on January 2, 2015. (A. pp. 23, 26-30). Fairway Oaks filed a supporting memorandum, and Hobbs filed an opposing memorandum.

The Honorable Judge Edward Miller held a hearing on the motion on August 7, 2015. At the hearing, Hobbs did not dispute the fact that Lambright was an independent contractor or that Hobbs himself hired Lambright, and he did not argue that any other person acting on behalf of Fairway Oaks participated in the events leading up to the incident. (A. p. 148, lines 16-17; p. 149, lines 7-8). Rather, he asked the Court to create a new exception to the independent contractor rule. After considering the arguments of both parties, Judge Miller refused to change the existing law, and granted Fairway Oaks' Motion for Summary Judgment in a written Order signed on September 15, 2015. (A. p. 8).

In its Order, the Circuit Court held that Fairway Oaks "is not liable for the negligence of an independent contractor that [Hobbs], as president of the HOA, hired, and there is no recognized exception that removes this case from the general independent contractor body of law." (A. p. 8). The Circuit Court considered Hobbs' argument that it should create a new exception to the independent contractor rule, but the Court refused to do so. (A. p. 8).

Petitioners filed their Motion to Alter or Amend Judgment on November 3, 2015, which was denied by an Order dated November 17, 2015. Petitioners then appealed the decision to the Court of Appeals. On January 10, 2018, the Court of Appeals unanimously affirmed the decision of the Circuit Court and refused to create a new exception to the well-established and long-standing independent contractor rule. Petitioners filed a petition for writ of certiorari to this Court on March 22, 2018, which this Court granted on December 13, 2018.

STATEMENT OF FACTS

On August 18, 2012, Benny Roper, a Fairway Oaks homeowner, called Hobbs to request the removal of a tree limb hanging over Roper's home. (A. p. 165, line 24-p. 166, line 9). At that time, Hobbs was serving as the president of Fairway Oaks, as he had done for the prior five years. (A. p. 159, lines 16-19). Among other responsibilities as president of Fairway Oaks, Hobbs arranged for the maintenance and repair of Fairway Oaks' common areas. (A. p. 161, lines 4-8).

Hobbs advised Roper that he would hire a professional tree service based out of Liberty, South Carolina to remove the limb on behalf of Fairway Oaks. (A. p. 190, lines 13-p. 191, line 6). Fairway Oaks had previously hired a professional tree trimmer to perform similar services. However, Hobbs – without consulting anyone else from Fairway Oaks – changed his mind and decided he did not want to pay a professional tree trimmer for this job. (A. p. 163, line 15-p. 164, line 21). Instead, during a golf outing, Hobbs asked his personal friend Lee Lambright to remove the limb. (A. p. 161, lines 20-p. 162, line 2; p. 166, lines 3-21; p. 170, lines 15-20).

Although Hobbs had hired Lambright to perform odd jobs for Fairway Oaks over the years, Lambright explained: "I am not a contractor. I am just a neighborhood friend, and I do a lot of little projects for people." (A. p. 172, line 25-p. 173, line 7). Lambright had no training in limb removal, and he had never previously been hired to remove tree limbs or performed tree limb removal work. (A. p. 172, line 8-p. 177, line 12). Lambright agreed to remove the limb if Hobbs would help, to which Hobbs agreed. (A. p. 166, lines 11-21).

On August 21, 2012, Hobbs met Lambright at Fairway Oaks, helped Lambright remove the ladder from his truck, and carried the ladder with Lambright to the tree at issue. (A. p. 179, line 3-p. 180, line 22). Hobbs held the bottom of the ladder as Lambright climbed up and began to remove branches with a chainsaw. (A. p. 180, lines 18-22). Then, Hobbs

stood in close proximity to the tree as Lambright performed his work. (A. p. 193, lines 8-20). Although there were safer places to stand, Hobbs stood "in the direct line of fire underneath the branch." (A. p. 193, lines 1-20).[1]

Hobbs stood in close proximity to the tree while Lambright was cutting a large limb, which fell and struck Hobbs on the head. (A. p. 188, line 20-p. 189, line 24; p. 192, lines 1-22). Hobbs candidly admitted that it was his own decision to attend the tree trimming and to stand where he did. (A. p. 168, lines 11-18). He further admitted that he was there as the president of Fairway Oaks. (A. p. 171, lines 4-13).

Hobbs claimed injuries and filed suit against the Respondent Fairway Oaks, of which he was the President. He did not file suit against Lambright, the independent contractor. Hobbs admits that he personally made the decision to hire Lambright instead of a professional tree trimmer in order to save money. (A. p. 170, lines 15–20; p. 171, lines 14-15). He also admits that he chose to stand where the limb fell, and he could have stood elsewhere. (A. p. 171, lines 16-23). Lastly, Hobbs presented no evidence before the Circuit Court that anyone else acted on behalf of Fairway Oaks to cause his injuries. In other words, the only negligence that Hobbs attempts to attribute to Fairway Oaks is from the acts of the independent contractor that Hobbs himself selected and hired in contravention of Fairway Oaks' standard practice of hiring a professional tree trimmer to perform similar work.

[1] There is some factual dispute as to whether Hobbs actually assisted Lambright in the limb removal, but multiple witnesses testified that he did. (A. p. 191, lines 3-6 ("Q. And when you showed up the day the branch was being removed, it was Mr. Hobbs and Mr. Lambright removing the branch? A. Yes, sir.")); (A. p. 188, lines 17-21). For purposes of this appeal, this factual dispute is immaterial because it is undisputed that Lambright was an independent contractor.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the Supreme Court applies the same standard that governs the circuit court under Rule 56(c), SCRCP. Dawkins v. Fields, 354 S.C. 58, 69, 590 S.E.2d 433, 438–39 (2003). "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.

ARGUMENT

The facts of this case present a typical independent contractor scenario, and the Circuit Court and Court of Appeals properly refused to change the existing law to create liability against Fairway Oaks when Hobbs himself selected the independent contractor without the involvement of any other officers or agents of Fairway Oaks. It is quite telling that Petitioner waits until the twelfth page of his brief and slips into a footnote the fact that Petitioner himself hired the independent contractor that caused his injury. There is no recognized exception in South Carolina that would remove this matter from the general body of independent contractor law, and the facts of this case do not justify the creation of a new exception. (A. p. 8). Moreover, in the event this Court was to create a new exception to the independent contractor rule, which Fairway Oaks argues it should not, such exception should only apply prospectively. Accordingly, Fairway Oaks was entitled to judgment as a matter of law, and the Circuit Court's grant of summary judgment should be affirmed.

I. The Circuit Court and Court of Appeals correctly found that Fairway Oaks is not liable to Hobbs for the negligence of an independent contractor that Hobbs himself hired.

South Carolina's independent contractor rule is well-established and clear: "A principal that hires an independent contractor is not liable for the negligence of that independent contractor, or for harm caused by that negligence." Cherry v. Myers Timber Co., Inc., 404 S.C. 596, 745

S.E.2d 405 (Ct. App. 2013) (holding that the timber company was not responsible for torts of a logger hired to harvest and haul timber to mills because the logger was an independent contractor). Hobbs[2] argues that this case presents a novel issue of law because it involves an independent contractor hired by a homeowners association, but this issue is far from novel. Instead, it is merely another iteration of the long-standing fact scenario under which the independent contractor rule was first established. Nearly 150 years ago, the South Carolina Court of Appeals announced the rule of law that controls this case: "[T]he owner of property, fixed or movable, for whose benefit a work about such property is to be accomplished, is not held answerable for the negligence of an independent contractor to whom he has committed the work, and to be done without his control in its progress." Conlin v. City Council of Charleston, 49 S.C.L. (15 Rich.) 201, 211 (1868). Therefore, a landowner who commits a task to an independent contractor and who does not control the means or methods used by the contractor is not liable for the independent contractor's negligence.

Fairway Oaks was the owner of property. Hobbs' – on behalf of Fairway Oaks – personally selected his friend Lambright and committed the work to Lambright. It is undisputed that Lambright was an independent contractor – i.e., that Fairway Oaks had no control over Lambright's means or methods in performing the work. Hobbs was injured by Lambright's conduct during his work. Therefore, the case falls squarely within the historically-sound rule that an independent contractor is liable for his own negligence, and a landowner does not have an obligation to control and supervise the conduct of an independent contractor. Thus, Petitioners' sole remedy is to bring an action against the independent contractor whom Petitioner selected and who caused his injuries.

[2] Unless stated otherwise, Petitioners are referred to collectively as "Hobbs."

The sole source of liability for which Hobbs seeks recovery is vicarious liability against Fairway Oaks for Lambright's – an independent contractor's – conduct. This is precisely the type of liability that the independent contractor rule precludes. The Court of Appeals in Cherry upheld summary judgment in favor of a principal, despite negligence of its hired driver, because the driver was an independent contractor. Cherry, 404 S.C. at 603–04, 745 S.E.2d at 409. The Court of Appeals in Cherry held, for the purposes of imposing vicarious liability on the employer, the test is "whether there is the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment." Id., at 601, 745 S.E.2d at 407 (citing Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 116, 512 S.E.2d 510, 520 (Ct. App. 1998)).

Here, the question of the right and authority to control Lambright's work is a non-issue because Hobbs concedes that Lambright, whom he hired, was an independent contractor. (A. p. 149, lines 7–8). Lambright furnished his own tools, controlled the means and methods of his work, and even testified that he was acting as an independent contractor. (A. p. 178, lines 6–8). Therefore, it is undisputed that Lambright was not an agent of Fairway Oaks.

Because the only conduct that gives rise to Hobbs' claim is the conduct of Lambright, the independent contractor rule applies, and Fairway Oaks cannot be liable for Lambright's negligence. Accordingly, this Court should affirm the decision of the Court of Appeals upholding the Circuit Court's grant of summary judgment in favor of Fairway Oaks.

II. The Circuit Court and Court of Appeals properly recognized that no exception to the independent contractor rule applies to an independent contractor working for a homeowners association.

It is important to note what Hobbs is ***not*** contending and, even more importantly, ***why*** he is not making that contention. Hobbs is ***not*** asserting that Fairway Oaks negligently hired an independent contractor causing his injury. (A. p. 154, lines 11–14). He cannot. Negligent hiring

of an independent contractor would typically provide a means of recovery directly against the principal in those situations where the principal fails to take reasonable care in the selection of an independent contractor. However, Hobbs himself selected his friend Lambright instead of a professional tree trimmer. Therefore, Hobbs is unable to allege a claim for negligent hiring of the independent contractor. Instead, Hobbs is left with only one option: asking this Court to ignore the fact that he chose the independent contractor with no applicable training or experience and to take the unprecedented step of creating a new legal duty by carving out a new exception to the independent contractor rule. The long history of the rule and the very few recognized exceptions under South Carolina law do not support a cavalier abandonment of the rule in this case.

In its over 150-year history of applying the independent contractor rule, South Carolina has only recognized exceptions to the rule based on nondelegable duties in two situations: (1) the defendant attempts to delegate a statutory duty; or (2) the defendant provides a public service and attempts to delegate that distinctly public duty.[3] Specifically, South Carolina has recognized the following exceptions to the independent contractor rule:

1) An employer's duty to provide a reasonably safe place to work and tools for its employees; See Belamy v. Hardee, 242 S.C. 71, 129 S.E.2d 905 (1963);

2) A commercial motor carrier's duty to properly secure cargo; See Jenkins v. E. L. Long Motor Lines, 233 S.C. 87, 103 S.E.2d 523 (1958) (statutory);

[3] There is an outlier to these two categories. South Carolina has recognized a master's nondelegable duty to provide a reasonably safe place and safe tools to an employee since the late nineteenth century. See Gunter v. Graniteville Mfg. Co., 15 S.C. 443 (1881). Thus, even if an employer delegates these duties to an independent contractor, the employer remains liable. However, this duty is quite different from the more recently recognized exceptions to the independent contractor rule. From its inception, courts applying this exception require a showing that the breach of the employer's duty went beyond the mere negligence of an independent contractor such that the employer was negligent in employing and supervising the independent contractor. Id. at 456. In other words, this exception is more akin to a claim for negligent hiring of an independent contractor. For this exception to be relevant, Hobbs would have to prove negligent hiring, implicating his golf-course interview of his personal friend as a negligent act leading to Hobbs' own injury.

3) A bail bondsman's duties with respect to actions of a hired bounty hunter; See Carson v. Vance, 326 S.C. 543, 485 S.E.2d 126 (Ct. App. 1997) (statutory);

4) A landlord's duty to maintain a tenant's property in a fit and habitable condition; See Nedrow v. Pruitt, 336 S.C. 668, 521 S.E.2d 755 (Ct. App. 1999) (statutory);

5) A private hospital's duties with respect to provision of emergency room services; See Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000) (public service); and

6) A municipality's duty to maintain public streets; See Dolan v. City of Camden, 233 S.C. 1, 103 S.E.2d 328 (1958) (public service).

The relative scarcity of exceptions to a rule that has been recognized for well over a century highlights the degree to which South Carolina's courts have protected the independent contractor rule. None of the above-listed exceptions apply in this case.[4]

Despite the courts' continued protection of the long-standing independent contractor rule, Hobbs asks this Court to create a new nondelegable duty out of whole cloth. Hobbs would make Fairway Oaks vicariously liable for the conduct of the independent contractor that Hobbs, in his capacity as Fairway Oaks president, chose. Moreover, he does not – and cannot – assert that this liability arises out of Fairway Oaks' own negligence in the selection of the independent contractor. Instead, he seeks a finding of a new, nondelegable duty regardless of the level of care a homeowners association – i.e. a non-profit association of neighbors – uses in hiring an independent contractor. Because Fairway Oaks does not hold a statutory duty towards Hobbs and Fairway Oaks' maintenance is not a public service, the facts of this case do not support the creation of a new exception to the long-standing independent contractor rule.

[4] As the Circuit Court found, Hobbs was not an employee, and Hobbs does not make any such contention.

A. The facts of this case do not fall within any recognized exception to the independent contractor rule, all of which rely on statutory or public obligations that are inapplicable to an HOA.

The trial court correctly found, and the Court of Appeals correctly affirmed, that no recognized exception to the independent contractor rule applies to this case. (A. p. 8). Most of the modern exceptions to South Carolina's independent contractor rule arise out of statutory duties. For example, this Court relied upon the Motor Carrier Rules and Regulations of the South Carolina Public Service Commission when it held that a commercial motor carrier's liability for improper loading of a vehicle could not be avoided when the shipper loaded the vehicle instead of the carrier. Jenkins, 233 S.C. at 95–96, 103 S.E.2d at 527–28. Likewise, the Court of Appeals relied upon South Carolina statutes to hold a South Carolina bail bondsman liable for the negligence of an independent contractor hired as a bounty hunter. Carson, 326 S.C. at 550, 485 S.E.2d at 129–30 ("Bail bondsmen have a statutorily imposed responsibility for the actions of their runners [bounty hunters] when they receive their license."). As discussed in detail below, the Court of Appeals also relied upon the Residential Landlord Tenant Act to recognize a nondelegable duty of a landlord while conducting business in a tenant's residence. Durkin v. Hansen, 313 S.C. 343, 437 S.E.2d 550 (Ct. App. 2013).

The remaining exceptions to the independent contractor rule recognized by South Carolina's courts involve government functions – such as the maintenance of public streets – or the provision of important services to the public – such as hospital services. See Dolan, 233 S.C. at 3–4, 103 S.E.2d at 329–30 (relying upon statutes and holding that municipalities may be liable for negligence with respect to roads maintained by the State Highway Department); Simmons, 341 S.C. at 51, 533 S.E.2d at 322 (applying Restatement (Second) of Torts § 429, which requires

showing that the employer of the independent contractor holds itself out to the public as providing certain services, to hospital providing emergency room services to the public).

Neither of the general bases supporting an exception to the independent contractor rule apply here.[5] No statute or regulation imposes a duty on Fairway Oaks, as an HOA, to maintain its property in any particular manner. Moreover, Fairway Oaks is not providing a service to the public. Its relationship to its relatively few homeowners (the property is composed of approximately eighteen units) can easily be governed by traditional rules of contract and tort. (A. p. 160, lines 10–21). There is no overriding public interest or need to change the traditional tort laws with respect to the relationship between Fairway Oaks and Hobbs. Therefore, the Circuit Court correctly applied the independent contractor rule and refused to create a new exception of an entirely different type than those few exceptions recognized by South Carolina courts.

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[5] With no authority cited to support him, Petitioner argues the commonality between the few exceptions recognized by South Carolina's courts is that the independent contractor had been performing a "core function" of the principal – just as maintenance of the common areas was, he argues, a "core function" of Fairway Oaks. (Pet. Br. p. 11–12). However, this argument is without merit for two reasons. First, the Court of Appeals applied the independent contractor rule in Cherry to a timber company who used an independent contractor logging company to harvest and transport timber to its mills. See 404 S.C. at 600,603–04; 745 S.E.2d at 407, 409. See also Norris v. Bryant, 217 S.C. 389, 60 S.E.2d 844 (1950) (applying independent contractor rule to similar timber harvesting contract). Surely, the harvesting and transportation of timber is a "core function" of a timber company, yet the Court of Appeals did not find a nondelegable duty that would impose upon the timber company liability for the actions of the logging company's driver. Thus, Petitioner's "core function" argument is without merit.

Second, regardless of the establishment of the independent contractor's performance of the principal's "core function," the few exceptions to the general rule recognized in South Carolina arise out of a statutory or distinctly public duty. An HOA's covenant to maintain a common area is not based on either. Thus, even if the maintenance of the common areas were a core function of Fairway Oaks, the creation of a new nondelegable duty based on this fact would be inconsistent with the other, few, exceptions to the independent contractor rule that this State recognizes.

B. Despite Hobbs' arguments to the contrary, the landlord-tenant exception does not apply because Fairway Oaks is not a landlord and Hobbs is not a tenant.

Hobbs places significant weight on the landlord-tenant exception and particular emphasis on the Court of Appeals' opinion in Durkin v. Hansen, 313 S.C. 343, 437 S.E.2d 550 (Ct. App. 2013). However, the exception recognized in Durkin is not analogous and has only been applied in a specific context: a landlord-tenant relationship. Because of the differences between the landlord-tenant relationship and the HOA-homeowner relationship – not the least of which is the fact that the former is governed by statute and the latter is not – the creation of a new exception based on the landlord-tenant exception would not be appropriate from a legal or factual perspective.

In Durkin, the landlord hired a contractor to enter into the plaintiff's dwelling unit to clean the carpets. The plaintiff came home and slipped on a slick substance left by the contractor in her unit. Durkin, 313 S.C. at 345, 437 S.E.2d at 552. The Court of Appeals considered the contract and the Residential Landlord Tenant Act ("RLTA") to find the landlord owed a nondelegable duty: "a ***landlord*** who makes repairs and improvements on the demised premises owes a duty of reasonable care to the occupying tenants which he cannot escape by placing the work with an independent contractor." Id., 313 S.C. at 348, 437 S.E.2d at 552 (citations omitted) (emphasis added). Although Hobbs' proposed exception includes similar words, the exception has never been applied to similar facts.

The landlord-tenant exception only applies in a residential rental setting, and it requires a landlord and a tenant. See Durkin, supra. Here, the landlord-tenant exception does not apply: Fairway Oaks is not Hobbs' landlord, and Hobbs was not injured in a rented or even residential area. Rather, Fairway Oaks is an HOA, and Hobbs was its president. This case has no similarity to a landlord-tenant relationship.

Additionally, unlike the landlord-tenant relationship, the South Carolina General Assembly has not adopted an act, similar to the RLTA, for common ownership of properties such as a homeowners association. Although homeowners association acts have been proposed in South Carolina for many years, the General Assembly has so far declined to adopt any such acts. See, e.g., S. 0218 General Bill, 119th Session, 2011-2012, "S.C. homeowners Association Act"; S. 0082 General Bill, 122nd Session, 2017-2018, "South Carolina Homeowners Association Act."[6] In effect, Hobbs is petitioning this Court to apply a statutory duty created by the General Assembly in the landlord-tenant context to the context of a homeowners association even though the General Assembly has declined to do so. The Legislature has shown its ability to create such legislation by enacting the RLTA. Yet, the General Assembly has not enacted a homeowners association act or held that HOAs are subject to the RLTA. See e.g., Talley v. John-Mansville Sales Corp., 285 S.C. 117, 119, 328 S.E.2d 621, 622 (1985) ("Such a change is the function of the legislature, and this Court refuses to usurp legislative authority in this matter.").

Hobbs' attempt to analogize the facts of this case to those in Durkin serves as a poor compass for this Court's analysis because that case dealt with a statutorily-governed landlord-tenant relationship; this case does not. Additionally, comparison to Durkin fails for three key reasons: (1) absent the RLTA, a landlord is not liable for the conduct of an independent contractor; (2) the HOA is not a landlord; and (3) the danger here was not caused by any physical quality of the premises.

[6] Notably, the RLTA requires landlords to "keep all common areas of the premises in a reasonably safe condition" . . . ." S.C. Code § 27-40-440(a)(3). The proposed Homeowners Association bills do not place a similar obligation on homeowners associations.

i. Absent the RLTA, the independent contractor rule applies to landlord-tenant relationships, and maintenance is not a nondelegable duty.

The RLTA substantially changed the common law duties and liabilities of a landlord. Before the adoption of the RLTA, a landlord was not automatically liable for the negligence of its independent contractor. See Young v. Morrisey, 285 S.C. 236, 329 S.E.2d 426 (1985). In fact, in commercial leases not subject to the RLTA, the independent contractor rule still operates to shield a landlord from liability when a plaintiff is injured due to an independent contractor's negligence on the landlord's premises. See Creighton, supra. Therefore, application of the nondelegable duty doctrine to Fairway Oaks is not supported in the absence of a statute obligating Fairway Oaks to maintain the property.

Prior to the enactment of the RLTA, this Court applied the independent contractor rule to shield a residential landlord from the negligence of an independent contractor in Young. The landlord defendant hired an electrical subcontractor to wire the heating and air conditioning units of an apartment complex during its construction. The electrician – an independent contractor – negligently installed the wiring, resulting in a fire that caused the death of two minors. 285 S.C. at 238-39, 329 S.E.2d at 427-28. The landlord's lease also obligated the landlord to repair the leased premises upon notice of any defects. Id. Nonetheless, this Court held that the landlord was not responsible for the negligence of the independent contractor. Id. at 242, 329 S.E.2d at 429-30.[7]

[7] South Carolina courts have recognized a limited exception to the independent contractor rule for inherently dangerous activities. Hobbs has never argued that the tree trimming in this case was inherently dangerous, and that issue is not preserved for review. Moreover, tree trimming is not an inherently dangerous activity because the risks – such as the risk at issue in this case – can be removed by taking proper precautions. See Robertson v. Morris, 209 W. Va. 288, 546 S.E.2d 770 (2001) (holding that tree trimming was not inherently dangerous because risks could be prevented with proper precautions).

Furthermore, prior to the enactment of the RLTA, a contractual obligation of a landlord to repair the premises did not give rise to a negligence cause of action in tort:

> A landlord may, however, enter into a binding agreement to keep the demised premises in repair, but even then the landlord is entitled to notice of any existing defects before becoming obligated to repair. Even when a landlord so obligates himself, a failure to make repairs will give rise merely to a right of action for breach of contract under which damages are not recoverable for personal injuries sustained by reason of the defective condition of the premises.

Id. at 239-40, 329 S.E.2d at 428 (citing Timmons v. Williams Wood Products Corp., 164 S.C. 361, 162 S.E. 329 (1932); Conner v. Farmers and Merchants Bank, 243 S.C. 132, 132 S.E.2d 385 (1963); Sheppard v. Nienow, 254 S.C. 44, 173 S.E.2d 343 (1970)). Thus, a mere contractual obligation to maintain premises does not create a nondelegable duty or otherwise render a principal liable for the tortious conduct of an independent contractor.

Here, at best Hobbs presented evidence that Fairway Oaks contractually agreed to "maintain" the common areas. Absent more, Hobbs cannot seek recovery for his personal injuries. See Young, supra; Timmons, supra.

Fairway Oaks' hiring of Lambright to trim the tree does not change the analysis. Although the RLTA changed the common law as it applies to the independent contractor defense in a residential lease context, the RLTA does not apply to commercial leases. See S.C. Code Ann. § 27-40-20(b)(1). In Creighton, the Court of Appeals held that a landlord in a commercial lease is not liable for the conduct of an independent contractor ***even when it assumes a duty to maintain the premises***. In that case, a commercial landlord hired an independent contractor to maintain vegetation near entrance steps leading to a leased premises where a plaintiff fell and was injured. 334 S.C. at 115, 512 S.E.2d at 520. The Court of Appeals recognized two rules: (1) a person who voluntarily undertakes to perform an act must use due care in the performance of that act; and (2)

a landlord who attempts to make premises safe must use due care. Id. at 115-116, 512 S.E.2d at 520 (citations omitted).

The Court of Appeals held that the landlord voluntarily undertook the maintenance of the steps by hiring a lawn care service – an independent contractor – to maintain the plants at the entrance steps where the plaintiff was injured. Id. However, despite the landlord's assumption of the duty to maintain the property, the Court of Appeals went on to hold that the independent contractor rule applied to shield the landowner from liability for the lawn care service's negligence. Id. Therefore, the landlord could not be held liable for injuries caused by the independent contractor's negligence even after the landlord assumed the duty of maintaining the stairway.

The same legal principles apply here. Like the landlord in Creighton, Fairway Oaks had a duty to maintain the common areas of the association. Also, like the landlord in Creighton, Fairway Oaks hired an independent contractor to perform a particular task: cutting the tree limb. Hobbs' injuries did not result from a general condition of the common area – the limb did not fall on its own or because Fairway Oaks failed to properly maintain the common area. Rather, Hobbs' injuries resulted directly from Lambright's performance of the work when he cut the limb and from Hobbs' decision to stand in close proximity to the tree when it was being cut. The limb fell and struck Hobbs because Lambright – an independent contractor – negligently performed the task and Hobbs was standing too close to the tree when the limb fell.

The nondelegable duties in the landlord-tenant context arise out of the RLTA. No similar statute has been adopted that would apply to an HOA under the facts of this case. Moreover, the duties in the landlord-tenant cases deal with physical conditions of the property, not tortious acts of third parties. Therefore, Hobbs' attempt to analogize the facts of this case – where he hired the

independent contractor himself and was injured while acting as the president of Fairway Oaks – falls flat. Expansion of the Court of Appeals' holding in Durkin to this case is not justified.[8]

ii. The landlord-tenant relationship is fundamentally different from the relationship between an HOA and its president, or even a homeowner and an HOA.

The relationship between a landlord and a tenant is distinct from the relationship at issue in this case. Hobbs was the president of Fairway Oaks and acting as the president when he was injured. Even when compared to the relationship between an HOA and a homeowner, the comparison to a landlord-tenant relationship is strained at best.

A homeowner in an HOA is a member of the HOA with voting rights. The homeowner has the ability to influence the HOA and its conduct. In this case, Hobbs was the president of the HOA. In fact, Hobbs used solely his discretion in selecting and hiring Lambright. Moreover, the homeowner owns his home. He has the right to make repairs at his will. The property under the control of the HOA is separate from the homeowner's residence.

In contrast, a tenant has no ownership in the rented property. In residential leases, the tenant rarely has the right to make any substantial changes to the rented property. In addition, aside from threatening not to renew a lease, the tenant has no say in what the landlord does with the property. In the typical residential lease, the landlord not only has control over any common areas, but also has final say in any changes that the tenant may desire to make to his residence.

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[8] Although the Court of Appeals in Durkin cited both the RLTA and the language in the lease agreement as supporting a finding of a nondelegable duty, a mere agreement in a lease to repair the premises – even with notice – does not give rise to an action in tort for recovery of personal injuries. See e.g., Timmons, supra (holding that landlord was not liable in tort for injuries to tenant's daughter when door fell on her foot despite fact that lease stated that landlord would repair premises, landlord was notified of the dangerous door hinge, and landlord failed to repair the hinge). Because the landlord in Timmons did not have a duty in tort to make the repairs, the duty arises only in contract, the breach for which does not give rise to a cause of action for personal injuries. Id. at 332.

As it relates to common areas, the HOA's role is more similar to that of a neighboring landowner than a landlord. While both have a duty to maintain premises under their control, the HOA's control stops at the homeowner's property line. Like a neighboring landowner, the HOA does not have a duty to maintain or any significant control over the homeowner's residence or property.

A neighboring landowner is not liable for the negligence of an independent contractor tree trimmer. See, e.g., Robertson v. Morris, 209 W. Va. 288, 546 S.E.2d 770 (2001) (applying independent contractor rule to homeowner who hired tree trimmer); Kinsey v. Spann, 139 N.C. App. 370, 533 S.E.2d 487 (Ct. App. 2000) (applying independent contractor rule to landowner who hired her nephew as an independent contractor to trim a tree, resulting in plaintiff neighbor's death); Dempsey v. Correct Mfg. Corp., 755 S.W.2d 798 (Tenn. Ct. App. 1988) (applying independent contractor rule to utility that hired tree trimmer). Because an HOA is like a neighboring landowner to which the independent contractor rule applies, Fairway Oaks is not responsible to a homeowner for the negligence of an independent contractor. Moreover, Hobbs was not standing under the tree observing Lambright's work merely as a homeowner at the time of his injury – he was there in his position as president of Fairway Oaks. (A. p. 169, lines 23–25). Therefore, the landlord-tenant analogy is even more attenuated and even less applicable.

iii. The duties arising out of the RLTA apply to the physical quality of the premises, not the negligent or criminal acts of others on the premises.

Hobbs was not injured by any physical quality of the Fairway Oaks common area. The tree limb did not fall due to Fairway Oaks' failure to notice a dead limb and remedy the situation. It fell because Lambright – an independent contractor – was negligent in his work, and Hobbs was injured because he stood "in the direct line of fire underneath the branch" while Lambright worked. (A. p. 193, lines 1–20). Even under the RLTA – which does not apply to the HOA – the

nondelegable duty exception only extends to defective conditions on the premises, not injuries caused by negligent actors on the premises.

In Fair v. United States of America, 334 S.C. 321, 323, 513 S.E.2d 616, 617 (1999), this Court limited the scope of the RLTA "fit and habitable" requirement to the "inherent physical state of the leased premises." Therefore, a landlord was not liable for injuries caused when one tenant's dog bit another tenant's daughter. Id. This Court rejected the argument that the RLTA changed the pre-existing law regarding dog bites because a dog is not part of the "inherent physical state of the leased premises."[9] Id.

Similarly, courts have routinely held that a landlord does not owe a duty to insure the safety of residents from criminal acts of third parties. See, e.g., Cooke v. Allstate Mgmt. Corp., 741 F. Supp. 1205 (D.S.C. 1990) (holding that RLTA did not impose a duty on a landlord to protect tenants from criminal activity); Jackson v. Swordfish Investments, L.L.C., 365 S.C. 608, 612-13, 620 S.E.2d 54, 56 (2005) (same). For purposes of keeping the premises safe, there is no appreciable difference from a duty to prevent criminal acts of third parties and the duty to prevent tortious acts of third parties.

For the same reasons, Hobbs' contention that he was an invitee is unavailing. Hobbs cites the "common areas" exception – which applies to landlords, not HOAs – to support his contention that he was an invitee and Fairway Oaks cannot rely upon the independent contractor rule to avoid liability for his injuries. However, the "common areas" exception also only applies to physical

[9] In a subsequent case, this Court held that a landlord who had actual knowledge of a dog's dangerous propensities could be liable for injuries caused to a tenant's invitee on common areas because the RLTA creates a statutory mandate for a landlord to keep the common areas "reasonably safe." See Clea v. Odom, 394 S.C. 175, 714 S.E.2d 542 (2011). Notably, this Court expressly relied on the RLTA requirement in reaching its result. As discussed above, the RLTA does not apply to an HOA.

conditions on the common areas, not acts of third parties. See Cooke, 741 F. Supp. at 1211 ("This rule clearly has never been applied in South Carolina to anything except physical injuries resulting directly from the *condition* of the premises themselves.") (emphasis in original); Wright v. PRG Real Estate Mgmt., Inc., 413 S.C. 276, 286, 775 S.E.2d 399, 404-05 (Ct. App. 2015) (same). Hobbs was injured by an act of a third party – Lambright's removal of the tree limb – and not a condition of the premises. Therefore, even if this Court analogized the landlord-tenant relationship with the facts of this case, the independent contractor rule still applies, and Fairway Oaks cannot be held liable for Lambright's actions.[10]

III. Because there is no statutory or public service basis for creating the exception that Hobbs seeks, this Court should not create such an exception to South Carolina's long-standing and well-established independent contractor rule.

As discussed above, there is no statutory or public service basis for the exception Hobbs would have the Court carve out of whole cloth. Instead of arguing there is a proper basis – that is, a statutory or public service basis – for this new exception, Hobbs argues that South Carolina should abandon its long-standing independent contractor rule because of a "national trend" towards the erosion of the rule. (Pet. Br. p. 7). However, even the resource he relies upon to point to a "national trend" would not recognize an exception in this context. Importantly, neither the

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[10] Even assuming for the moment that this claim were brought in a context where the nondelegable duty doctrine applied, this Court's prior assignment of liability in such context would pose a problem for Hobbs given the facts in this case:

> The term "nondelegable duty" is somewhat misleading. A person may delegate a *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, ***the delegating person remains liable for that breach***.

Simmons., 341 S.C. at 42, 533 S.E.2d at 317. Hobbs admitted that it was his decision alone to delegate the tree limb removal job to the unskilled, untrained independent contractor. (A. p. 170, lines 15-17). Accordingly, even if the Court did extend the existing body of case law to find a new exception under the nondelegable duty doctrine, "the delegating person remains liable for that breach."

specific facts of this case nor the more general relationship between a homeowners association and its members supports the creation of a new legal duty here. Moreover, the cases cited by Petitioner are irrelevant and easily distinguishable.

A. The specific facts of this case – where Petitioner himself selected and hired the independent contractor who caused his injuries – do not support the creation of a new legal duty.

Hobbs asks this Court to change the law, treat a homeowners association differently from a typical landowner, and hold a homeowners association has a nondelegable duty to control the work of an independent contractor. Neither the specific facts of this case nor the general relationship between a homeowner and its homeowners association supports such a change in the law. As to the specific facts of this case, ***Hobbs himself selected the independent contractor and chose to hire his friend with no tree trimming experience instead of the professional tree trimmer that Fairway Oaks had historically hired for similar work.*** Hobbs is the sole individual who decided to hire Lambright. Therefore, the facts of this particular case do not support changing the law of South Carolina to hold Fairway Oaks liable for the conduct of an independent contractor that Hobbs – the plaintiff here – hired. Moreover, Hobbs was not standing under the tree observing Lambright's work merely as a homeowner at the time of his injury – he was there in his position as president of Fairway Oaks. (A. p. 169, lines 23–25). Therefore, the facts of this case do not support the creation of a new legal duty.

Likewise, the general relationship between a homeowners association and its individual member does not support the creation of a non-delegable duty. Homeowners associations are made up of a body of homeowners. The association's boards typically consist of a collection of volunteer, member homeowners, and the associations do not operate for profit. Fairway Oaks itself is a non-profit association. In other words, as it relates to the maintenance of land that they

own, homeowners associations are no different from an individual landowner and have no special skill, training, or financial motive that should create a heightened, non-delegable duty. Therefore, when an association hires an independent contractor to maintain land owned by the association, it should be treated no differently than a homeowner who hires an independent contractor to perform work on his land.

The law as to individual homeowners is clear – there is no liability for the negligence of an independent contractor tree trimmer. A neighboring landowner is not liable for the negligence of an independent contractor tree trimmer. See e.g., Robertson, 209 W. Va. 288, 546 S.E.2d 770 (applying independent contractor rule to homeowner who hired tree trimmer); Kinsey, 139 N.C. App. 370, 533 S.E.2d 487 (applying independent contractor rule to landowner who hired her nephew as an independent contractor to trim a tree, resulting in plaintiff neighbor's death); Dempsey, 755 S.W.2d 798 (applying independent contractor rule to utility that hired tree trimmer). Because a homeowners association is similar to any other neighboring landowner to which the independent contractor rule applies, Fairway Oaks is not responsible for the negligence of an independent contractor.

B. The non-binding authorities cited by Petitioner are either distinguishable or actually support the application of the independent contractor rule in this case.

In support of this contention, Hobbs cites to cases from a mere four jurisdictions: California, Connecticut, Florida, and Georgia, three of which are from intermediate appellate courts. Not only do these decisions lack any binding authority over this Court, but they are readily distinguishable from the case at hand.[11]

[11] Hobbs also cites to 41 American Jurisprudence Independent Contractors § 27, which claims there is a trend towards exceptions to the independent contractor rule. However, this section of American Jurisprudence relies on: (1) a federal district court case from Oregon that states, without citation, that there are many exceptions to the rule; and (2) an intermediate state appellate court

Hobbs relies on Affan v. Portofino Cove Homeowners Ass'n, 189 Cal. App. 4th 930, 117, Cal. Rptr. 3d 481 (Ct. App. 4th Dist., Div. 3, 2010), to establish that Fairway Oaks has a duty to its homeowners just as the Affan condominium association had a duty to its condominium owners. However, Affan is distinguishable for two reasons. First, California's Civil Code – like South Carolina's RLTA in Durkin, which is inapplicable here – mandated repair, replacement or maintenance of common areas by the condominium association. Id. at 935; Calif. Civil Code § 1364(a). While California had a statutory basis for the nondelegable duty of the condominium association, no such statutory basis governs Fairway Oaks. Second, the plaintiffs in Affan were not injured by a direct act of the condominium association or the condominium association's independent contractor – they were injured by the condominium association's decade-long failure to maintain a common sewage line and the contractor's failure to remedy the situation, which led to sewage overflow into the plaintiffs' condominium unit. Id. at 936. In other words, the independent contractor's negligence left a pre-existing physical condition on the common area – a sewage blockage – that eventually damaged the plaintiffs' unit. Hobbs, however, was injured by the negligent acts of Lambright – not a pre-existing condition on the land left by Lambright.

Hobbs' reliance on Gazo v. City of Stamford, 225 Conn. 245, 765 A.2d 505 (2001), is likewise misplaced. In Gazo, the plaintiff, a business invitee of a for-profit business, slipped on an icy sidewalk and was injured. Id. at 247,765 A.2d at 507. Ultimately, one of the defendants

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case from Washington that merely acknowledges the existence of exceptions before applying the independent contractor rule. See Cain v. Bovis Lend Lease, Inc., 817 F. Supp. 2d 1251, 1273 (D. Or. 2011); Hansen v. Horn Rapids O.R.V. Park of the City of Richland, 85 Wash. App. 424, 430 n.4, 932 P.2d 724, 727 n.4 (Wash. Ct. App. 1997). Two cases acknowledging the existence of exceptions to the general rule do not constitute a national trend away from the independent contractor rule. More importantly, Petitioner fails to point to any case recognizing a non-delegable duty on the part of a homeowners association under facts similar to those in this case and where there is no statutory duty placed on the association.

filed a claim against an independent contractor that it had hired to perform ice and snow removal. Id. In Gazo, as in Affan, the plaintiff's injury resulted from a condition of the premises – the sidewalk covered in snow and ice. By contrast, the injury in this case occurred because of Lambright's negligent acts in cutting the limb – not a condition of the land. Furthermore, Gazo involved a businessowner's duties to the general public, whereas the common area maintained by Fairway Oaks is not business property open to the public.

Hobbs also relies on Vasquez v. Lago Grand Homeowners Association, 900 So.2d 587 (Fla. Dist. Ct. App. 3d Dist. 2004), in which a Florida court held an HOA liable for a contracted security company's failure to prevent a multiple homicide. South Carolina's courts have held that landlords – and even more so an HOA – are not insurers of a tenant or homeowner's safety. See Wright, supra (holding a landlord and apartment managers did not have a duty to provide security for a tenant and that the common areas exception did not apply to impose a duty to keep common areas secure from criminal activity).

Finally, Hobbs references a Georgia case that is distinguishable on its face. The defendant HOA in Moon was sued for either its direct negligence or the negligence of its unqualified independent contractor lifeguard in failing to prevent party guests from throwing the plaintiff in a pool. Moon v. Homeowners' Ass'n of Sibley Forest, Inc., 202 Ga. App. 821, 824, 415 S.E.2d 654, 658 (Ct. App. 1992). However, the Moon case dealt with an HOA that rented a pool to a business, not its homeowners, and the liability arose out of an HOA acting as a business in renting out its facilities. Moon did not address an HOA landowner maintaining common property. Therefore, relying upon Moon to create a nondelegable duty between an HOA and its homeowners (or president) is a poor fit.

Furthermore, in 2008, the Georgia Court of Appeals applied the independent contractor rule and found that a landowner was not liable for the damage his neighbors suffered from the independent contractor cutting the landowner's trees. Whatley v. Sharma, 291 Ga. App. 228, 661 S.E.2d 590 (Ct. App. 2008). Whatley demonstrates that Georgia still applies the independent contractor rule, and – most importantly – that the independent contractor rule protects Georgia landowners from liability for the acts of their tree-trimming independent contractors that harm the landowners' neighbors.

Hobbs cites Affan, Gazo, Vasquez, and Moon as evidence of a national trend away from the independent contractor rule, yet none of these cases stands for an exception to the independent contractor rule for an injury resulting from the independent contractor's negligent acts while working for an HOA. As discussed above, an HOA's relationship to its homeowners is similar to the relationship between neighboring landowners. In this context, the independent contractor rule is alive and well, especially regarding independent contractor tree-trimmers. See e.g., Robertson, 209 W. Va. 288, 546 S.E.2d 770; Kinsey, 139 N.C. App. 370, 533 S.E.2d 487; Dempsey, 755 S.W.2d 798; Whatley, 291 Ga. App. 228, 661 S.E.2d 590; Lane-Hill v. Ruth, 910 P.2d 360, 1995 OK CIV APP 155 (Ct. App. Okla., Div. No. 1, 1995). In these cases, West Virginia, North Carolina, Tennessee, Georgia, and Oklahoma, respectively, applied the independent contractor rule and found that landowners who had hired independent contractors to trim tree limbs were not liable to the landowners' neighbors for the damage resulting from the independent contractors' actions in felling the limbs. Based on the relationships involved in these cases, Robertson, Kinsey, Dempsey, Whatley, and Lane-Hill are more similar to this case than any of those relied upon by Hobbs in support of his argument that there is a national trend towards exceptions to the long-standing independent contractor rule.

Over 150 years after the independent contractor rule was first recognized, South Carolina has only created six exceptions, and each of those limited exceptions is based on either a statutorily-prescribed duty or a public service. None of those exceptions apply here. Therefore, Petitioner has provided no basis for this Court to abandon such a well-established and widely-applied rule. Fairway Oaks owed no duty to Hobbs and is not liable for Hobbs' injuries resulting from Lambright's negligent acts.

IV. Any newly created exception to the independent contractor rule could not apply to Fairway Oaks in this case – it must apply only prospectively.

Hobbs' requested exception to the independent contractor rule, even if created by the Court in this case, could not subject Fairway Oaks to liability for his injuries. Because such an exception would create a new nondelegable duty where there previously was none, the new duty could only be applied to actions arising after the Court decides the current case. Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989) ("[T]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively.") (citations and quotations omitted). In other words, Fairway Oaks cannot be held liable now for a duty it did not have at the time of Hobbs' injury. Id. ("Prospective application is required when liability is created where formerly none existed.") (citations and quotations omitted).

As discussed at length above, there is currently no exception to the independent contractor rule that creates a duty on the part of an HOA to control the conduct of its independent contractor. If the Court were to create such an exception, it would place upon all HOAs a nondelegable duty to anyone harmed by the actions of their independent contractors. Because Fairway Oaks did not have such a nondelegable duty to Hobbs – its president – at the time Lambright – its independent contractor – cut the limb that struck Hobbs on the head, Fairway Oaks should not be held liable

for Lambright's conduct in this case. See id.; Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007) (holding that because the newly created common law duty of an adult social host who knowingly and intentionally serves alcohol to a person between the ages of 18 and 20 created tort liability where formerly there was none, the duty could only be applied prospectively).[12]

CONCLUSION

Hobbs, as president of Fairway Oaks, hired his personal friend, Lambright, as an independent contractor to remove a limb from the common property of Fairway Oaks. Hobbs attended the limb-cutting in his position as president of Fairway Oaks, and the cut limb struck Hobbs in the head as he stood beneath the tree – directly in the line of fire. The independent contractor rule prevents Fairway Oaks from being held liable for Hobbs' injury because it resulted from the negligent acts of the independent contractor he hired. Furthermore, there is no exception to this rule currently recognized in South Carolina that would subject Fairway Oaks to such liability, and the facts of this case do not justify a change in the law. Thus, the Circuit Court correctly granted summary judgment for Fairway Oaks, and the Court of Appeals correctly affirmed that decision. This Court should not create a new exception to the well-established and long-standing independent contractor rule simply to hold Fairway Oaks responsible for Hobbs' injuries resulting from the negligence of the independent contractor Hobbs himself selected.

[Signature Page to Follow]

[12] This Court reversed the grant of summary judgment in Simmons when it created the nondelegable duty of a hospital in the provision of its emergency services, thereby allowing a possible retroactive application of the duty. It appears the parties in Simmons did not raise the retroactivity issue. However, seven years after deciding Simmons, this Court prevented retroactive application of newly created duty in Marcum. 372 S.C. at 454, 643 S.E.2d at 86 ("Because our decision today creates tort liability where formerly there was none, a social host will be liable only for claims arising *after* the effective date of this decision.") (emphasis added). Thus, Marcum's retroactivity holding is binding precedent over Simmons.

Respectfully submitted,

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March 6, 2019

IN THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2015-002573

RECEIVED

MAR 06 2019

S.C. SUPREME COURT

Charles Thomas Hobbs and Mary Hobbs..... Appellants,

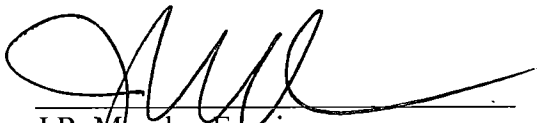
v.

Fairway Oaks Homeowners
Association.....Respondents.

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Brief of Respondent complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

MURPHY & GRANTLAND, P.A.



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PROOF OF SERVICE

I certify that I have served the Brief of Respondent upon Charles Thomas Hobbs and Mary Hobbs, via regular mail, on March 6, 2019, to their attorney of record, Raymond T. Wooten, Esq. of Smith, Jordon, Lavery & Lee, P.A., 1810 East Main Street, Easley, SC 29644.

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