The Supreme Court of South Carolina

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April 16, 2019

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Denise Wright v. PRG
Lower Court Case No. 2011CP4004068
Appellate Case No. 2015-001921

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

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cc:
Christian Stegmaier, Esquire
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Jordan Christopher Calloway, Esquire
Edward Wayne Ridgeway, Jr., Esquire
Gerald Malloy, Esquire
Deborah G. Casey, Esquire
Charles A. Kinney, Jr., Esquire
Edgar Warren Dickson, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Denise Wright, Appellant,

v.

PRG Real Estate Management, Inc., Franklin Pineridge Associates, and Karen Campbell Individually and in her Representative Capacity as an Agent of PRG Real Estate Management, Inc., Respondents.

Appellate Case No. 2013-002157

Appeal From Richland County
W. Jeffrey Young, Circuit Court Judge

Opinion No. 5326
Heard January 15, 2015 – Filed July 15, 2015

AFFIRMED

Jordan Christopher Calloway, S. Randall Hood, and Deborah G. Casey, McGowan Hood & Felder, LLC, all of Rock Hill; Whitney Boykin Harrison, McGowan Hood & Felder, LLC, of Columbia; Gerald Malloy, Malloy Law Firm, of Hartsville; and Edward Wayne Ridgeway, Jr., Burriss & Ridgeway, of Columbia, all for Appellant.

Brian Arnold Comer and Christian Stegmaier, Collins & Lacy, PC, of Columbia, both for Respondents.

FEW, C.J.: Two men abducted Denise Wright at gunpoint from the parking lot of the apartment she leased at Wellspring Apartment Complex. Wright filed this

lawsuit alleging Wellspring's owners and managers[1] (the respondents) were negligent in providing security and were liable under the South Carolina Unfair Trade Practices Act. *See* S.C. Code Ann. § 39-5-10 to -180 (1985 & Supp. 2014). The circuit court granted summary judgment on both claims, finding the respondents had no duty to provide security for Wright and there was no evidence the respondents engaged in unfair or deceptive acts. We affirm.

I. Facts and Procedural History

In 2003, Wright leased an apartment at Wellspring, which is part of a planned unit development known as the "Harbison Community Association." Several public walking trails weave through the community. Wellspring and other properties within the community are accessible from these public trails.

On the night of September 18, 2008, Wright parked her car in Wellspring's parking lot and was walking to her apartment when two men held her at gunpoint and demanded money. When she responded she had none, they forced her to drive them to various automatic teller machines to make withdrawals from her account. After approximately thirty-five minutes, the men fled the car, and Wright called the police. The men have never been identified.

In 2011, Wright filed this action, alleging the respondents were negligent in failing to protect tenants from third-party criminal activity by not (1) providing adequate lighting in the common areas, (2) maintaining the overgrown shrubbery to an appropriate height, and (3) executing its courtesy officer program in a reasonable manner. She also brought an unfair trade practices claim, arguing a Wellspring employee committed unfair and deceptive acts in making statements concerning the safety and security of the apartment complex when Wright filled out her rental application.

The respondents moved for summary judgment on both claims, which the circuit court granted. The court first held the negligence cause of action failed as a matter of law because the respondents had no duty to protect Wright against third-party criminal activity. The court then found Wright presented no evidence the respondents engaged in unfair or deceptive acts.

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[1] PRG Real Estate Management manages Wellspring, Franklin Pineridge Associates is the owner, and Karen Campbell was the property manager at the time of the incident.

II. Standard of Review

Rule 56(c), SCRCP, provides the circuit court shall grant summary judgment if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." When the circuit court grants summary judgment on a question of law, we review the ruling de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). When the circuit court grants summary judgment on a question of fact, we view "the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). "[T]he non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim." *Chastain v. Hiltabidle*, 381 S.C. 508, 514, 673 S.E.2d 826, 829 (Ct. App. 2009). "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). We must affirm summary judgment where the non-moving party "fails to . . . establish the existence of an element essential to the party's case." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007).

III. Negligence Claim

To prevail on a negligence claim, the plaintiff must demonstrate the defendant owed her a duty of reasonable care. *See Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998) (stating "the existence of a legal duty of care owed by the defendant to the plaintiff" is "[a]n essential element in a cause of action for negligence"). The existence or non-existence of a duty is a question of law. *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005).

Generally, residential landlords do not owe tenants a duty to protect them from the criminal activity of third parties. *Cramer v. Balcor Prop. Mgmt., Inc.*, 312 S.C. 440, 441 S.E.2d 317 (1994) (*Cramer I*). In *Cramer I*, the plaintiff asked our supreme court "to extend the duty [to provide security] owed by store owners and innkeepers to landlords." 312 S.C. at 442, 441 S.E.2d at 318. The supreme court pointed out store owners and innkeepers have a duty to protect their customers from foreseeable criminal activity because they invite the public onto their premises. 312 S.C. at 442-43, 441 S.E.2d at 318. The court explained this duty is based on the principle that "[o]ne who invites all may reasonably expect that all

might not behave" and therefore bears responsibility for any injury resulting from the failure to take reasonable precautions against criminal activity. 312 S.C. at 443, 441 S.E.2d at 318 (quoting *Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1213 (D.S.C. 1990) (applying South Carolina law)). The court concluded, however, there was a "fundamental distinction between the relationships of landlord/tenant and store owner/invitee and innkeeper/guest." *Id.* Accordingly, the court "decline[d] to find that landlords owe an affirmative duty to protect tenants from criminal activity merely by reason of the [landlord/tenant] relationship." 312 S.C. at 443, 441 S.E.2d at 318-19; *see also Cramer v. Balcor Prop. Mgmt., Inc.*, 848 F. Supp. 1222 (D.S.C. 1994) (*Cramer II*) (relying on *Cramer I* to grant summary judgment on the tenant's negligence claim).[2]

Wright acknowledges landlords do not generally have a duty to provide security services and protect tenants from criminal activity. However, she makes three arguments to support her position that a duty exists under the facts of this case. For the reasons we explain below, we reject these arguments and find the circuit court correctly granted summary judgment.

A. "Particular Circumstances"

In *Cramer I*, the supreme court relied on the nature of apartment complexes as private places not held open to the public. *See* 312 S.C. at 443, 441 S.E.2d at 318 (relying on the fact the complex was "private and only for those specifically invited"); *see also Cooke*, 741 F. Supp. at 1213 ("An apartment complex is not a place of public resort . . . . [and] is of its nature private and only for those specifically invited." (citation omitted)); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997) ("[A]n apartment complex is not a place held open to the public and is instead a private place for only people who are specifically invited."). The *Cramer I* court recognized, however, "A duty may arise under the *particular circumstances* of the individual case based upon a showing of negligence constituting the proximate cause of the loss." 312 S.C. at 443 n.1, 441 S.E.2d at 319 n.1 (emphasis added).

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[2] *Cramer I* and *Cramer II* arose from the same lawsuit. *Cramer I* was "certified to [the supreme court] by the United States District Court for the District of South Carolina," 312 S.C. at 441, 441 S.E.2d at 317, and the district court decided *Cramer II* after the supreme court answered the certified question. 848 F. Supp. at 1224.

Wright relies on this language from *Cramer I.* She contends her case presents "particular circumstances" that give rise to a duty to protect her. Specifically, she argues Wellspring is "unique" and "analogous to a retail store or motel" because the "series of walking trails that weave through [Wellspring]" constitute "places to which the public are invited to enter and remain for extended periods." Because of these differences between Wellspring and the typical private apartment complex, Wright argues this case is not controlled by *Cramer I.* In particular, she argues (1) the "manner of access" to Wellspring—through the trails—is different from other apartment complexes because the common areas can be directly accessed by the public; (2) the respondents invited the public to the premises via the walking trails, (3) the respondents could reasonably expect the public to use the common areas—based on the nature and location of Wellspring—and (4) the existence of several public policy considerations. We find none of these circumstances distinguishes this case from *Cramer I.*

First, we find the evidence does not support Wright's assertion that the "rare" nature of Wellspring warrants different treatment from the apartment complexes in *Cramer I, Cooke,* and *Goode.* Rather, all the evidence in this case shows Wellspring is private property and its tenants are the only people the respondents specifically invited onto the premises. Under these circumstances, the trails at Wellspring are the same as public sidewalks or streets that adjoin any apartment complex because the trails—like sidewalks and streets—simply allow tenants and their invited guests to access the property. The fact that uninvited people may access the properties from the trails—like sidewalks and streets—does not change the analysis.

Wright argues, however, that Wellspring is different from the type of complex addressed in *Cramer I, Cooke,* and *Goode* because "Wellspring is part of the Harbison Community Association," which Wright points out "maintains a series of walking trails that weave through the community," "including one trail that goes directly through Wellspring." We find these arguments and the evidence upon which they are based do not remove this case from the general rule the supreme court explained in *Cramer I.* There, the court focused on whether the apartment owners or managers invited the public onto the premises—not on the physical layout of the apartment building or complex. 312 S.C. at 442-43, 441 S.E.2d at 318-19. In *Goode,* this court relied on *Cramer I* to find the apartment complex owed no duty because the public was not invited. 329 S.C. at 441, 494 S.E.2d at 831. Wright has cited no authority for focusing on the physical layout of an apartment building or complex as a basis for determining the existence of a duty. *Cf. Cramer I,* 312 S.C. at 443, 441 S.E.2d at 318 ("Tenants in a huge apartment

complex, or a tenant on the second floor of a house converted to an apartment, do not live where the world is invited to come." (quoting *Cooke*, 741 F. Supp. at 1213)); *Goode*, 329 S.C. at 442, 494 S.E.2d at 831 (same).

As the circuit court found, therefore, the fact that public streets—or trails—adjoin or even traverse the apartment complex does not remove the case from *Cramer I.* Rather, our inquiry must be whether the respondents invited the public onto the premises.[3]

Wright argues the public was invited onto Wellspring's premises. In support of her argument, she presented evidence that other entities invited the public to use the trails at Harbison, including the trail that goes through the Wellspring property. For example, Wright points out the Harbison Community Association maintains a website on which it advertises to the public the availability of its trails and the South Carolina Department of Parks, Recreation and Tourism advertises on its website the availability of the Harbison trails, describing them as "multiuse trails" that are "within the neighborhoods of Harbison." According to Wright, the Department's website "includes a graphic map of the area with suggested routes for the public" and "describes the experience of an average user of the trails: 'As you walk these well-shaded trails, you pass the backyards of homes.'" The Richland County Conservation Commission also advertises the trails in a brochure entitled "Richland County Trails," which states the Harbison trails are "paved pathways weaving through neighborhoods."

Based on this evidence, Wright argues *Cramer I* does not apply because the public is invited onto Wellspring's premises. We disagree. While there is evidence that these other entities invited the public to use the trails, Wright produced no evidence that these entities invited the public onto Wellspring's property. As to the trail that goes through Wellspring, the only evidence in the record indicates this trail is also on public property—not Wellspring's premises. As to the actions of the respondents themselves, Wright presented no evidence they invited the public to use the trails. Viewing this evidence in the light most favorable to Wright, we find this is not Wellspring's invitation to the *public* to use the trails. Additionally,

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[3] As we explain below, we find no evidence the respondents invited the public onto the premises. Thus, we do not address the question whether doing so would remove this case from *Cramer I.* Rather, we discuss this for the sole purpose of squarely addressing Wright's argument on appeal.

Wright conceded at oral argument the respondents took no action to invite the public onto Wellspring's property.

We find Wright presented no evidence to support a finding the respondents—or anyone else—invited the public onto Wellspring's premises. Therefore, even if Wright's theory is valid—that *Cramer I* does not apply when such an invitation did occur—the facts of this case do not support the theory.

Turning to Wright's third argument, she asserts the unique nature of Wellspring created a duty on the respondents to take measures to exclude the public from the property, such as erecting a fence or posting signs to indicate that Wellspring was private property. We reject this argument for two reasons. First, as previously discussed, the trails do not distinguish Wellspring from homes situated along public sidewalks or streets. Second, the fact that the respondents did not take measures to exclude the public from the property does not take this case out of the *Cramer I* context. Under the facts of this case, their *inaction* may be relevant to whether they breached an otherwise existing duty, but their inaction does not support the existence of a duty. *Cf. Sherer v. James,* 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986) (holding one who *does* act, even though under no obligation to do so, becomes obligated to act with reasonable care).

Finally, Wright asserts a duty to provide security should be imposed on landlords based on public policy considerations. First, she contends a landlord's "superior knowledge of the crime risk in the area" is a "circumstance" that can establish a duty of reasonable care to guard against the danger posed by third-party criminals. Wright argues "[f]rom a public policy perspective, assigning all responsibility for security to a tenant ignores the fact that a landlord is better positioned to know when and where crimes are occurring." Second, Wright urges us to recognize that a landlord who retains "exclusive control over common areas, and therefore exclusive ability to care for the common areas, must also have a duty to take reasonable actions to keep those areas reasonably secure." She reasons that when a landlord has exclusive control of common areas, the landlord "is in a far superior position to take steps necessary to secure the premises for the safety of the tenants."

The circuit court rejected these arguments, stating this "is just another way of arguing that a landlord has a duty to protect tenants from the foreseeable risk of criminal activity." We agree.[4]

Because we find the facts of this case indistinguishable from *Cramer I*, we hold the respondents owed no duty to provide security for Wright.

B. Common Areas Exception

Wright argues there are exceptions to *Cramer I* that apply in this case to create a duty of reasonable care. *See Cramer II*, 848 F. Supp. at 1224 (stating that "the court must determine if an exception to the general rule that South Carolina common law imposes upon a landlord no general affirmative duty to maintain leased premises in a safe condition applies in this case"). Wright relies in particular on the common areas exception, under which a landlord has "a duty to maintain the common areas of a leased property in a safe condition." *Cramer II*, 848 F. Supp. at 1225. This duty applies to areas "for the common use of several

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[4] Wright's arguments, which she supports by relying exclusively on out-of-state precedent, are based on rules of law not recognized in South Carolina. *See Martinez v. Woodmar IV Condos. Homeowners Ass'n*, 941 P.2d 218, 220 (Ariz. 1997) (stating a duty to protect "exist[s] because of Defendant's status with respect to the land and consequent power to prevent harm by exercising control over its property"); *Johns v. Hous. Auth. for City of Douglas*, 678 S.E.2d 571, 573 (Ga. Ct. App. 2009) ("A landlord's duty to exercise ordinary care to protect a tenant against third-party criminal attacks extends only to foreseeable criminal acts."); *Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 826 A.2d 443, 453 (Md. 2003) ("By virtue of its control over the common areas, a landlord must exercise reasonable care to keep the tenant safe . . . from certain criminal acts committed within the common areas."); *Davenport v. D.M. Rental Props., Inc.*, 718 S.E.2d 188, 189-90 (N.C. Ct. App. 2011) (stating "a landlord has a duty to exercise reasonable care to protect his tenants from third-party criminal acts that occur on the premises if such acts are foreseeable"); *McPherson v. State ex rel. Dep't of Corr.*, 152 P.3d 918, 923 (Or. Ct. App. 2007) ("[A] landlord has a common-law duty to take reasonable steps to protect tenants in the property's common areas from reasonably foreseeable criminal acts by third persons."); *Tedder v. Raskin*, 728 S.W.2d 343, 348 (Tenn. Ct. App. 1987) ("[T]he same standard of care should apply to both the innkeeper and the landlord in the area of liability for injuries to tenants resulting from third-party crimes on the premises.").

tenants," such as "halls, entrances, porches or stairways." *Cooke*, 741 F. Supp. at 1211 (quoting *Daniels v. Timmons,* 216 S.C. 539, 549, 59 S.E.2d 149, 154 (1950)). Wright argues the common areas of Wellspring were in an "unsafe condition" because they were susceptible to criminal activity due to the respondents' failure to maintain its courtesy officer program, provide adequate lighting, and trim the overgrown shrubbery to an appropriate height.

Wright attempts to apply the duty to provide "safe" physical premises—structurally—to the provision of "secure" premises that protect against third-party criminal activity. In doing so, Wright again relies solely upon out-of-state precedent and secondary sources. We find the common areas exception does not apply to the facts of this case.

In *Cooke*, the district court "reject[ed] the application of the 'common areas' exception to criminal activity" because the exception had "never been applied in South Carolina to anything except physical injuries resulting directly from the *condition* of the premises themselves." 741 F. Supp. at 1211. In *Cramer II*, the court addressed the same issue. 848 F. Supp. at 1225. The plaintiff contended "the design and operation of the apartment complex was inadequate due to the lack of fencing around the perimeter, the insufficient lighting, the lack of security guards, and the poor locks on apartment doors." *Id.* The court relied on *Cooke* to find "[the common areas] exception is inapplicable to these facts." *Id.* The court reasoned, "To . . . apply the common areas exception to this situation would stretch the exception to the point of swallowing the rule." *Id.* We agree with *Cooke* and *Cramer II*, and hold South Carolina does not recognize a landlord's duty to keep common areas "secure" from third-party criminal activity. Thus, we find the circuit court correctly determined the common areas exception does not apply under these facts.

C. Affirmative Acts Exception

Wright also contends the affirmative acts exception applies in this case to create a duty of reasonable care. *See Sherer*, 290 S.C. at 406, 351 S.E.2d at 150 (providing that one who undertakes to act, even though under no obligation to do so, becomes obligated to act with reasonable care); *see also Cooke*, 741 F. Supp. at 1209-10 (stating "one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care" (citation omitted)). Wright argues a duty was created by three affirmative acts of the respondents: (1) hiring courtesy officers to patrol the premises, (2) providing common area lighting, and (3) trimming the shrubbery throughout the common areas. We disagree.

With regard to the courtesy officer program, Wellspring maintained a program under which residents affiliated with law enforcement served as courtesy officers in exchange for a reduced rental rate. The program required courtesy officers to patrol Wellspring's premises for "a minimum of two hours each day" and answer calls from residents reporting a crime. Wellspring gave tenants a "security pager" number in its monthly tenant newsletter and told them to call the number or the Richland County Sheriff's Department "if you see anything suspicious." While nothing in the record reflects Wellspring terminated a courtesy officer, the position was occasionally vacant for various reasons—marriage, death, or the officer no longer being affiliated with law enforcement. When the position was vacant, Wellspring sought a new courtesy officer to fill the position. At the time of Wright's abduction, Wellspring did not have a courtesy officer in place.

We find the creation of its courtesy officer program did not impose on Wellspring a duty to exercise reasonable care in providing security at the complex. Rather, Wellspring's undertaking to create the program required only that Wellspring maintain the program itself with reasonable care. *See* 65 C.J.S. *Negligence* § 40 (2010) ("A person's duty to exercise reasonable care in performing a voluntarily assumed undertaking is limited to that undertaking . . . . A duty assumed because of a voluntary undertaking must be strictly limited to the scope of that undertaking."); *see also Byerly v. Connor*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992) (finding defendant had no duty to inspect for a latent defect because he had "undertaken a *limited* duty to use due care to discover structural nonconformity with permits" only (emphasis added)). The record in this case demonstrates the courtesy officer program contemplated times during which no officer would be on duty because the program required only that an officer patrol the complex two hours per day. The program also contemplated there would be times during which the courtesy officer positions would be vacant, and the respondents would seek to fill the position in a timely manner. Thus, the duty the respondents assumed by undertaking to provide a courtesy officer program did not include a general duty to provide security for its tenants. Under the facts of this case, the duty the respondents assumed was limited to exercising reasonable care in maintaining the courtesy officer program, and we find no evidence they failed to exercise reasonable care in fulfilling that duty.

In *Cramer II*, the court held the affirmative acts exception did not apply to facts that are indistinguishable from the facts of this case. 848 F. Supp. at 1224. The plaintiff argued the landlord's conduct of "hiring a 'courtesy officer' to patrol the grounds and then terminating that officer without replacing him" established a duty

to exercise due care in maintaining the courtesy officer program—and breach of that duty resulted when the courtesy officer position was left vacant. *Id.* The court found "[the plaintiff] misapprehend[ed] the scope of the affirmative acts exception" because "a stronger connection between the act and the injury" is necessary to establish liability. *Id.* We agree with the reasoning of *Cramer II.* The fact that the courtesy officer position was vacant at the time is a circumstance too attenuated from the kidnapping and robbery of Wright to establish a duty to provide security.

Regarding lighting and shrubbery, Wright asserts the respondents provided lighting for the common areas and trimmed the shrubbery throughout the common areas. She contends the respondents had no obligation to provide these services, but because they undertook to do so, they had a duty to act with reasonable care. Wright points to evidence that the respondents provided lighting and maintained the shrubbery in part for security purposes—deterring crime. Wright presented expert testimony that the lighting "was totally inadequate" and the "overgrown" shrubbery could provide a hiding place for criminals, as it did in Wright's case.

We find neither the provision of lighting nor the trimming of shrubbery around the parking areas and apartment buildings, even if done in part for the purpose of making the premises more secure, gives rise to a duty to provide security. It is inconceivable that any apartment developer would not install lighting and shrubbery around the parking areas and apartment buildings of a complex. The installation of lighting and maintenance of shrubbery serve multiple purposes in addition to increasing security—such as preventing accidental injury and improving aesthetics. If the law recognized these activities as "undertakings" sufficient to impose on developers and apartment managers a duty of reasonable care to provide security services, the rule of *Cramer I* would be swallowed by the affirmative acts exception. We find the installation of lighting and the maintenance of shrubbery did not impose on the respondents a duty to exercise reasonable care in providing security at the complex.

Because we find the respondents had no duty to protect Wright from third-party criminal activity under *Cramer I* and no exceptions to this rule apply, we hold the circuit court correctly granted summary judgment on Wright's negligence claim.[5]

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[5] We decline to address the circuit court's ruling that the respondents' conduct did not proximately cause Wright's injuries. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (explaining an

IV. Unfair Trade Practices Claim

Under the South Carolina Unfair Trade Practices Act, it is unlawful to engage in "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a) (1985). A person who suffers "loss of money . . . as a result of . . . an unfair or deceptive" act or practice "may bring an action . . . to recover actual damages." S.C. Code Ann. § 39-5-140(a) (1985). Wright argues Wellspring's property manager made deceptive statements to her when she filled out her rental application. Specifically, she contends the manager told her Wellspring was a "safe and secure place" and that courtesy officers patrolled the premises. The circuit court found Wright failed to prove these statements constituted unfair or deceptive acts. We agree. The generalized statements that the apartments are safe and secure and are patrolled by courtesy officers—on the facts of this case—simply cannot be unfair or deceptive acts under subsection 39-5-20(a). *See Johnson v. Collins Entm't Co.*, 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002) ("An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." (citation omitted)); *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000) (stating "[a]n unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive" and "[a] deceptive practice is one which has a tendency to deceive"). We affirm the award of summary judgment.

V. Conclusion

The order of the circuit court granting summary judgment in favor of the respondents is **AFFIRMED**.

THOMAS, J., concurs. LOCKEMY, J., concurring in part and dissenting in part in a separate opinion.

LOCKEMY, J., concurring in part and dissenting in part: I respectfully concur in part and dissent in part. I agree with the majority that summary judgment was proper on Wright's claim under the Unfair Trade Practices Act. I disagree, however, with the majority that summary judgment should have been

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appellate court need not address remaining issues when the court's resolution of the issues it does address are dispositive of the appeal).

granted on Wright's negligence claim. Summary judgment must be denied in a negligence case when the non-moving party submits a mere scintilla of evidence. *See Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) ("In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment."). I find based on reviewing the record that Wright met that burden here. Oscar Wilde once quipped satirically, "[D]uty is what one expects of others . . . . ."[6] Applying that literally to the law in this case, Wright presented some evidence that she expected security would be provided and that the respondents accepted the duty to do so. In addition, she presented enough evidence to avoid summary judgement that the breach of that duty was a proximate cause of her abduction. I analyze below why the circuit court's grant of summary judgment to the respondents should be reversed and the case remanded for trial.

I. Duty

As stated by the majority, landlords generally do not owe an affirmative duty to protect tenants from criminal activity merely by reason of the landlord/tenant relationship. *Cramer v. Balcor Prop. Mgmt., Inc.*, 312 S.C. 440, 443, 441 S.E.2d 317, 318-19 (1994). Nevertheless, "[a]t common law, when there is no duty to act but an act is voluntarily undertaken, the actor assumes a duty to use due care." *Sherer v. James*, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986).[7] The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in the Restatement of Torts, which states:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical

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[6] Oscar Wilde, *A Woman of No Importance* 68 (Arc Manor 2008) (1894).

[7] The majority cites *Sherer v. James*, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986) to refer to this body of law as the "affirmative acts exception." I note that the exact same language from *Sherer* has been cited by this court when applying the "undertaking exception." *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 444, 494 S.E.2d 827, 832 (Ct. App. 1997). For purposes of my analysis, I refer to it as the "undertaking" exception.

> harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504-05, 737 S.E.2d 512, 514 (Ct. App. 2012) (quoting Restatement (Second) of Torts § 323 (1965) (footnote omitted)). Section 323 "prescribes a duty of care" for purposes of South Carolina common law. *Sherer*, 290 S.C. at 408, 351 S.E.2d at 150. Specifically, section 323 "establishes a duty on one who undertakes to render services for the protection of another." *Id.* at 407, 351 S.E.2d at 150.

In *Goode v. St. Stephens United Methodist Church*, the appellant—a visitor to an apartment complex who was attacked by a tenant in a common area—sued the complex, asserting it was negligent in failing to provide security. 329 S.C. at 438, 442, 494 S.E.2d at 829, 831. The appellant "argue[d] [the apartment complex] created a duty to protect him from the violent acts of third parties by undertaking to provide security to tenants and their guests." *Id.* at 444, 494 S.E.2d at 832. In support of his argument that the apartment complex owed him a duty, the appellant relied on both the common law "undertaking exception" and section 323 of the Restatement (Second) of Torts. *Id.* at 444, 494 S.E.2d at 832-33. Our court found "no basis for liability under either the Restatement (Second) of Torts nor the common law rule." *Id.* at 445, 494 S.E.2d at 833. In finding no duty was owed to the appellant, we noted the security measures undertaken by the complex—"repairing locks, securing windows, informing tenants of criminal acts occurring in the complex, and routinely inspecting the complex"—"were for the protection of the residents of the complex, not the general public." *Id.* at 444, 494 S.E.2d at 833. Our court also concluded there was no evidence that the security was performed with less than due care, and the appellant could not demonstrate the required element of reliance under section 323 because he admitted he knew the landlord did not provide security at the complex at the time he was attacked. *Id.* at 444-45, 494 S.E.2d at 833.

Unlike *Goode*, I believe Wright presented evidence—sufficient to survive summary judgment—that Wellspring had a duty to protect Wright from violent acts of third parties by undertaking to provide security to its tenants. First,

Wellspring undertook to provide some form of security for the protection of its tenants. It is undisputed Wellspring offered a "courtesy officer program whereby a resident who was affiliated with law enforcement received a reduced rental rate to serve as a courtesy officer." In a monthly newsletter to its tenants, Wellspring provided tenants with a phone number for a "security pager," stated security is a "very top priority," and told tenants to "please call the security pager or Richland County Sheriff['s Department] if you see anything suspicious." Unlike the appellant in *Goode* who failed to show any of the apartment complex's security measures were taken for his protection, the security measures undertaken by Wellspring were for Wright's benefit, as a tenant at the apartment complex.

There was also evidence Wellspring performed its security program with less than due care. Wright stated that before she signed a lease at Wellspring, she asked an apartment manager if Wellspring provided security, and the apartment manager confirmed Wellspring had "security officers on duty." Despite the fact that Wright was informed Wellspring "had security officers on duty," it is undisputed that at the time of her attack Wellspring had no "security" or "courtesy" officers. Similarly, Wellspring informed tenants to call the security pager if they "see anything suspicious"; however, at the time of Wright's attack, it is unclear if anyone answered this pager. The majority finds "the duty the respondents assumed was limited to exercising reasonable care in maintaining the courtesy officer program" and there was "no evidence [the respondents] failed to exercise reasonable care in fulfilling [its] duty." I disagree. I believe by specifically informing Wright that the complex had "security officers" and urging tenants to call the security pager in the event of an emergency, Wellspring undertook a duty to either provide security at the complex, or to take affirmative steps to ensure tenants were aware of the limitations of its security program. If the jury accepts Wright's evidence that Wellspring failed to do either, it could find a failure to exercise reasonable care in the performance of an undertaking.

Next, there was evidence that unlike the appellant in *Goode*, Wright relied on Wellspring's security program when she decided to move to its apartment complex. When asked whether her decision to move to Wellspring was based on any amenities, Wright testified, "I was told that there were security officers on duty. So I felt like [Wellspring] would be a safe place." As previously stated, Wright entered her lease at Wellspring after it informed her that the complex had "security officers." Assuming this evidence is somehow insufficient to show reliance under section 323, I would still find a duty exists under this section because there is evidence the deficiencies in the respondents' security program increased the risk of harm Wright ultimately suffered. *See* Restatement (Second) of Torts § 323 (stating

a duty can apply to one who undertakes to render services for another's benefit if "(a) his failure to exercise such care increases the risk of such harm, *or* (b) the harm is suffered because of the other's reliance upon the undertaking" (emphasis added)). By not having officers in place to patrol the area or answer the "security pager," the respondents undoubtedly increased the risk that a tenant would be attacked at the complex. As confirmed by William Booth, Wright's "security expert," criminals are less likely to lurk in areas where officers are actively patrolling. Accordingly, I believe Wright presented some evidence establishing a duty owed by the respondents under section 323.

In finding Wright failed to show a duty, the majority relies on *Cramer v. Balcor Prop. Mgmt., Inc.*, 848 F. Supp. 1222 (D.S.C. 1994) (*Cramer II*). I believe that reliance is misplaced. In *Cramer II*, the appellant argued under the "affirmative acts" exception, the landlord's conduct of "hiring a 'courtesy officer' to patrol the grounds and then terminating that officer without replacing him" established a duty to protect the tenant from criminal activity of a third party and a breach of that duty occurred when the landlord failed to replace the terminated courtesy officer. *Id.* at 1224. The court disagreed, finding

> [the appellant] misapprehends the scope of the affirmative acts exception. The exception envisions a situation where the act of the landlord leads directly to the injury complained of. The cases which fit this exception are those where there is a stronger connection between the act and the injury, such as where a landlord leaves an apartment door unlocked and a third party enters.

Id. at 1224.

Cramer II described the "affirmative acts" exception as "'one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care.'" *Id.* (quoting *Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1209-10 (D.S.C. 1990)). Interestingly, *Cooke* quoted *Crowley v. Spivey*, 285 S.C. 397, 406, 329 S.E.2d 774, 780 (Ct. App. 1985), which cited *Roundtree Villas Association, Inc. v. 4701 Kings Corporation*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984)—a case that found a "common law duty of care" arose under section 323 when a lender undertook to repair defects in condominiums. Thus, the source of *Cramer II*'s authority for the "affirmative acts" exception has its roots in section 323. Our courts have analyzed section 323 in the context of the common law

"undertaking" exception—not the "affirmative acts" exception. *See, e.g.*, *Goode*, 329 S.C. at 444-45, 494 S.E.2d at 832-33; *Sherer*, 290 S.C. at 406, 351 S.E.2d at 150; *Russell v. City of Columbia*, 305 S.C. 86, 89-90, 406 S.E.2d 338, 339-40 (1991). I find this significant because unlike *Cramer II*'s "affirmative acts" exception, the common law "undertaking" exception has not been limited to situations "such as where a landlord leaves an apartment door unlocked and a third party enters." For example, in *Goode*, the appellant raised a claim similar to the one Wright has made here that the apartment complex was negligent "in failing to provide security," and our court analyzed the claim under the common law "undertaking" exception and section 323. *See* 329 S.C. at 438, 444-45, 494 S.E.2d at 829, 832-33. Although our court in *Goode* ultimately found the appellant failed to show a duty arose under section 323, the decision was not based on the fact that the exception applies only "where there is a stronger connection between the act and the injury." Therefore, I believe the court in *Cramer II* and the majority are mistaken to the extent they hold the "affirmative acts" exception (a/k/a "undertaking" exception) cannot apply in a situation where a landlord undertakes to provide security for its tenants. I interpret *Goode* to mean a tenant injured by a third party criminal attack at an apartment complex may be able to establish a duty owed by a landlord who has undertaken to provide security pursuant to section 323. Because Wright, in my opinion, presented some evidence as to each of the elements under section 323, I would find such a duty existed here for purposes of summary judgment. Therefore, I believe the circuit court erred in granting summary judgment on the ground that Wright failed to show a duty.

II. Proximate Cause

Because I believe Wright presented evidence tending to establish a duty under section 323, I next address whether the circuit court erred in finding Wright presented no evidence the respondents' negligence was a proximate cause of Wright's injuries.

"To show the defendant was the proximate cause of the injury, the plaintiff must establish the defendant was both the cause-in-fact and the legal cause of the injury." *Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011). Cause-in-fact may be proven "by showing the injury would not have occurred but for the defendant's negligence," while legal cause "is proved by establishing the plaintiff's injury was foreseeable." *Id.*

While the defendant's negligent conduct "need not be the sole cause of the injury" to establish proximate cause, an injury resulting from a third-party's criminal act

may break the causal link between any negligence of the defendant and the plaintiff's injuries:

> Generally, if between the time of the original negligent act or omission and the occurrence of the injury, there intervenes a willful, malicious, or criminal act of a third person producing the injury, and the intervening act was not intended by the negligent actor and could not have been foreseen by him as a probable result of his own negligence, the causal link between the original negligence and the injury is broken, and there is no proximate causation.

Shepard v. S.C. Dep't of Corr., 299 S.C. 370, 375, 385 S.E.2d 35, 37 (Ct. App. 1989). "[I]t is not necessary that the actor should have contemplated the particular chain of events that occurred, but only that the injury at the hand of the intervening party was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act." *Cody P.*, 395 S.C. at 621, 720 S.E.2d at 478 (internal quotation marks omitted).

"Ordinarily, legal cause is a question of fact for the jury." *Id.* "'Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law.'" *Id.* at 621, 720 S.E.2d at 479 (quoting *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986)).

Viewing the evidence in the light most favorable to Wright, I believe she presented a scintilla of evidence that the respondents' negligence was a proximate cause of her injuries. *See Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) ("In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment."). First, there is evidence Wright's injury was foreseeable. The respondents' "Courtesy Officer Independent Contractor Agreement" created a relationship between the respondents and the courtesy officers to provide services to prevent certain harms to the tenants. Courtesy officers were required to respond to calls regarding "[d]omestic altercations" and "[c]riminal acts." The fact that there were policies and procedures in place to prevent these harms indicates that the respondents perceived some threat of third party criminal acts directed at its tenants. *See Cody P.*, 395 S.C. at 622, 720 S.E.2d at 479 (relying in part on the defendant's policies and

procedures that were "designed to avoid fraud and loss situations" to find an injury was foreseeable).

Wright also presented expert testimony that her injury was foreseeable. *See id.* (relying in part on expert testimony in finding evidence that an injury was foreseeable). Booth testified that, in his opinion, Wright's abduction was a "foreseeable incident." His opinion was based in part on his analysis of various crimes at Wellspring including other crimes in the Wellspring parking lot. For example, between 2007 and the first nine months of 2008, Booth documented fifteen parking lot offenses at Wellspring. Booth testified that in the same parking lot where Wright was abducted, there had been an attempted home invasion and an attempted burglary within the previous two years. There had also been a series of vehicle related crimes over that same period that Booth referred to as "precursor crimes"—incidents that likely would have included crimes against a person had the car's owner been present. While the respondents presented testimony indicating Wright's abduction was not foreseeable, the evidence as a whole yields more than one inference regarding this issue. *See Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992) ("Only when the evidence is susceptible to only one inference does [the issue of legal cause] become a matter of law for the court.").

Finally, I believe there was evidence the respondents' negligence was a cause-in-fact of Wright's injuries. *See Singleton v. Sherer*, 377 S.C. 185, 203, 659 S.E.2d 196, 206 (Ct. App. 2008) ("Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence."). Booth testified,

> It is my opinion that had the courtesy officers been there and been patrolling the property as required that the perpetrators in this crime more likely than not would not have been in a position to rob and kidnap [Wright].

See J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 370, 635 S.E.2d 97, 102 (2006) (relying in part on expert testimony when deciding whether a defendant's negligence was a cause-in-fact of the plaintiff's injury). Admittedly, there is no guarantee Wright's attack would not have occurred even if Wellspring had courtesy officers at that time. Nevertheless, it must be remembered that on summary judgment, the non-moving party need only submit a mere scintilla of evidence for her claim to survive. I believe Wright presented evidence that a consistent presence of officers patrolling the area likely would have deterred perpetrators

from the area where Wright was abducted. Alternatively, had the respondents taken steps to inform Wright that "security officers" were not on duty at the complex, one inference from the evidence is Wright likely would not have been in a position to be attacked. This inference is supported by Wright's testimony that the day after her attack, she asked a Wellspring representative: "Where are these security officers that are supposed to be walking the beat?" Therefore, I believe there is evidence showing the respondents' negligence was a cause-in-fact of Wright's injuries.

Reviewing the evidence in the light most favorable to Wright, I believe she presented some evidence that the respondents' owed her a duty and the respondents negligence was a proximate cause of her injuries. I want to make clear that I am not making a finding that the respondents were negligent or that their negligence was a proximate cause of Wright's injuries. I simply feel there is a scintilla of evidence in the record from which a jury could find in favor of Wright as to those issues. Whether it will "pass with relief from the tossing sea of Cause and Theory to the firm ground of Result and Fact,"[8] should be decided at trial not with summary dismissal. Therefore, I would reverse the circuit court's grant of summary judgment on Wright's negligence claim and remand for further proceedings.

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[8] Sir Winston S. Churchill, *The Story of the Malakand Field Force* 36 (Arc Manor 2008) (1898).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Denise Wright, Petitioner,

v.

PRG Real Estate Management, Inc., Franklin Pineridge Associates, Karen Campbell Individually and in her Representative Capacity as an Agent of PRG Real Estate Management, Respondents.

Appellate Case No. 2015-001921

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
W. Jeffrey Young, Circuit Court Judge

Opinion No. 27868
Heard March 6, 2018 – Filed March 20, 2019

REVERSED

S. Randall Hood, Jordan C. Calloway, and Deborah G. Casey, all of McGowan, Hood & Felder, LLC, of Rock Hill, E. Wayne Ridgeway Jr., of Burriss Ridgeway, of Columbia and Gerald Malloy, of Malloy Law Firm, of Hartsville, for Petitioner.

Charles A. Kinney and Christian Stegmaier, both of Collins & Lacy, PC, of Columbia, for Respondents.

JUSTICE JAMES: Denise Wright was abducted and robbed at gunpoint by two unknown assailants in a common area of an apartment complex (Wellspring) in which she resided. Wellspring was owned by Respondent Franklin Pineridge Associates and operated by Respondent PRG Real Estate Management, Inc. Respondent Karen Campbell was Wellspring's property manager and an employee of PRG at the time of the incident. Wright sued Respondents for negligence, alleging Respondents voluntarily undertook a duty to provide security to residents of Wellspring and breached this duty, thereby causing her damages. She also alleged Respondents were negligent in failing to properly maintain shrubbery and lighting on the premises. The circuit court granted summary judgment to Respondents on Wright's negligence claim. A divided court of appeals affirmed. *Wright v. PRG Real Estate Mgmt., Inc.*, 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015).

We granted Wright's petition for a writ of certiorari to review the following questions: (1) whether Respondents voluntarily undertook a duty to provide security services to residents, (2) if such a duty exits under the facts of this case, whether there is a genuine issue of material fact that Respondents breached the duty, and (3) whether there is a genuine issue of material fact that any such breach proximately caused Wright's damages. We reverse the court of appeals and remand the matter to the circuit court for trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2003, Wright began her search for an apartment she could rent in the Columbia area. Wellspring is part of a planned unit development known as the "Harbison Community Association," and several walking trails weave throughout the community. Wellspring and other properties within the community are accessible via these public trails. Wright testified she initially became interested in Wellspring because of its proximity to her job and because of several recommendations from members of her church. Wright testified security was an important factor in her decision-making process. She testified that at the time she signed her lease, a Wellspring manager told her there were security officers on duty. During oral argument at the court of appeals, Respondents conceded Wright "was told that there are security officers" and that when Wright moved into the complex, she had that expectation. Wright testified this representation caused her to believe Wellspring would be a safe place in which to live. Wright leased an apartment at Wellspring from 2003 until the subject incident occurred in 2008.

An internal Wellspring employee manual stated, "We generally do not provide security for our residents[,] and employees should never indicate that we do so." This information was not given to residents. Wellspring had designed a courtesy officer program allowing residents affiliated with law enforcement to receive reduced rent in exchange for their service as courtesy officers for the apartment complex. Wellspring employed these courtesy officers as independent contractors and entered into agreements requiring the courtesy officers to (1) spend a minimum of two hours daily of their off-duty time walking the property, (2) answer calls regarding incidents on the property, and (3) submit daily reports to the property manager. Courtesy officers were asked not to carry a weapon unless required by their law enforcement employer. Courtesy officers were asked, but were not required, to park their law enforcement vehicles on the Wellspring premises. The parameters of these agreements were kept internally and were not provided to residents. Wellspring published a "security pager" number in a monthly tenant newsletter. The newsletter also prominently noted "[s]ecurity is also [a] very top priority with us" and advised tenants to "call the security pager or Richland County Sheriff Dept. if you see anything suspicious." Respondents did not alert Wright or other tenants that the provision of "security" was limited to the confines of the courtesy officer program, as those particulars were known only to Respondents.

Also, Respondents contracted with a maintenance company to provide landscaping services at Wellspring, including the trimming and shaping of shrubs as needed. Respondents also provided lighting in the common areas and parking lots of Wellspring.

On the night of September 18, 2008, Wright left choir practice at her nearby church and returned to Wellspring at approximately 10:00 p.m. Wright parked her car and began walking toward the ramp that led to her apartment. She testified, "The pole light in the parking lot was not illuminated and the view of the stairs and ramp . . . was obscured by darkness and massive shrubbery that was overgrown." Before Wright could reach her apartment, two armed men appeared from behind the shrubbery and demanded money. When Wright replied she was not carrying any cash, the men forced her at gunpoint to drive them to several ATMs to withdraw money from her account. The men promised Wright they would kill her and told her, "You will never see home again." One of the men put his hand down the back of Wright's pants and contemplated "hav[ing] some fun before [killing] her." Eventually, the men fled Wright's car and escaped. Wright sped away and drove to her daughter's house where law enforcement interviewed her.

The next day, Wright met with a representative of Wellspring. Wright testified the first thing she asked the manager was, "Where are these security officers that are supposed to be walking the beat? I didn't see anybody. There was nobody there when I needed them. I didn't see one. I've never seen one the whole time I've lived there." Wright testified the manager shrugged her shoulders and replied, "I'm sorry." Wright did not spend another night in her apartment at Wellspring and moved out a few days later. Unfortunately, the two assailants have never been identified.

There were no courtesy officers at Wellspring on the night Wright was abducted and robbed in September 2008; the last time a courtesy officer had been employed at Wellspring was in July 2008. Respondent Karen Campbell, the property manager at the time of the incident, testified there were periods of time when there were no courtesy officers because officers would leave Wellspring or quit the program for various reasons. Although there were no courtesy officers at the time of the incident, Wellspring continued to publish the security pager number in its monthly tenant newsletter. Respondents were not sure who, if anyone, would have answered the security pager when no courtesy officers were employed. There is no evidence Respondents ever informed Wright and other tenants that the security program lacked its key ingredient—the participation of security officers.

Wright's security expert, William F. Booth, stated four opinions in his deposition. First, Booth opined that Wellspring is a unique property because it is an apartment complex wrapped around a public park. He believed this fact placed an additional responsibility on Respondents to provide security for its residents, which was not met. He testified the incident was foreseeable due to the lack of security. Second, Booth opined that the shrubbery on the property had become overgrown and provided a hiding place for the individuals who committed the crime. He testified the incident would have been avoided if the shrubbery had been cut to an appropriate height. Third, Booth opined the lighting on the property was below industry standards, and if the lighting had been adequate, the crime would not have occurred. Fourth, Booth opined that Wellspring represented to its residents that there was security in place pursuant to the courtesy officer program and that it was reasonable for residents to have relied on the courtesy officers to patrol the property. He testified that "had the courtesy officers been there and been patrolling the property as required that the perpetrators in this crime more likely than not would not have been in the position to rob and kidnap [Wright]."

Wright brought this action against Respondents for negligence, breach of implied warranties, and violation of the South Carolina Unfair Trade Practices Act.[1] Wright's negligence claim is the only cause of action relevant to the instant appeal. Wright alleged Respondents were negligent in failing to protect tenants from third-party criminal activity by not (1) providing adequate lighting in the common areas, (2) maintaining the overgrown shrubbery to an appropriate height, and (3) executing its courtesy officer program in a reasonable manner. Respondents argue they did not owe Wright a duty to provide security. They further argue that even if they did, they breached no duty. Finally, they argue that even if they breached a duty owed to Wright, their alleged negligence was not a proximate cause of any harm sustained by Wright. The circuit court granted Respondents' motion for summary judgment.

A divided court of appeals affirmed. *Wright v. PRG Real Estate Mgmt., Inc.*, 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015). As to Wright's negligence action, the majority held Respondents had no duty to protect Wright from third-party criminal activity. The majority rejected Wright's argument that the relevant facts of her case created an exception to the general rule that landlords do not have a duty to provide security services and protect tenants from criminal activity arising from the (1) particular circumstances, (2) common areas exception, and (3) affirmative acts exception.

In its discussion of the affirmative acts exception, the majority addressed Wright's argument that a duty arose from Respondents' (1) hiring courtesy officers to patrol the premises, (2) providing common area lighting, and (3) trimming the shrubbery throughout the common area. The majority found the creation of the courtesy officer program did not impose on Respondents a duty to exercise reasonable care in providing security at Wellspring; the majority held Respondents' undertaking to create the courtesy officer program required only that Respondents maintain the program itself with reasonable care. The majority explained, "Under the facts of this case, the duty [R]espondents assumed was limited to exercising reasonable care in maintaining the courtesy officer program, and [there is] no evidence they failed to exercise reasonable care in fulfilling that duty." *Wright*, 413 S.C. at 288, 775 S.E.2d at 406. Citing the reasoning in *Cramer v. Balcor Property Management, Inc.*, 848 F. Supp. 1222 (D.S.C. 1994), the majority found the situation "indistinguishable" because the "fact that the courtesy officer position was vacant at the time is a circumstance too attenuated from the kidnapping and robbery of Wright to establish a duty to provide security." *Wright*, 413 S.C. at 288,

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[1] S.C. Code Ann. §§ 39-5-10 to -180 (1976 & Supp. 2018).

775 S.E.2d at 406. The majority also found Respondents' provision of lighting and maintenance of shrubbery did not give rise to a duty to provide security. The majority did not employ section 323 of the Restatement (Second) of Torts (1965) in reaching its conclusions, nor did the majority address Wright's contention that she was not advised of the limitations of the security program.

Concurring in part and dissenting in part, then-Judge Lockemy disagreed with the majority's conclusion that summary judgment should have been granted on Wright's claim that Respondents were negligent in failing to provide security as represented to Wright. Applying section 323 of the Restatement (Second) of Torts (1965), Judge Lockemy concluded Wright presented some evidence that she expected security and that Respondents undertook the duty to provide it. Judge Lockemy wrote that by specifically informing Wright that "the complex had 'security officers' and urging tenants to call the security pager in the event of an emergency, Wellspring undertook a duty to either provide security at the complex, or to take affirmative steps to ensure tenants were aware of the limitations of its security program." *Wright*, 413 S.C. at 293, 775 S.E.2d at 408 (Lockemy, J., concurring in part and dissenting in part).

Judge Lockemy also concluded the majority's reliance on *Cramer v. Balcor Property Management, Inc.*, 848 F. Supp. 1222 (D.S.C. 1994), which applied the affirmative acts exception, was misplaced. He noted the source of *Cramer's* authority for the affirmative acts exception was rooted in section 323. Judge Lockemy believed the instant situation to be more akin to the "undertaking" exception and stated "a tenant injured by a third party criminal attack at an apartment complex may be able to establish a duty owed by a landlord who has undertaken to provide security pursuant to section 323." *Wright*, 413 S.C. at 295, 775 S.E.2d at 409-10 (Lockemy, J., concurring in part and dissenting in part). Because Judge Lockemy found Wright presented evidence establishing a duty under section 323, he addressed Wright's proximate cause argument and concluded there were genuine issues of material fact that would allow Wright's negligence claim to survive summary judgment.

Wright filed a petition for a writ of certiorari with this Court. We granted Wright a writ of certiorari on the sole question of whether the court of appeals erred in failing to apply section 323 to Wright's allegation that Respondents voluntarily assumed a duty to provide security to her.

II. STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). Rule 56(c), SCRCP, provides a circuit court shall grant summary judgment "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 . . . the moving party is entitled to a judgment as a matter of law." "On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party." *George*, 345 S.C. at 452, 548 S.E.2d at 874. When a circuit court grants summary judgment on a question of law, this Court will review the ruling de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109-10, 662 S.E.2d 40, 41 (2008).

III. DISCUSSION

Wright argues the court of appeals erred in failing to apply section 323 of the Restatement (Second) of Torts to her negligence action. Wright asserts section 323 "stands on its own doctrinal footing and may not be narrowed or ignored when considering a residential landlord's voluntarily assumed security program."

A. Voluntarily Assumed Duties in South Carolina

In an action alleging negligence, a plaintiff must show (1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages. *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 318, 605 S.E.2d 12, 15 (2004). "If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006).

"While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken." *Vaughan v. Town of Lyman*, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006). "The question of whether such a duty arises in a given case may depend on the existence of particular facts. Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder." *Id.* at 446-47, 635 S.E.2d at 637 (quoting *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)). Although a

landlord generally has no duty to provide security to protect tenants from criminal acts of third parties, a landlord who undertakes to provide security measures may be liable if the undertaking is performed negligently. *See* Tracy A. Bateman & Susan Thomas, Annotation, *Landlord's Liability for Failure to Protect Tenant from Criminal Acts of Third Person*, 43 A.L.R. 5th 207 (1996). The landlord's duty can be limited and will apply only to the extent of the landlord's undertaking. *Id.*

The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement (Second) of Torts (1965),[2] which provides:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Under section 323, the voluntary undertaking does not create a duty of care unless (a) the undertaker's failure to exercise reasonable care in performing the undertaking increased the risk of harm to the plaintiff, or (b) the plaintiff suffered harm because she relied upon the undertaking. State and federal case law in South

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[2] *See, e.g.*, *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984) (holding a common law duty of care arose under section 323 when a lender undertook to market condominium units and to repair defects in those units); *Sherer v. James*, 290 S.C. 404, 407-08, 351 S.E.2d 148, 150 (1986) ("Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another *to use due care* to avoid increasing the risk of harm. We agree with this rationale." (internal citation omitted)); *Madison ex rel. Bryant*, 371 S.C. at 136-37, 638 S.E.2d at 657 (recognizing a private treatment center may owe a duty to a patient under section 323); *Doe 2 v. Citadel*, 421 S.C. 140, 146-47, 805 S.E.2d 578, 581-82 (Ct. App. 2017) (applying section 323 in analyzing whether the defendant established a duty of care to the plaintiff when it voluntarily undertook to investigate claims of sexual abuse).

Carolina have not been clear as to whether section 323 applies to a landlord's voluntarily assumed duty to provide security to a tenant.

It is well-settled in South Carolina that a landlord generally does not owe an affirmative duty to a tenant to provide security in and around leased premises to protect the tenant from the criminal activity of third parties. *See Cramer v. Balcor Prop. Mgmt., Inc.*, 312 S.C. 440, 444, 441 S.E.2d 317, 319 (1994) (*Cramer I*). In *Cramer I*, we explained that although South Carolina law does not impose a duty on a landlord to provide security to protect a tenant from the criminal acts of third parties, a plaintiff is not precluded from asserting a claim under a general negligence principle. *Id.* at 443 n.1, 441 S.E.2d at 319 n.1.

In *Cooke v. Allstate Management Corp.*, the United States District Court for the District of South Carolina enumerated four exceptions to the general rule: (1) the affirmative acts exception, (2) the concealed danger exception, (3) the common area exception, and (4) the undertaking exception. 741 F. Supp. 1205, 1209 (D.S.C. 1990). In *Cooke*, the plaintiff tenant brought a negligence action against her landlord seeking to recover damages after she was assaulted by an intruder who gained access to her second-floor apartment. She claimed the intruder gained access to her apartment by using a ladder that was negligently left on the premises by her landlord. *Id.* at 1206. The district court disagreed with the tenant's argument that the undertaking exception applied because of an inadequate lock and advice she received from the landlord regarding safety. In addressing the affirmative acts exception, the district court quoted *Crowley v. Spivey*, 285 S.C. 397, 406, 329 S.E.2d 774, 780 (Ct. App. 1985), for the proposition that "one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care." *Cooke*, 741 F. Supp. at 1209-10. Because there was a factual issue as to whether the ladder was used by the intruder to enter tenant's apartment, and because there was some evidence the ladder was left unsecured by the landlord, the district court denied the landlord's motion for summary judgment pursuant to the affirmative acts exception. *Id.* at 1210. The district court did not directly cite section 323.

In *Cramer v. Balcor Property Management, Inc.* (*Cramer II*), the United States District Court for the District of South Carolina applied this Court's answer to a certified question in *Cramer I* to a plaintiff tenant's wrongful death action alleging negligence on behalf of the landlord after the deceased was murdered in her apartment. 848 F. Supp. 1222 (D.S.C. 1994). Although this Court ruled in *Cramer I* that there was no general duty under South Carolina law for the landlord to provide security, the district court addressed the affirmative acts exception and the undertaking exception. The district court defined the affirmative acts exception

by quoting *Crowley*—"one who assumes to act, even though under no obligation to do so, may become subject to the duty to act with due care." *Cramer II*, 848 F. Supp. at 1224. The district court noted:

> [Plaintiff] argues that by initially hiring a "courtesy officer" to patrol the grounds and then terminating that officer without replacing him, [landlord] breached this duty. [Plaintiff] misapprehends the scope of the affirmative acts exception. The exception envisions a situation where the act of the landlord leads directly to the injury complained of. The cases which fit this exception are those where there is a stronger connection between the act and the injury, such as where a landlord leaves an apartment door unlocked and a third party enters.

Id. In addressing the undertaking exception, the district court stated that "if a landlord undertakes to make repairs, they must be performed with due care." *Id.* The court found the landlord did not undertake to install any additional security devices on the apartment's sliding glass door; therefore, the landlord was not negligent. The court noted, "In order to fall within the undertaking exception, the defendant must undertake to do something." *Id.* at 1225. Because plaintiff's claim of negligence did not fit into any exception, the court granted the landlord's motion for summary judgment. There was no direct citation to section 323 by the district court.

In *Goode v. St. Stephens United Methodist Church*, a social guest of a tenant at an apartment complex was assaulted by third persons while at the complex and sued the landlord for negligence in failing to provide security. 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997). The guest alleged a duty was created because the landlord undertook to render security services on the premises. In support of his argument, the plaintiff relied upon both the common law undertaking exception and section 323. The court of appeals addressed this argument as the "Duty Created by Undertaking." *Id.* at 444, 494 S.E.2d at 832. The court of appeals found (1) the security measures undertaken by the landlord (repairing locks, securing windows, informing tenants of criminal acts occurring in the complex, and routinely inspecting the complex) were for the residents of the complex and not the general public, (2) there was no evidence the security measures were performed with less than due care, and (3) there was no evidence any reliance on security by the tenants caused the plaintiff to be assaulted. *Id.* at 444-45, 494

S.E.2d at 833. Therefore, the court of appeals held there was no basis for liability to the non-tenant plaintiff under either the common law rule or section 323.

In Wright's brief before the court of appeals, she acknowledged, "South Carolina case law is not clear as to how the 'affirmative acts' exception differs from the 'undertaking exception.'" Nevertheless, Wright maintained that section 323 gave rise to her negligence cause of action. The court of appeals analyzed Wright's negligence cause of action under the affirmative acts exception without mention of section 323. We disagree with the court of appeals' approach and find Wright's negligence cause of action invokes the undertaking exception—making section 323 applicable.

The affirmative acts exception is limited to situations where the landlord's direct action increases a tenant's risk of harm from criminal activities. Examples of such direct action may include a landlord giving out a master key to someone who should not have one, a landlord leaving an apartment door or window unlocked, or a landlord failing to secure a ladder that is used by a criminal to commit a crime. Such affirmative acts by the landlord may impose liability for criminal acts of third parties. On the other hand, the voluntary undertaking exception invokes section 323 and may be applicable when a landlord's actions are more attenuated. *See* Restatement (Second) of Torts § 323 (1965) ("One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking."). Section 323 is the standard in South Carolina when analyzing voluntarily assumed duties. The concept of the undertaking exception is not limited to a landlord's undertaking to make repairs. Insofar as *Cooke* or *Cramer II* can be read to provide this limitation, we clarify the law in South Carolina. Here, Wright's argument that Respondents were negligent in failing to provide security invokes the undertaking exception.

B. Analysis of Wright's Negligence Claim

Wright argues the court of appeals erred in affirming the circuit court's grant of summary judgment to Respondents on her claim that Respondents were

negligent in failing to provide security. We agree and hold that under the facts of this case, summary judgment should not have been granted.[3]

1. Duty

As noted above, "While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken." *Vaughan*, 370 S.C. at 446, 635 S.E.2d at 637. "The question of whether such a duty arises in a given case may depend on the existence of particular facts. Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder." *Id.* at 446-47, 635 S.E.2d at 637 (quoting *Miller*, 329 S.C. at 314, 494 S.E.2d at 815). A landlord generally has no duty to provide security to protect

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[3] The court of appeals correctly found summary judgment was appropriate in the limited context of Respondents' actions involving the lighting and shrubbery at Wellspring. These actions do not give rise to a duty to provide security. The court of appeals correctly ruled:

> We find neither the provision of lighting nor the trimming of shrubbery around the parking areas and apartment buildings, even if done in part for the purpose of making the premises more secure, gives rise to a duty to provide security. It is inconceivable that any apartment developer would not install lighting and shrubbery around the parking areas and apartment buildings of a complex. The installation of lighting and maintenance of shrubbery serve multiple purposes in addition to increasing security—such as preventing accidental injury and improving aesthetics. If the law recognized these activities as "undertakings" sufficient to impose on developers and apartment managers a duty of reasonable care to provide security services, the rule of *Cramer I* would be swallowed by the . . . exception.

Wright, 413 S.C. at 289, 775 S.E.2d at 406. We simply cannot find the existence of such a duty under the facts of this case. *See Madison ex rel. Bryant*, 371 S.C. at 135-36, 638 S.E.2d at 656 ("If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.").

tenants from criminal acts of third parties, but a landlord who voluntarily undertakes to provide security measures may be liable if he negligently performs the undertaking. *See* Tracy A. Bateman & Susan Thomas, Annotation, *Landlord's Liability for Failure to Protect Tenant from Criminal Acts of Third Person*, 43 A.L.R. 5th 207 (1996). The landlord's duty can be limited and will apply only to the extent of the undertaking. *Id.*

Wright acknowledges the general rule that a landlord does not have a duty to provide security for their tenants; however, Wright asserts Respondents voluntarily undertook such a duty. She asserts her claim meets all of the section 323 requirements: (1) Respondents voluntarily undertook to provide services to her; (2) Respondents should have recognized those services as necessary for her safety; (3) Wright suffered from physical harm because Respondents failed to exercise reasonable care in their undertaking; and (4) either Respondents' failure increased the risk of harm to Wright or Wright suffered harm because of her reliance upon the undertaking. As noted above, Respondents concede a former Wellspring manager told Wright in broad terms "that there are security officers" and that Wright had that expectation when she moved in. The monthly tenant newsletter announced "[s]ecurity is also [a] very top priority with us," and there is no evidence to suggest Respondents notified Wright or any other tenants of the actual limitations of the courtesy officer program.

The majority at the court of appeals analyzed the question of the existence of a duty solely within the limited parameters of the courtesy officer program, specifically noting the relatively limited time of patrols per officer per day and the occasional lack of courtesy officers. The court of appeals based its holding on what it perceived as a narrow undertaking and did not consider the uncontroverted evidence that Wright had no knowledge of the limitations of the courtesy officer program. The court of appeals concluded, "Under the facts of this case, the duty [R]espondents assumed was limited to exercising reasonable care in maintaining the courtesy officer program, and [there is] no evidence they failed to exercise reasonable care in fulfilling that duty." *Wright*, 413 S.C. at 288, 775 S.E.2d at 406. The court of appeals' focus was too narrow. Respondents recite numerous limitations upon the program in their brief, but Wright had absolutely no knowledge of these limitations. The limited scope of the courtesy officer program analyzed by the court of appeals and described in Respondents' brief was known only to Wellspring and its employees.

Since Wright had no knowledge of the true limitations upon the program, we must examine the question of the existence of a duty of care with a focus upon the undertaking as it was described to Wright. At first glance, it would appear that

subsections 323(a) and (b) encompass not only the assumption of a duty but also the issues of breach and proximate cause. However, in *Sherer v. James*,[4] we quoted with approval the following from the Appellate Court of Illinois in *Curry v. Summer*: "Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another to use due care to avoid increasing the risk of harm." 483 N.E.2d 711, 717 (Ill. App. Ct. 1985). In *Sherer*, we concluded section 323(a) "applies only to duty and not proximate cause." 290 S.C. at 408, 351 S.E.2d at 150. Likewise, subsection (b) applies only to duty and not proximate cause.

Therefore, in order for a duty of care to arise under section 323(a) or (b), Wright must establish that (a) Respondents' failure to exercise due care in performing the undertaking increased the risk of harm to Wright or that (b) Wright suffered harm because of her reliance upon the undertaking.

We conclude there are questions of fact that a jury must resolve to ascertain whether a duty of care arose in this case. *See Vaughan*, 370 S.C. at 446-47, 635 S.E.2d at 637. As Respondents point out, there is evidence in the record that Wright chose Wellspring as her place of residence not because of security concerns, but because it was close to her place of employment and was recommended by fellow church-goers. However, the record also contains Wright's testimony that she chose Wellspring because "there were security officers on duty. So I felt like it would be a safe place." Respondents also point out that when Wright confronted the Wellspring representative the day after the incident, Wright exclaimed that she had not seen any security on the premises since she moved in five years prior. Thus, Respondents contend any reliance Wright may have placed upon the presence of security had completely dissipated by the time she was attacked. Respondents will certainly be free to introduce this and any other evidence relevant to the question of the existence of a duty, but in the end, the jury must resolve genuine issues of material fact.

The dissent insists we have taken the common existence of a security officer program and morphed that limited undertaking into "a sweeping duty to protect tenants from the unforeseen criminal acts of third parties." The dissent further claims our decision "disincentivizes apartment complexes from offering a security officer program at all." We respectfully disagree with both contentions. First, we again note that the court of appeals mistakenly confined its analysis to the limited undertaking of the courtesy officer program, while there is evidence that a broader

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[4] 290 S.C. 404, 407-08, 351 S.E.2d 148, 150 (1986).

undertaking was described to Wright. As we have emphasized, the question of the existence of a duty under section 323(a) or (b) should not be analyzed with an eye solely upon the more limited undertaking urged by Respondents, especially when the parameters of that limited undertaking were known only to complex employees. Second, we are not recognizing a duty that is not already recognized by section 323. We have emphasized that under *Cramer I*, a landlord generally does not owe an affirmative duty to a tenant to provide security in and around leased premises to protect the tenant from the criminal activity of third parties. That is still undoubtedly the law in South Carolina. In holding as we do on the existence of a duty under the narrow facts of this case, we have simply given form to the application of section 323(a) or (b) to a set of facts that may, in the view of the factfinder, warrant such an application. That is hardly a sweeping approach, and our holding is no less sweeping than the content of section 323 itself. There is no authority for the proposition that section 323 does not and cannot apply to an apartment complex that voluntarily undertakes to provide security to residents. Third, to the dissent's contention that our holding will disincentivize apartment complexes from offering security officer programs at all, our holding does nothing of the sort. If anything, our holding should incentivize the apartment complex that has voluntarily undertaken to offer security officer programs to recognize it has undertaken a duty to administer the programs with due care. The complex would have the right to impose limitations upon the program or even discontinue the program; however, the complex would be incentivized to simply let its tenants know.

To close on this point, we hold that under the narrow facts of this case, a jury must resolve the unique factual questions pertinent to the existence of a duty under section 323. Specifically, a jury must determine (a) whether any failure by Respondents to exercise due care in performing the undertaking increased the risk of harm to Wright or (b) whether any harm suffered by Wright arose from her reliance upon Respondents' undertaking. If the jury answers "No" to both questions, Wright's cause of action fails. If the jury answers "Yes" to either question, the jury must proceed to the issues of breach and proximate cause.

2. Breach and Proximate Cause

In the summary judgment setting, we consider the evidence of a breach of duty in the light most favorable to the non-moving party and must determine whether the evidence and all reasonable inferences to be derived from the evidence create a genuine issue of material fact. Here, there is evidence that would allow a jury to reasonably conclude Respondents failed to use due care in carrying out any duty owed under subsections 323(a) or (b). When she visited Wellspring before

signing a lease, Wright was informed by an apartment manager there were security officers on duty. There was no security at all at the time of the incident, and there had been no security for two months prior to the incident. A jury could conclude Respondents failed to exercise due care in having security officers available, or at least negligently failed to notify apartment tenants of the absence of officers and the true limitations of the courtesy officer program.

Should the jury determine Respondents breached a voluntarily undertaken duty, we conclude there would be a jury issue as to whether such a breach was a proximate cause of any damages sustained by Wright. "Negligence is not actionable unless it is a proximate cause of the injury." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998). "Proximate cause requires proof of both causation in fact and legal cause." *Id.* "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence." *Id.* "Legal cause is proved by establishing foreseeability." *Id.* at 88-89, 502 S.E.2d at 83.

"The general rule of law is that when, between negligence and the occurrence of an injury, there intervenes a willful, malicious, and criminal act of a third person producing the injury, but that such was not intended by the negligent person and could not have been foreseen by him, the causal chain between the negligence and the accident is broken." *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173-74 (1968). "It is generally for the jury to determine whether the defendant's negligence was a concurring proximate cause of the plaintiff's injuries. Only when the evidence is susceptible of only one inference does proximate cause become a matter of law for the court." *Bishop*, 331 S.C. at 89, 502 S.E.2d at 83 (citation omitted).

Of course, Wright argues that Respondents' negligence proximately caused her losses. She presented documentary evidence and expert testimony in her attempt to illustrate Respondents' conduct was a direct and proximate cause of her damages. Wright contends the intervening criminal acts of her attackers do not absolve Respondents of liability under South Carolina law. Although the existence of proximate cause indeed may hang by a slender thread, it hangs nonetheless, and we conclude the question should be resolved by a jury.

Legal cause is established by showing foreseeability. Here, Wright presented evidence that Respondents' negligence in operating the security program was the legal cause of her injuries. A third-party criminal act cannot be deemed *completely* unforeseeable as a matter of law when the alleged breach was Respondents' failure to properly administer a program that guarded against these

very happenings. *See Cody P. v. Bank of America, N.A.*, 395 S.C. 611, 622-23, 720 S.E.2d 473, 479 (Ct. App. 2011) (relying in part on the defendant's policies and procedures that were "designed to avoid fraud and loss situations" to find an injury by fraud was foreseeable). Additionally, Wright's security expert Booth opined that Wright's injuries were foreseeable based upon an analysis of other crimes at Wellspring, including other crimes in the Wellspring parking lot. For example, between 2007 and the first nine months of 2008, Booth documented fifteen parking lot offenses at Wellspring. Booth testified that in the same parking lot where Wright was abducted, there had been an attempted home invasion and an attempted burglary within the previous two years. There had also been a series of vehicle-related crimes over the same time frame that Booth referred to as "precursor crimes"—incidents that likely would have included crimes against a person had the car's owner been present. While Respondents presented evidence indicating the attack was not foreseeable, the evidence as a whole yields more than one inference as to foreseeability.[5] *See Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992) ("[L]egal cause is ordinarily a question of fact for the jury. Only when the evidence is susceptible to only one inference does it become a matter of law for the court.").

Cause-in-fact is proved by establishing a plaintiff's injuries would not have occurred "but for" a defendant's negligence. There is evidence in the record that Respondents' negligence was a cause-in-fact of Wright's injuries. Since there was no operational security program, there were no officers patrolling Wellspring at all during the two months leading up to the incident. Booth calculated that even under the limited parameters of the courtesy officer program, a courtesy officer would have been able to patrol Wellspring's premises five to six times during a two hour period. Booth stated that "had the courtesy officers been there and had been patrolling the property as required that the perpetrators in this crime more likely than not would not have been in the position to rob and kidnap [Wright]." Wright was never told there were no courtesy officers on the property, and there is a reasonable inference to be derived from the evidence that having this knowledge would have affected her actions on the night of the incident. As noted above, the day after the attack, Wright exclaimed to the apartment manager that she had not seen a security officer during the entire five years she lived at Wellspring. While this statement is evidence Wright's actions were <u>not</u> affected by her assumption

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[5] For example, Respondents provided the testimony of two law enforcement officers who were familiar with the area surrounding Wellspring and characterized the crime rate as "average."

that security was present, the evidence as a whole would allow a jury to conclude Wright has established the existence of cause-in-fact.

We conclude Wright presented a genuine issue of material fact that Respondents' negligence, if any, in operating the security program was a proximate cause of her damages.[6]

IV. CONCLUSION

We hold the court of appeals erred in affirming the circuit court's grant of summary judgment in favor of Respondents. In this case, the question of the existence of a duty involves, in part, genuine issues of material fact that must be resolved by a jury. Also, there are genuine issues of material fact as to whether Respondents breached any duty owed and as to whether any damages sustained by Wright were a proximate cause of such breach. Therefore, we **REVERSE** the court of appeals and remand the matter to the circuit court for further proceedings consistent with this opinion.

BEATTY, C.J., HEARN, J., and Acting Justice Edgar W. Dickson, concur.
KITTREDGE, J., dissenting in a separate opinion.

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[6] Of course, Wright will have the burden of proving her damages as well.

JUSTICE KITTREDGE: Today, the majority takes the common existence of an apartment complex's security officer program and morphs that limited undertaking into a sweeping duty to protect tenants from the unforeseen criminal acts of third parties. Especially troubling is what I view as the majority giving Petitioner a pass on the element of proximate cause. While Section 323 of the Restatement (Second) of Torts (1965) may serve as the basis for imposing a limited duty on Respondents, I respectfully dissent because Petitioner has failed as a matter of law to present evidence sufficient to create a question of fact concerning proximate cause. I would affirm the court of appeals in result. *Wright v. PRG Real Estate Mgmt., Inc.*, 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015).

First, I take no exception to the principle that one who undertakes a duty is liable for physical harm resulting from the failure to exercise reasonable care in the performance of the undertaking. The majority correctly rejects Petitioner's "failure to trim shrubbery" and "inadequate lighting" theories. That leaves Petitioner with the alleged "negligent" security officer program. Apartment complexes routinely utilize these so-called security officer programs, in which law enforcement officers serve as courtesy officers and provide a "police presence" at the complex in exchange for free or reduced rent.

"Under South Carolina law[,] a landlord does not owe a duty to a tenant to provide security in and around a leased premises to protect the tenant from criminal activity of third parties." *Cramer v. Balcor Prop. Mgmt., Inc.* (*Cramer I*), 312 S.C. 440, 443, 441 S.E.2d 317, 318 (1994) ("Absent agreement, the landlord cannot be expected to protect [his tenants] against the wiles of felonry . . . . The criminal can be expected anywhere, any time, and has been a risk of life for a long time." (quoting *Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1213 (D.S.C. 1990))). However, a tenant may sue his landlord for the failure to protect him from crimes committed by third parties when the landlord voluntarily assumes a duty to protect the tenant and the landlord's negligence in carrying out that duty proximately causes the loss. *See id.* at 443 n.1, 441 S.E.2d at 319 n.1; *Cooke*, 741 F. Supp. at 1209 n.1 (citation omitted); *see also id.* at 1209–14 (discussing four exceptions to the general "no duty" rule, including the affirmative acts exception, concealed danger exception, common area exception, and undertaking exception).

This is consistent with section 323 of the Restatement (Second) of Torts, which provides:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the

other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Petitioner, through her expert witness and otherwise, has relied primarily on subpart (b)—"reliance upon the undertaking"—to impose a duty on Respondents with respect to the security officer program. However, the record is devoid of any evidence of reliance by Petitioner. As the majority correctly points out, when Petitioner confronted Respondents' representative the day after her ordeal, she "exclaimed that she had not seen any security on the premises *since she moved in five years prior*." (Emphasis added). I cannot fathom how, after not seeing any evidence of a security officer for five years, Petitioner could have possibly relied on the existence of a security officer program.[7] The absence of reliance evidence would seem to preclude section 323 as the source of Respondents' broad duty to prevent crime at the apartment complex.

Nevertheless, assuming the existence of a duty, I would find Petitioner's claim fails as a matter of law due to the absence of evidence creating a genuine issue of material fact concerning proximate cause. "Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause." *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). "Causation-in-fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence, and legal cause is proved by establishing foreseeability." *Id.* (stating foreseeability is determined by looking at the natural and probable consequences of the defendant's acts or omissions). I find that, under the undisputed facts, Petitioner can satisfy

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[7] Similarly, when Petitioner previously had problems at the complex with a young person going door-to-door and selling magazine subscriptions, she directly called the sheriff's office rather than the courtesy officer number. While Petitioner may have factored the security officer program into her decision to move to the complex five years before the incident, it seems her reliance on that program—even for minor things like discouraging nuisance solicitations—was nonexistent five years later, at the time in question.

neither of these requirements.[8]

First, as framed by the majority, Respondents' breach of duty was that they did not employ a security officer at the time of the robbery, nor did they "notify apartment tenants of the absence of officers and the true limitations of the courtesy officer program." Even viewing the evidence in the light most favorable to Petitioner, there is no proof whatsoever that Petitioner would not have suffered her injuries but-for Respondents' alleged failures. For example, Petitioner did not actually call the security pager number and fail to get a response. Nor did Petitioner produce any evidence that, had Respondents currently employed a courtesy officer, the officer would have (1) been on patrol at the time or (2) prevented or stopped the robbery.

The majority places importance on the opinion of Petitioner's security expert, William Booth, who opined that (1) had Respondents employed a security officer, that officer could have patrolled the complex five to six times in his requisite two-hour shift, i.e., completed a circuit around the complex approximately every twenty to twenty-four minutes for two hours per day; and (2) "had the courtesy officers been there and [] been patrolling the property as required that the perpetrators in this crime more likely than not would not have been in the position to rob and kidnap" Petitioner. Booth's desire for an optimal security program in no way establishes a genuine issue of material fact as to causation-in-fact because it does not specify whether the required two-hour patrol always occurred during the same time of day as the time of the robbery. The majority speculates that, had Petitioner known there were no security officers present, "there is a reasonable inference to be derived from the evidence that having this knowledge would have affected her actions on the night of the incident." Such a conclusion is conjecture, at best, particularly given the fact that Petitioner had not seen a single security officer in the five years she lived at the complex.[9] Accordingly, I would find the connection

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[8] Petitioner may not look to Section 323 to rescue her on the issue of proximate cause. This is because this Court has previously held section 323 applies only to duty, at least for medical malpractice claims. *See Sherer v. James*, 290 S.C. 404, 408, 351 S.E.2d 148, 150 (1986) ("Therefore, we hold that even if section 323(a) does apply in a medical malpractice case, it applies only to duty and not proximate cause.").

[9] In fact, the majority's speculation seemingly relies on subpart (b) of section 323—"reliance upon the undertaking"—as a crutch to help show Petitioner presented evidence of proximate cause, which is expressly contrary to our previous statement in *Sherer* that section 323 encompasses only duty, not proximate cause.

between Respondents' alleged breach of duty and Petitioner's injuries is so attenuated that, as a matter of law, there is no genuine issue of material fact regarding causation-in-fact.

Likewise, viewing the evidence in the light most favorable to Petitioner, I would find there is no evidence this robbery was foreseeable. In fact, the evidence points to the lack of foreseeability. Law enforcement officers testified the crime rate in the apartment complex was "average." *See Cramer I*, 312 S.C. at 443, 441 S.E.2d at 318 ("Absent agreement, the landlord cannot be expected to protect [his tenants] against the wiles of felonry any more than the society can always protect them upon the common streets and highways leading to their residence or indeed in their home itself. . . . *The criminal can be expected anywhere, any time, and has been a risk of life for a long time.*" (emphasis added) (citation omitted)). There is no suggestion Respondents knew the risk of injury to the complex's tenants was higher than the risk to the public at large. *See Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 621, 720 S.E.2d 473, 478 (Ct. App. 2011) ("Foreseeability is determined from the defendant's perspective at the time of the negligent act allegedly causing the plaintiff's injury.").[10]

See Sherer, 290 S.C. at 408, 351 S.E.2d at 150 (determining section 323(a) applies only to duty and not proximate cause).

[10] *See also, e.g.*, *Stone v. Bethea*, 251 S.C. 157, 164, 161 S.E.2d 171, 174–75 (1968) (affirming the grant of a directed verdict based on the absence of proximate cause as a matter of law because, *inter alia*, the intervening criminal act occurred in a low-crime area where it was unforeseeable the crime would occur); *Jeffords v. Lesesne*, 343 S.C. 656, 664–65, 541 S.E.2d 847, 851 (Ct. App. 2000) (finding the issue of proximate cause presented a jury issue in the case of injuries resulting from a bar fight because, *inter alia*, (1) the place in which the injuries occurred was a high-crime area; (2) the character of the event during which the injuries occurred involved heavy alcohol consumption and was targeted to "attract[] bystanders who were within this [high-crime] area," and (3) in "[p]erhaps the most compelling" piece of evidence, the allegedly-negligent bar staff *were specifically aware* the attacker was heavily intoxicated and acting obnoxious and aggressive for several minutes prior to the assault); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 448, 494 S.E.2d 827, 835 (Ct. App. 1997) (affirming the grant of summary judgment to the allegedly negligent landlord because, despite providing limited security patrols in the apartment complex, the landlord had no notice the attack on the plaintiff was going to occur, and therefore had no reason to foresee that a breach of any alleged duties to protect the complex's tenants and guests

The majority acknowledges "the existence of proximate cause indeed may hang by a slender thread." I do not find even a thread of evidence to save Petitioner's claim against Respondents. In addition, I am concerned the majority's decision disincentivizes apartment complexes from offering a security officer program at all. I dissent.

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would have the natural and probable consequence of resulting in an intentional attack on the plaintiff by third parties).