

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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Appellate Case No.: 2019-000152

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Vanessa Wiggins,.....Appellant,

v.

ALDI, Inc.,.....Respondent.

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**INITIAL BRIEF  
OF APPELLANT**

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**RECEIVED**  
SEP 25 2019  
SC Court of Appeals

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the trial court err in denying Plaintiff/Appellant's Motion to Dismiss Without Prejudice pursuant to Rule 41(a)(2)?
2. In refusing to grant the dismissal without prejudice, did the trial court err in concluding Defendant/Respondent showed legal prejudice if dismissal was granted?
3. In granting directed verdict did the lower court err in determining evidence presented by the Plaintiff/Appellant was insufficient to show a negligent breach of duty undertaken by the Defendant/Respondent?
4. Did the lower court err in granting Defendant's Motion for Directed Verdict in view of the evidence of record?

## STATEMENT OF THE CASE

This action for personal injury caused by negligence of the Defendant was filed on September 14, 2017. By her Complaint, the Plaintiff Vanessa Wiggins alleged she entered the Defendant ALDI's grocery store on June 17, 2017, for the purpose of shopping. As the wait at the cash register was taking longer than expected, an employee of Defendant provided a wheeled chair to Plaintiff and began to assist her in sitting down. Unknown to Plaintiff, however, and without warning the Defendant's employee walked away. As Plaintiff attempted to sit down the chair rolled out from under her, Plaintiff fell, and suffered injuries. (Complaint, p. \_\_\_\_). By way of Answer, dated October 18, 2017, Defendant denied the pertinent allegations of Complaint, and alleged comparative negligence or sole negligence of Plaintiff as affirmative defenses. (Answer, p. \_\_\_\_).

Defendant filed a Motion for Summary Judgment on June 29, 2018. That Motion was denied on November 20, 2018. That motion was denied by Order dated November 20, 2018. (Order, p. \_\_\_\_). Defendant filed a Motion to Reconsider on November 21, 2018. Plaintiff moved to dismiss her action without prejudice pursuant to Rule 41(a)(2). That motion was heard by the trial court on December 17, 2018, and denied. (Transcript 1, page 25, line 23-page 26, line 1). The case was called for a jury trial on December 20, 2018, and lasted one day. At the end of Plaintiff's case, the lower court granted Defendant's Motion for Directed Verdict. A formal Order Granting Directed Verdict was issued on January 25, 2019. (Order, p. \_\_\_\_).

Plaintiff served an initial Notice of Appeal on January 22, 2019, which was filed on February 1, 2019. Plaintiff filed and served an Amended Notice of Appeal on February 1, 2019, after the lower court issued its formal Order Granting Directed Verdict

of January 25, 2019. The Plaintiff/Appellant Vanessa Wiggins respectfully submits the lower court erred in denying her Motion to Dismiss Without Prejudice and in granting Defendant's Motion for Directed Verdict.

### **STATEMENT OF FACTS**

The Plaintiff/Appellant Vanessa Wiggins entered an ALDI grocery store located on 1240 Long Green Parkway, in Columbia, South Carolina, on June 17, 2017, for the purpose of shopping. Because of some problems at the store's checkout counter Plaintiff began to experience problems standing. (Transcript 2, p.119, line 20-page 120, line 15). The cashier provided her with a rolling-type chair with wheels on the legs. The Defendant's cashier employee spent some time attempting to adjust the chair for Wiggins, but was unable to properly complete the adjustments. (Transcript 2, p.121, lines 5-17).

The cashier then obtained a second chair for Appellant, which again was a rolling-type chair, with wheels on the legs. The employee placed the second chair behind Wiggins, Wiggins felt the chair press against the back of her legs, but as Wiggins began to sit down the cashier let go of the chair and walked away. Wiggins testified she thought the Defendant's employee was continuing to make sure the chair was proper for her and was holding the chair. (Transcript 2, page 121, line 18-page 123, line 11).

At trial Wiggins also presented a witness that observed the seating incident. The witness Vivian Ashford testified she observed Wiggins attempting to sit down and Wiggins was looking down as the cashier placed the chair behind her and she attempted

to sit. (Transcript 2, p. 102, line 4-line 8, and page 103, line 14-line 22). When Wiggins attempted to sit down, because the cashier ceased to assist her and stopped holding the chair, Wiggins fell and suffered injuries. The actions of the cashier in providing both of the two chairs and the fall were documented by a video from a camera in the Defendant's store.

Prior to trial Wiggins moved to dismiss her action without prejudice pursuant to SCRCP Rule 41(a)(2). The Motion was heard by the lower court on December 17, 2018. One of the primary reasons for the requested dismissal was the decision of Plaintiff's counsel to conduct additional discovery of medical witnesses and to better prepare the medical evidence for trial. (Transcript 1, page 5, lines 1-12).

The Defendant objected to the request for dismissal without prejudice claiming it would be prejudice because Defendant had made arrangements for representatives of the Defendant to be present for the trial, and the Defendant might be required to take additional depositions and hire additional medical experts in the event the case was refiled. (Transcript 1, page 17, lines 17-24; page 21, lines 1-7).

The trial court denied the Plaintiff/Appellant's Motion to Dismiss at a hearing held on December 17, 2018. (Transcript 1, page 25, line 23-page 26, line 6). The case proceeded to trial by jury on December 20, 2018, lasting one day. Upon conclusion of the Plaintiff/Appellant's case the trial court granted Defendant/Respondent's motion for directed verdict, concluding Plaintiff had failed to show actionable negligence on the part of ALDI.

## ARGUMENT I

**THE LOWER COURT ERRED IN DENYING PLAINTIFF/APPELLANT'S MOTION TO DISMISS WITHOUT PREJUDICE PURSUANT TO RULE 41(A)(2) BECAUSE THERE WAS NO SHOWING OF LEGAL PREJUDICE TO THE DEFENDANT/RESPONDENT. (ISSUES 1 AND 2)**

Appellant respectfully submits the lower court erred in denying Appellant's Motion to Dismiss without prejudice due to Rule 41(a)(2). Our appellate courts have made it clear a Plaintiff is entitled to a voluntary dismissal without prejudice as a matter of right unless there is a showing of legal prejudice to a defendant. If no legal prejudice is shown the trial judge has no discretion, but must grant the dismissal without prejudice. Knight v. Waggoner, 359 SC 492, 597 SE2d 894 (Ct.App. 2004); Prime Med. Corp., v. First Med. Corp., 291 SC 296 353 SE2nd 294 (Ct.App. 1987); and Walker v. Jones, 269 SC 19, 235 SE2nd 810, (1977).

Appellant requested dismissal without prejudice primarily because counsel wished to obtain additional medical evidence and depositions in further preparation for trial. (Trans.1, page 5, lines 1-12). In response, Respondent argued it had brought in representatives of the company for the trial, and that Respondent might be required to take additional depositions or possibly obtain its own medical experts if the case was refiled. (Trans.1, page 17, lines 17-24; page 21, lines 1-line 7). Those were the primary reasons given by Respondent to show it would suffer legal prejudice.

South Carolina Rule of Civil Procedure Rule 41(a)(2) provides the means for the lower courts to address a dismissal of an action at the behest of a plaintiff after a defendant has filed an answer. Rule 41(a)(2) provides an action can be dismissed at the request of a plaintiff, without prejudice, upon terms and conditions the trial court deems

proper. The arguments of Respondent in regard to legal prejudice simply amount to complaints it might be required to defend the action in the future if it is refiled.

The showing by a defendant that it is already been put through the time and expense of preparing for a trial does not constitute legal prejudice. The possibility a defendant may have to defend another lawsuit at a later date, does not constitute legal prejudice for purposes of Rule 41(a)(2). As shown above, at the hearing of the Motion to Dismiss, Respondent simply stated it had representatives of the company present for trial. There was no representation that any of these representatives of ALDI had any knowledge in regard to the case or would even testify at the trial. Respondent further asserted it might have to take additional depositions and obtain medical experts when or if the action was refiled. The possibility a defendant might be required to defend the suit if it is refiled does not constitute legal prejudice. Knight v. Waggoner, supra.

Our appellate courts have made it very clear the simple fact a defendant might be required to face a new trial in the future is not a sufficient showing of legal prejudice. The presence of the representatives, without assertions they would even testify, was clearly not a showing of prejudice to a Respondent. Furthermore, the remaining assertions in regard to the possibility Respondent might have to take some additional depositions or obtain medical experts is not a sufficient showing of prejudice to Respondent.

For all of the above reasons Appellant respectfully submits the lower court erred in denying the Motion to Dismiss. Appellant would request the case be remanded for a new trial with the provision adequate time should be allowed for the parties to conduct

additional discovery and trial preparation. This relief is requested as the statute of limitations may likely expire prior to a decision in this case.

## **ARGUMENT II**

**THE TRIAL COURT ERRED IN DIRECTING A VERDICT AGAINST THE APPELLANT AS THE EVIDENCE SHOWED THE RESPONDENT VOLUNTARILY UNDERTOOK TO ASSIST APPELLANT BY PROVIDING AND HELPING WITH THE ADJUSTMENT OF A ROLLING CHAIR AND DID SO IN A CARELESS OR NEGLIGENT MANNER. (ISSUES 3 AND 4)**

Appellant respectfully submits she submitted sufficient evidence of negligence on the part of ALDI for the case to be submitted to the jury. For this reason, the lower court erred in granting a directed verdict in favor of the Respondent.

In ruling upon a motion for directed verdict a trial court must view the evidence and all inferences that can be reasonably be drawn from the evidence in a light most favorable to the party opposing the motion. If more than one inference could be drawn from the evidence the motion should be denied. Worley v. Yarborough Ford, Inc., 317 SC 206, 452 SE2d 622, (Ct.App. 1994). In reviewing an order granting a directed verdict, an appellate court views the evidence and reasonable inferences from the evidence in a light most favorable to the party against whom the directed verdict is granted. If the evidence as a whole is susceptible of reasonable inferences which would support the position of the Plaintiff, the directed verdict should be overturned. Washington v. Whitaker, 317 SC 108, 451 SE2d 894 (1994); Love v. Gamble, 316 SC 203, 448 SE2d 876 (Ct. App. 1994).

Although it is true a store keeper is not an insurer of his customers' safety, a store keeper does owe a duty to keep the premises in a reasonably safe condition. Pennington v. Zayre Corp., 252 S.C. 176, 165 S.E.2d 695 (1969); Wintersteen v. Food-Lion, Inc., 344 S.C. 32, 542 S.E. 2d 728 (2001). A store keeper is liable for injuries caused by unsafe conditions which were created by the store keeper. Cook v. Food-Lion, Inc., 328 S.C. 324, 491 S.E. 2d 690 (S.C. App. 1997); Wimberly v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 165 S.E. 2d 627 (1969). Additionally, even if a person has no duty to act, if he or she voluntarily acts, then he or she must act with due care. One who voluntarily acts to assist another may be held liable for personal injuries resulting from performing that duty in a negligent or careless manner. Russel v. City of Columbia, 305 SC 86, 406 SE2d 338 (1991); Johnson v. Jackson, 401 SC 152, 735 SE2d 664 (Ct.App. 2012, cert. denied).

Appellant respectfully submits the evidence submitted at trial showed the Respondent, through its cashier, created a dangerous condition by providing the rolling chair to Appellant, assisting the Appellant with the adjustment of the chair, by placing the back of the chair against the back of her legs, and simply walking off with no warning. The cashier, by her actions, led Appellant to believe she was continuing to assist with the second chair as she had with the first chair. The chair was placed behind Wiggins legs and it was absolutely reasonable for Appellant to believe the cashier was continuing to assist by holding the chair. There was no verbal warning or indication by the cashier she was simply walking away.

Although the Respondent may not have had an initial duty or responsibility to provide a chair to its customer, Appellant, once the cashier began to provide and assist

Wiggins with the chair and in sitting down the cashier had a duty to provide assistance in a careful manner. Our courts have been clear that one who voluntarily acts to assist another may be held liable if she performs that undertaking in a negligent or careless manner.

Appellant respectfully submits the evidence showed carelessness or negligence on the part of Respondent which caused her to be injured. For this reason the decision of the trial court should be reversed and the action remanded for a new trial.

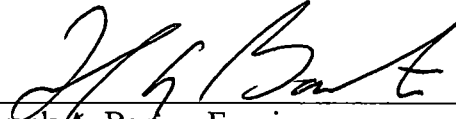
### CONCLUSION

The trial court erred in failing to grant Appellant's motion to dismiss without prejudice. Appellant was entitled to voluntarily dismiss the action as a matter of right in view of the failure of the Respondent to show any legal prejudice. For this reason the action should be remanded to the lower court for a new trial with directions a reasonable amount of time should be allowed for additional discovery and trial preparation.

Additionally, the trial court erred in granting Respondent's motion for directed verdict as evidence was presented to show Respondent's cashier undertook to provide a wheeled chair to Appellant and to assist Appellant in sitting in the chair. The evidence shows the Respondent's cashier was careless or negligent in assisting Appellant with the chair. For this reason the case should have been submitted to the jury.

Respectfully submitted,

September 25, 2019  
West Columbia, South Carolina



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THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

The undersigned does hereby certify one copy each of the **INITIAL BRIEF OF APPELLANT and APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on September 25, 2019, addressed to the following:

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September 25, 2019

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RE: Vanessa Wiggins v. ALDI, Inc.  
Appellate Case No. 2019-000152

Dear Clerk Kitchings:

Enclosed for filing please find Appellant's Designation of Matter to be Included in the Record on Appeal and Initial Brief in the above referenced matter.

Truly Yours,



Frank A. Barton

FAB/lfm

cc: Helen F. Hiser, Esquire  
Kelly L. Burnside, Esquire

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