

19243

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2008-CP-26-7002

Lisa Everitt Lomonaco.....Appellant,

v.

The Myrtle Beach Resort  
Homeowner's Association, Inc.....Respondent.

RECORD ON APPEAL

Bradley A. Floyd  
THE FLOYD LAW FIRM  
PO Drawer 14607  
Surfside Beach, SC 29587-4607  
(843) 238-5141  
*Attorney for Appellant*

Timothy A. Domin  
CLAWSON & STAUBES, LLC  
126 Seven Farms Dr., Suite 200  
Charleston, SC 29492-8144  
(843) 577-2026  
*Attorney for Respondent*

RECEIVED  
JUL 26 2011  
SC Court of Appeals

## INDEX

Order of September 14, 2009 .....	2
Order of September 10, 2010 .....	7
Complaint .....	8
Answer .....	12
Plaintiff's Brief in Support of Reconsideration .....	17
Notice of Appeal .....	25
Affidavit of Phillip Stegall .....	27
Affidavit of Mel Renkey.....	30
Transcript of Hearing .....	33
Testimony	
Direct Examination of Ronald G. Budd.....	50
Cross Examination of Ronald G. Budd.....	55
Direct Examination of Jennifer Lundi .....	56
Cross Examination of Jennifer Lundi.....	80
Redirect Examination of Jennifer Lundi.....	81
Certificate of Appellant .....	82

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry )

CASE NO.: 08-CP-26-7002

Lisa Everitt Lomonaco, )

Plaintiff, )

vs. )

ORDER GRANTING SUMMARY  
JUDGMENT  
IN FAVOR OF DEFENDANT

The Myrtle Beach Resort Homeowners'  
Association, Inc., )

Defendant. )

**COPY**

RECEIVED  
CLERK OF COURT  
MAY 18 2009

This matter came before the Court on the Defendant's Motion for Summary Judgment. Having heard argument from both counsel and after reviewing the affidavits and depositions in this case, I find that the defendant is entitled to summary judgment as a matter of law. While there are some differences in the facts as recounted by various individuals, even viewed in the light most favorable to the plaintiff, these do not result in any conceivable basis for recovery by the plaintiff.

The Myrtle Beach Resort (hereinafter "Resort") is located on the beach in Horry County. It is comprised of four separate horizontal property regimes which each have their own board of directors and property management company. Each individual regime elects a member to the board of directors of the defendant entity. This master board selects a property manager who administers the day-to-day affairs of the property common to all the regimes. The property manager at the time of this incident was Chicora Development. Chicora Development hired Eagle Services, Inc. to maintain security over the common areas maintained by the Master Association.

The undisputed facts demonstrate that the plaintiff, Lisa Lomonaco, was an adult over the age of twenty-one who was present on the subject property as a guest of a friend

*1*  
*BHC*

who lived in one of the buildings at the Resort. By all accounts and by an admission in her own pleadings, Lomonaco became highly intoxicated. This intoxication was not the result of any actions of the defendant. Lomonaco was not served any alcohol by the Resort, by the property manager for the Resort, or by security for the Resort.

The evidence shows that Lomonaco was in the beach area of the Resort and then the pool area of the Resort. Due to a disturbance in the pool area, which apparently involved Lomanaco's boyfriend throwing her into the pool, security was called. Security directed Lomanaco to go to the room to "sleep it off."

Plaintiff alleges that the security guards told her boyfriend to stay downstairs. While this is disputed by the security guard, it must be assumed as true for the purposes of this Motion. Plaintiff's boyfriend states in his affidavit that although he had consumed some alcohol, he did not believe he was too impaired to drive. Lomanaco's boyfriend contends that he requested that he be allowed to drive the plaintiff off the subject property and was denied that request by security.

Plaintiff was accompanied to the room by her friends Jennifer Lundi, Stephanie Caradinta and Ovidiu Caradinta. After arriving at the room, Stephanie Caradinta and Ovidiu Caradinta left. Jennifer Lundi remained with the plaintiff in the unit. Plaintiff thereafter opened the sliding door to the balcony, climbed onto the chest-high balcony railing and either fell or jumped from the eighth story room. Although the plaintiff survived the fall, she sustained serious injuries.

In South Carolina, a plaintiff is barred from recovery if her negligence outweighs the defendant's negligence. Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). While the question of comparative negligence is often a question for the jury, when

2  
MHC

the evidence supports only one conclusion, then the comparative fault of the plaintiff and defendant become a question of law for the trial judge. Creech v. South Carolina Wildlife & Marine Res. Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997).

This state's modified comparative negligence system also bars an intoxicated adult's recovery on a first party negligent entrustment cause of action. See Lydia v. Horton, 355 S.C. 36, 40 583 S.E.2d 750, 752 (2006) ("We cannot imagine how one could be more than fifty percent negligent in loaning his car to an intoxicated adult who subsequently injured himself."). Public policy and logic is not served by allowing an intoxicated adult to maintain a suit for injuries which result from his own conduct. See Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318, 319 (1998). An adult who voluntarily renders themselves intoxicated is nevertheless responsible for their own acts. State v. Vaughn, 268 S.C. 119, 125 232 S.E.2d 328, 330-31 (1977)

In the present case, it is not foreseeable that directing the intoxicated Lomonaco out of the pool area and to a room with friends would result in her climbing over the balcony and jumping to the ground from the eighth floor. Jennifer Lundi, the plaintiff's friend who accompanied her to the room testified that no one had any reason to believe that she would go over the balcony that day. (Lundi Dep. Tr., 71, l.15-25).

The suggestion that the Resort security should have allowed Lomonaco to be driven off the property by her boyfriend does not provide any reasonable alternative or a means to assign negligence to the security personnel. While Lomonaco might not have had an opportunity to jump off the eighth floor balcony if she had been allowed to be driven off the subject property by her boyfriend, placing her in a moving car with a man who had just thrown her into the pool to "sober her up", would have posed its own unique risks.

3  
/ MTE

In comparing the negligence of the parties, it is difficult to suggest the security guards were negligent whatsoever. It was not foreseeable the plaintiff would jump off an eighth floor balcony if directed to the room. On the other hand, plaintiff's voluntary intoxication does not excuse her conduct. The direct cause of Lomonaco's injuries is her decision to climb over the balcony on the eighth floor and to thereafter jump or fall. Based on those facts, it is inconceivable that any reasonable jury could conclude that the Resort was somehow more responsible for plaintiff's injuries than the plaintiff herself. As a matter of public policy and logic, plaintiff should not be permitted to recover for the consequences of her own voluntary intoxication under these circumstances.

Further, the Court would note that the Resort's employees did not interact with the plaintiff in any way whatsoever. The plaintiff and her friends only interacted with the security guards who were employees of Eagle Security Services, Inc. By all accounts, and tests, Eagle Security Services, Inc. appears to be an independent contractor hired by the property manager, Chicora Development. The general rule is that a person is not vicariously liable for the negligent acts of an independent contractor. Duane v. Presley Constr. Co., Inc., 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

While the plaintiff argues that the Resort has responsibility for the security guards under the theory of a non-delegable duty, there is no duty under South Carolina law for a property owner to provide a security guard or any type of security service. Unlike those cases which involve some defect on the property which the property owner is charged with the duty of making safe, See e.g., Courtney v. Remler, 566 F. Supp. 1225, 1234 (D.S.C. 1983) aff'd, 745 F.2d 50 (4th Cir. 1984), there is no tort duty for a landowner to provide security for guests absent some level of criminal activity warranting security. Simmons v.

4  
BAC

Tuomey Reg'l Med. Ctr., 341 S.C. 32, 52 (S.C. 2000).

The only reasonable inference that may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent of the total negligence that caused her injuries. Even if the security guards were somehow negligent in directing the plaintiff up to a room as opposed to having her leave the Resort in a moving car with her boyfriend, it was not foreseeable that plaintiff would thereafter climb on to an eighth floor balcony railing.

  
Benjamin Culbertson  
Presiding Judge

Georgetown, South Carolina

September 14, 2009

STATE OF SOUTH CAROLINA  
 COUNTY OF HORRY  
 Lisa Everitt Lomonaco,  
  
 Plaintiff,  
 vs.  
 The Myrtle Beach Resort Homeowners'  
 Association, Inc.,  
  
 Defendant.

IN THE COURT OF COMMON PLEAS

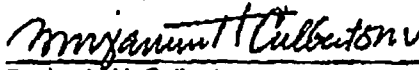
CASE NO.: 08-CP-26-7002

ORDER

FILED  
 HORRY COUNTY  
 10 SEP 17 AM 11:24  
 MELANIE HUGHES-WARD  
 CLERK OF COURT

This matter comes before me on the Plaintiff's motion to reconsider my order granting summary judgment in favor of the Defendant. I have asked each party to submit a memorandum of law in support of their position rather than have a second oral argument. I have reviewed the memorandums and accompanying materials. The court believes that its prior order adequately addresses the issues in this case. Accordingly, plaintiff's motion for reconsideration is denied.

AND IT IS SO ORDERED



Benjamin H. Culbertson  
 Benjamin H. Culbertson  
 Presiding Judge

Sept. 10, 2010, 2009

Conway, South Carolina



8. Upon information and belief, Plaintiff was obviously intoxicated and loud at the pool as a result of which someone called security.
9. Upon information and belief, Phil Stegall was carrying Plaintiff to the car to take her home when two (2) security guards employed by the HOA intervened and prevented him from doing so.
10. Plaintiff is informed and believes that Phil Stegall was obviously sober, lucid and able to drive unimpaired by alcohol.
11. Plaintiff is informed and believes that Phil Stegall wanted to remove her from the premises and return to their residence in Myrtle Beach, SC, and announced his intention to the security guards, but was prevented by the security guards from removing Plaintiff from the premises because, according to them, he had been drinking.
12. Upon information and belief, the security guards ordered Jennifer Lundi to take Plaintiff to her room, but the security guards prevented Phil Stegall from going to the room, although he explained to the security guards that he was the only one who could control her, or calm her down when she was so intoxicated. He made the request repeatedly and was repeatedly denied. At all times, Phil was orderly and respectful in his dealings with the security guards.
13. Plaintiff is informed and believes that she was so intoxicated that she was helpless and to be carried from the pool to the eighth floor.
14. Upon information and belief, the security guards designated Ovidiu to carry Lisa to the eighth floor, and he took her to unit 804 and then left.

15. Plaintiff is informed and believes that, because the security guards prevented Phil Stegall from going to the room, she was left in the room with only Jennifer Lundi.
16. Upon information and belief, the security guards, after having assumed total control of the situation, made no provision for the safety of Plaintiff after they required that she be removed from the common area.
17. Plaintiff is informed and believes that in her highly intoxicated state she attempted to go back outside by going over the balcony railing, and was hanging by the rail when Jennifer tried pulling her up, but was unable to hold onto Plaintiff.
18. Plaintiff is informed and believes that she fell eight (8) stories suffering multiple injuries and great damages as hereinafter alleged.
19. Plaintiff is informed and believes that the security guards were employees of Defendant for whose acts the Defendant is responsible.
20. Plaintiff is informed and believes that her injuries and damages were proximately caused by the negligence, gross negligence, recklessness, willfulness, and wantonness of the security guards, for whose acts the defendant is responsible in one or more or all of the following particulars:
  - a) in preventing Phil Stegall from removing Plaintiff from the premises and taking her home;
  - b) in preventing Phil Stegall from accompanying Plaintiff in order to protect her;
  - c) in failing to make sufficient provisions for the safety of Plaintiff after taking control of the situation.

21. As a direct and proximate result of Defendant's negligence as aforesaid, without which Plaintiff would not have been placed in a position of danger and would not have been injured, Plaintiff suffered multiple physical injuries, requiring extensive hospitalization, and numerous operations and causing Plaintiff pain, suffering, discomfort, inconvenience, loss of the normal pursuits, and loss of income and leaving her with permanent injury, permanent impairment and permanent disability (physical, mental and emotional), and causing Plaintiff to incur such extensive expenses that she has been unable to pay same thus leaving her destitute and ruining her credit.

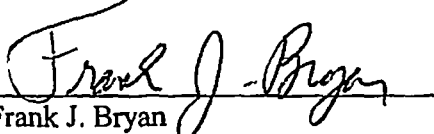
WHEREFORE, Plaintiff prays for Judgment against Defendant for actual and punitive damages, the costs and disbursements of this action and for such other and further relief as this Honorable Court deems just and proper.

THE FLOYD LAW FIRM PC

Frank J. Bryan  
S.C. Bar No. 7140  
P.O. Box 14607  
Surfside Beach, SC 29587  
843-238-5141 (phone)  
843-238-9060 (facsimile)  
fjbryan@floydflaw.com

Bradley A. Floyd  
S.C. Bar No. 75294  
P.O. Box 14607  
Surfside Beach, SC 29587  
843-238-5141 (phone)  
843-238-9060 (facsimile)  
bafloyd@floydflaw.com

*Attorneys for Plaintiff*

By:   
Frank J. Bryan

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Lisa Everitt Lomonaco,

Plaintiff,

vs.

The Myrtle Beach Resort Homeowners'  
Association, Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 08-CP-26-7002

) **ANSWER**

) **(Jury Trial Demanded)**

The defendant, above named, answering the Complaint of the plaintiff, above named, alleges and says as follows:

1. Upon information and belief, the defendant admits the allegations contained in paragraph 1 of the Complaint.
2. The defendant admits so much of paragraph 2 of the Complaint as it indicates that it is an eleemosynary corporation providing for the operation of the homeowners' association at Myrtle Beach Resort. Any remaining allegations of paragraph 2 are denied.
3. Upon information and belief, the defendant would admit that the plaintiff was a guest of a person who was staying in Unit 804 of the Myrtle Beach Resort.
4. Defendant lacks sufficient information to admit or deny the particulars of paragraph 4 of the Complaint relating to exact circumstances of plaintiff's arrival and accordingly demands strict proof thereof.
5. Upon information and belief, the defendant would admit that the plaintiff, Lisa Everitt, now Lisa Everitt Lomonaco became highly intoxicated on the date in question.
6. That the defendant lacks sufficient information to admit or deny plaintiff's claim of memory loss.

7. That the defendant lacks sufficient information to admit or deny all of the particulars of paragraph 7 of the Complaint, but would admit that security guards encountered Lisa Everitt, now Lisa Everitt Lomonaco in the pool area. Any remaining allegations of paragraph 7 are denied.

8. That the defendant lacks sufficient information to admit or deny all of the particulars of paragraph 8 of the Complaint, but would admit that security guards encountered Lisa Everitt, now Lisa Everitt Lomonaco in the pool area. Any remaining allegations of paragraph 8 are denied.

9. That the defendant denies the allegations contained in paragraph 9 of the Complaint as stated.

10. That the defendant denies the allegations contained in paragraph 10 of the Complaint as stated.

11. That the defendant denies the allegations contained in paragraph 11 of the Complaint as stated.

12. That the defendant denies the allegations contained in paragraph 12 of the Complaint as stated.

13. That the defendant admits plaintiff was to go to the room with a female companion and male companion. Any remaining allegations of paragraph 13 are denied.

14. That the defendant admits plaintiff was to go to the room with a female companion and male companion. Any remaining allegations of paragraph 14 are denied.

15. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 15 of the Complaint.

16. That the defendant denies the allegations contained in paragraph 16 of the

Complaint.

17. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 17 of the Complaint.

18. In response to the allegations of paragraph 18, the defendant admits that plaintiff apparently jumped or fell eight stories to the ground.

19. That the defendant denies the allegations contained in paragraph 19 of the Complaint.

20. That the defendant denies the allegations contained in paragraph 20 of the Complaint.

21. That the defendant denies the allegations contained in paragraph 21 of the Complaint.

22. That the defendant denies each and every allegation not specifically admitted.

**FURTHER ANSWERING THE COMPLAINT**

**AND AS AN AFFIRMATIVE DEFENSE THERETO,**

**THE DEFENDANT ALLEGES AND SAYS:**

**(Comparative Negligence)**

23. That if there was any negligence of the defendant, which is expressly denied, then such negligence was less than the negligence of the plaintiff who consumed such quantity of alcohol so as to be intoxicated and disregarded the directions of her companions and thereafter jumped or fell from the eighth story balcony. That such negligence on the part of the plaintiff bars any recovery on her part, or, alternatively, would reduce any recovery provided by law.

**FURTHER ANSWERING THE COMPLAINT**  
**AND AS AN AFFIRMATIVE DEFENSE THERETO.**  
**THE DEFENDANT ALLEGES AND SAYS:**

**(Proximate Cause)**

24. That even if defendant was negligent, which is expressly denied, the direct and proximate result of plaintiff's injuries was her own poor decision to jump from the eighth floor balcony or, to stand on the eighth floor balcony railing and fall off of it and that defendant's alleged acts of directing her to go to the room were not the proximate cause of her injuries.

**FURTHER ANSWERING THE COMPLAINT**  
**AND AS AN AFFIRMATIVE DEFENSE THERETO.**  
**THE DEFENDANT ALLEGES AND SAYS:**

**(Security Are Not Employees Of The Association)**

25. That security personnel were not employees of the Association and were instead independent contractors paid through the property management company and supervised by the property management company and accordingly, no respondeat superior liability would exist.

**FURTHER ANSWERING THE COMPLAINT**  
**AND AS AN AFFIRMATIVE DEFENSE THERETO.**  
**THE DEFENDANT ALLEGES AND SAYS:**

**(Punitive Damages Unconstitutional - Procedural Due Process)**

26. That the plaintiff's Complaint to the extent that it seeks punitive or exemplary

damages violates the right of this defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.



Timothy A. Domin  
CLAWSON & STAUBES, LLC  
126 Seven Farms Dr., Suite 200  
Charleston, South Carolina 29492-8144  
(843) 577-2026

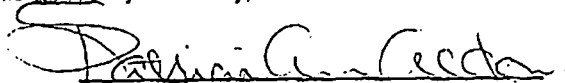
Attorneys for Defendant

Charleston, South Carolina

January 8, 2009

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 13<sup>th</sup> day of January, 2009.



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Lisa Everitt Lomonaco, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 Myrtle Beach Resort Homeowner's )  
 Association, Inc., )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2008-CP-26-7002

**PLAINTIFF'S BRIEF IN SUPPORT OF  
 MOTION FOR RECONSIDERATION  
 PURSUANT TO RULE 59(e) SCRPC  
 AND TO ALTER OR AMEND  
 PURSUANT TO RULE 52(b) SCRPC**

There is evidence of Defendants' negligence as a proximate cause of Plaintiff's injuries in this case, and the question of comparative negligence and causation should be submitted to the jury.

The evidence, and all inferences deducible therefrom, must be viewed in the light most favorable to Plaintiff.

**FACTS**

Plaintiff was highly intoxicated to the extent that she was unable to take care of herself. For that reason, Phil Stegall and Jennifer Lundi were watching her. (Lundi's deposition at p. 48, f.f. 9-19) It was clear to everyone that Plaintiff needed supervision and care because of the level of her intoxication, because she was helpless (Stegall Affidavit, paragraph 12), and was so drunk she couldn't stand up. (Budd deposition, p. 31, f.f. 12 and 13). It was foreseeable that Plaintiff, if left alone, was in danger of sustaining some type of injury. (She backed up and fell in the pool and Phil jumped in and got her out.) (Stegall Affidavit, paragraph 7). It is not necessary that the particular event be foreseeable, but only that injury and damage to Plaintiff were foreseeable. Jennifer hid a knife "just in case she was going to do anything stupid; she was that drunk". (Lundi deposition at p. 65, f.f. 9-13).

The actions of the security guards indicated that even they were aware that injury to Plaintiff was foreseeable because they directed Plaintiff's friends to take her back to the room "to sleep it off".

Philip Stegall stated in his Affidavit that "I was going to take her home, and was on my way to do so when the security guards for Myrtle Beach Resort stopped me and would not let me take her home." (Stegall Affidavit, paragraph 6). It was obvious to everyone, including the security guards, that Philip Stegall was not under the influence. (Stegall Affidavit, paragraph 6). The security guard himself acknowledged that they had no authority to stop Stegall from taking Plaintiff off the premises, (Budd deposition, p. 24, f.f. 13-19), and the exercise of their apparent authority (apparent from the standpoint of Stegall), should be submitted to the jury as evidence of negligence and willfulness which was a proximate cause of Plaintiff's injuries. (Stegall Affidavit, paragraphs 10, 11 and 12).

The security guards then directed Plaintiff's friend, Jennifer Lundi, to take Plaintiff up to the room. It was obvious that Plaintiff could not go to the room on her own. (Budd deposition, p. 41, f.f. 12 and 13). The security guards directed another friend to pick her up and carry her up to the room. (Stegall Affidavit, paragraph 7). They did so despite the fact that, according to Stegall, "I told them over and over that I was the only person who can control her when she is like that and I wanted to go up, but they grabbed me by the arm and told me not to go." (Stegall Affidavit, paragraph 7). Again, the security guards probably did not have the authority to prevent Stegall from going to the room, but they had apparent authority from Stegall's point of view, and there is a clear inference that he wanted to go, and did not only because he was directed not to and subjected to some physical restraint. (Stegall Affidavit, paragraph 7). "They had no business stopping me from taking her home, and that was the easiest and best solution to dealing with the condition that Lisa was in." (Stegall Affidavit, paragraph 8).

The Affidavit of Phil Stegall makes it clear that there was no reason for preventing him from going up to the room especially since "Lisa was objecting to going with Jennifer, and she just wanted to get back and be with me." (Stegall Affidavit, paragraph 9).

Stegall states that her fall from the eighth floor "would had never happened if the Myrtle Beach Resort security guards had not kept me from taking her home. It also would not have happened if they had just let me go with her to the eighth floor because I would have stuck with her and she would not have been trying to get back to me like she did when she went over the railing." (Stegall Affidavit, paragraphs 10 and 11).

There is clear evidence that "Lisa was helpless, and I was the only one who could control her in the situation she was in. They prevented me from taking her home and they prevented me from being with her when she was distressed over not being with me." (Stegall Affidavit, paragraph 12).

#### APPLICABLE LAW

Generally, where there is evidence of negligence on the part of the Defendant, the question of comparative negligence is one for the jury. The case of Creech v. South Carolina Wildlife and Marine Resources Department, cited by the Order in this case is an excellent one for the Plaintiff. The Court found that the question of comparative negligence should be decided by the jury and stated:

Here, evidence was presented suggesting that Creech, County, and Wildlife Department were all negligent. In our view, the jury reasonably could have drawn many different conclusions regarding the relative fault of the parties. Under such circumstances, a directed verdict would have been wholly inappropriate. We find no error here.

Further, the Court quoted with approval from another case, where the Court stated that the matter should be decided by the jury even if the Plaintiff's testimony amounted to an admission of negligence, as in the instant case.

County next argues it was entitled to a direct verdict because Creech was more than fifty percent negligent as a matter of law. We disagree.

Comparison of a plaintiff's negligence with that of the defendant is a question of fact for the jury to decide. See e.g., Ott v. Pittman, 320 S.C. 72, 80, 463 S.E. 2d 101, 106 (Ct.App. 1995) (citing trial judge's statement that "because this was a comparative negligence case, even if the plaintiff's testimony amounted to an admission of negligence, it was a question of fact for the jury to compare the plaintiff's negligence [with that the defendant]"). Creech v. South Carolina Wildlife and Marine Resources Department, 328 S.C. 24, pp. 32 and 33, 491 S.E. 2d, 571, 575 (1997).

The case of Nelson v. Concrete Supply Co., 303 S.C. 243, 399, S.E. 2d, 783, also cited by the Court's Order was not one where the Court applied the doctrine of comparative negligence and found that the negligence of the Plaintiff was greater than that of the Defendant as a matter of law. In fact, the Court stated that the doctrine of comparative negligence should not be applied in that particular case. That case did not involve summary judgment or directed verdict, but was a case decided by the verdict of the jury.

Generally, the question of proximate cause is one for the jury. The Order in this case does not mention proximate cause, but does speak of foreseeability which is the basis for determining proximate cause. It states that "it is not foreseeable that directing the intoxicated Lomonaco out of the pool area and to a room with friends would result in her climbing over the balcony and jumping to the ground from the eighth floor." And again, that it "was not foreseeable the Plaintiff would jump off an eighth floor balcony if directed to the room." (The evidence viewed in the light most favorable to the Plaintiff is that Plaintiff fell rather than jumped, and that she was simply trying to get back to her boyfriend. The Court's Order acknowledges the factual question by stating "to thereafter jump or fall".)

The recent Court of Appeals case of Hughes v. Western Carolina Regional Sewer Authority, decided October 22, 2009, has a full discussion of proximate cause and foreseeability and cites numerous cases. It states "it is not necessary that Defendant foresaw the particular event that occurred, but rather only that his negligent conduct would probably cause someone injury. Hurd, 353 S.C. at 613, 579 S.E. 2d at 145". The Hughes Court also states, citing Hurd,

“a Plaintiff can establish proximate cause by showing that the act or omission was ‘at least one of the direct, concurring causes of the injury.’”

Although the specific event might not have been foreseeable, there is clear evidence that it was apparent to everyone that the Plaintiff was incapable of caring for herself, and that harm to her was a foreseeable event unless she was protected from injury to herself. Phil Stegall was prevented by the guards from taking her home and from caring for her when they ordered her up to the room. It is for the jury to determine whether that constituted negligence as a proximate cause of Plaintiff’s injuries and whether the negligence of Plaintiff exceeded that of the Defendant.

In this case the Court relied on and cited the case of Lydia v. Horton, 355 S.C. 36, 583 S.E. 2<sup>nd</sup> 750 (2006), which is a case of negligent entrustment in which the South Carolina Court decided that there is no cause of action in South Carolina for negligent entrustment where the Plaintiff was voluntarily intoxicated. Lydia v. Horton has no application outside of a case based on negligent entrustment. This case is not a case of negligent entrustment.

The Court cited and relied on the case of Tobias v. Sports Club, Inc., 332 SC 90, 504 S.E. 2d 318 (1998), which was a case based on the dram shop act. Although the Court’s Order cites that case for the proposition that “public policy and logic is not served by allowing an intoxicated adult to maintain a law suit for injuries which result from his own conduct”, it is clear that the application of the Tobias case should be limited to dram shop cases because the actual quotation from the case refers to an intoxicated adult patron. It states “we now hold that public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct.” The holding states that “[w]e hold today that our alcohol control statutes do not create a first party cause of action for an intoxicated adult patron...”. The South Carolina Court decided that the dram shop act is not the basis for a cause of action by a Plaintiff who is voluntarily intoxicated. This case is not based on the dram shop act.

The Order of the Court also cites State v. Vaughn, 268 S.C. 119, 232 S.E. 2d 328 (1977), which is a criminal case deciding whether an intoxicated Defendant could be guilty of a crime involving specific intent. The conclusion in that case has no relevance to civil actions and especially the questions presented by the instant case.

This is a unique case with its own unique set of facts. The Plaintiff was intoxicated through no fault of the Defendant. Had the Defendant taken no action whatsoever, the Defendant would not be liable for any resulting injury to the Plaintiff. However, the defendant took control of the situation and is totally responsible for what happened after the Defendant did not permit Plaintiff's boyfriend to take her off the premises or remain with her to make certain that no harm could come to her. As a matter of public policy and logic, Defendant should be liable for taking control of the situation of dealing with a person who was helpless as a result of voluntary intoxication. It is a matter to be determined by a jury.

In this case the Defendant is responsible for the acts of the security guards. §7-31-160 of the Code of Laws provides that with regard to Defendant's by-laws, they must provide for "(c)Care, upkeep and surveillance of the property and its general or limited common elements and services". As a matter of fact, the Defendant did take that responsibility and clearly under the facts did employ the security guards.

The Court's Order in this case cites Duane v. Presley Construction Co., Inc., 270 S.C. 682, 244 S.E. 2d 509 (1978), for the proposition, that generally, an employer is not liable for the torts of an independent contractor committed in the performance of contracted work. In Duane v. Presley the Court reversed summary judgment and remanded for the jury to determine. This case now before the Court involves an exception to the general rule which our court refers to as the non-delegable duty doctrine.

The other two cases cited by the Court's Order both found that the employer was responsible for the acts of people performing services on their premises. Courtney v. Remler,

566 F. Supp. 1225 (D.S.C. 1983), is a case decided by the Judge without a jury. The Court found in its legal conclusions:

“Based on the fact that the Agreement shows the intention of both parties to form an agency relationship and Hotel Investments actual control over the operation of the motel, this Court finds that Quality Management was the agent of Hotel Investments on October 1, 1979, and any negligence attributed to Quality Management will be imputed to Hotel Investments.”

In that case, while the principal was found to be liable for the acts of the agent, the Court, finding the facts, found no negligence.

Likewise, the case of Simmons v. Tuomey Regional Medical Center, 341, S.C. 32, 533 S.E. 2d 312 cited by the Court's Order is a case supporting the Plaintiff's position regarding the responsibility of the Defendant for the actions of the security guards. The Simmons' Court has a good discussion of the non-delegable duty doctrine and points out that it is actually the liability, not the duty, that is non-delegable. The party which owes the non-delegable duty is vicariously liable for negligent acts of the independent contractor. Despite no statute making the hospital liable, the South Carolina Court found the hospital liable for the negligence of the independent contractor doctors. The hospital argued that the adoption of the non-delegable duty doctrine in that setting is a decision for the legislature to make, not the Courts. The Court disagreed. The Court also named other situations in which there is a non-delegable duty. Interestingly, the Court did not cite Duane v. Presley, or mention the general rule.

In this case, the Defendant had a duty pursuant to Statute, but even if it did not, it undertook to employ independent contractors to provide security, and gave them apparent authority to direct the actions of residents and guests. There should be no question in this case regarding the liability of the Defendant for the acts of the security guards.

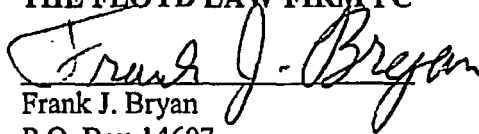
#### CONCLUSION

The Defendant is liable for the negligence and willfulness of the security guards. The security guards inserted themselves into a situation and took actions which could be found by a

reasonable jury to have stopped those caring for the safety of Plaintiff from doing so. There is evidence of negligence, and willfulness of the Defendant as a proximate cause of Plaintiff's injuries, and those questions are for the jury. Defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,

**THE FLOYD LAW FIRM PC**



Frank J. Bryan  
P.O. Box 14607  
Surfside Beach, SC 29587  
843-238-5141 (phone)  
843-238-9060 (facsimile)  
fjbryan@floydlaw.com

Attorneys for Plaintiff

Submitted November 10, 2009.  
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2008-CP-26-7002

**RECEIVED**

NOV 16 2010

SC Court of Appeals

Lisa Everitt Lomonaco.....Appellant,

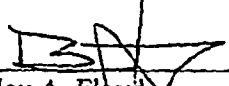
v.

The Myrtle Beach Resort  
Homeowner's Association, Inc.....Respondent.

NOTICE OF APPEAL

Appellant, Lisa Everitt Lomonaco, appeals the Order of the Honorable Benjamin H. Culbertson dated September 14, 2009. Appellant received written notice of entry of this Order on September 22, 2009. Appellant filed a timely Notice of Motion and Motion for Reconsideration of this Order pursuant to Rules 52(b) and 59(e) SCRPC on October 2, 2009. Appellant also appeals the Order of the Honorable Benjamin H. Culbertson, dated September 10, 2010, that denied Appellant's Motion for Reconsideration. The Appellant received written notice of entry of the Order denying its Motion for Reconsideration pursuant to Rules 52(b) and 59(e) SCRPC on October 25, 2010.

November 15, 2010

  
Bradley A. Floyd  
The Floyd Law Firm  
15 Highway 17 South  
P.O. Drawer 14607  
Surfside Beach, SC 29587  
843-238-5141 (phone)  
843-238-9060 (facsimile)  
Attorney for Appellant

Other Counsel of Record:  
Timothy A. Domin  
Clawson & Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492  
843-577-2026 (phone)  
843-722-2867 (facsimile)  
Attorney for Respondent



guards for Myrtle Beach Resort stopped me and would not let me take her home. They asked if I had been drinking, and I told them that I had a part of one drink and they would not let me take her home. It should have been obvious to them and everyone else that I was not under the influence of alcohol.

7. The security guards told her friend Jennifer Lundi to take her up to the room. They held me back and said that I could not go with them. While they were talking to me, Lisa backed up and fell in the pool, and the security guards did not do anything. I ran over there and jumped in and got her out of the pool, and they still held me back, and they choose Ovidiu to pick her up and carry her up to the room. I told them over and over that I was the only one who can control her when she is like that and I wanted to go up, but they grabbed me by the arm and told me not to go.

8. They had no business stopping me from taking her home, and that was the easiest and best solution to dealing with the condition that Lisa was in.

9. Then there was absolutely no reason from preventing me to going up to the room with Jennifer and Lisa. Instead they sent Ovidiu and Stephanie, and there was no reason for that. Lisa was objecting to going with Jennifer, and she just wanted to get back to and be with me.

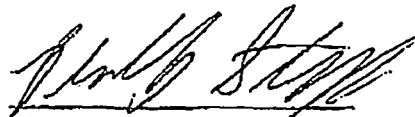
10. I was not up on the eighth (8) floor, and only heard about what happened up until the time that Lisa fell. But that would had never happened if the Myrtle Beach Resort Security guards had not kept me from taking her home.

11. It also would not have happened if they had just let me go with her to the eighth floor because I would have stuck with her, and she would not have been trying to get back

to me like she did when she went over the railing.

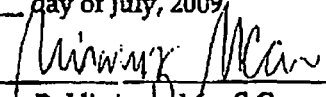
12. At the point that the security guards took control, I was in control and nothing bad would have happened. The whole tragedy was the fault of the security guards, because Lisa was helpless, and I was the only one who could control her in the situation she was in. They prevented me from taking her home, and they prevented me from being with her when she was distressed over not being with me.

July 08, 2009

  
Phillip Stegall

SWORN to before me this

08 day of July, 2009

 (L.S.)

Notary Public in and for S.C.

My Commission Expires March 21, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CASE NO.: 08-CP-26-7002
Lisa Everitt Lomonaco,	)	
	)	<b>AFFIDAVIT OF MEL RENKEY</b>
vs.	)	
The Myrtle Beach Resort Homeowners'	)	
Association, Inc.,	)	
	)	
Defendant.	)	

2009 JUN 15 AM 10:14  
 MELANIE HUGGINS  
 CLERK OF COURT  
 HORRY COUNTY

Mel Renkey being duly sworn, deposes and says:

1. That I am over eighteen (18) years of age and of a sound mind and otherwise competent to make this affidavit.
  
2. The Myrtle Beach Resort is located in Horry County, South Carolina and consists of four condominium complexes including the Horizontal Property Regime, Ocean Front Spa, Five Seasons Centre and Renaissance Towers plus certain common areas. Each of the four condominium complexes have their own property regimes, with their own boards, and are each managed by property management companies. Each regime can select their own property manager. Each board elects representatives to the board of the Myrtle Beach Resort Homeowners' Association, Inc. (sometimes hereinafter "the Association") which addresses issues related to common areas for the entire resort. The master Association hires a property management company to directly supervise and control day-to-day operations of the Association and common areas.
  
3. At the time of this accident, September 8, 2005, I was employed at K.A.

Diehl & Associates, Inc. which was in the business of property management services. K.A. Diehl & Associates, Inc. is located at 11740, Hwy 17 Bypass South, Murrells Inlet, South Carolina, 29576. I have been employed there since May, 2004. I am very familiar with the Myrtle Beach Resort and its Homeowners' Association because my company K.A. Diehl & Associates, Inc. was the property manager for one of the individual regimes, the Renaissance Towers Horizontal Property Regime, Inc. in September of 2005. K.A. Diehl & Associates, Inc. took over property management for the master Association in November, 2005.

4. On or about January 1, 2003 to November 1~~X~~<sup>3 2/11/5/2/109</sup>, 2005, The Myrtle Beach Resort Homeowners' Association, Inc. contracted with Chicora Development, A South Carolina Corporation, ("Chicora Development") to act as property manager which included supplying administrative personnel and hiring a company to provide security services.
5. At the time of the Lomanaco Accident in September, 2005, Chicora Development had a contract with the Myrtle Beach Resort Homeowners' Association, Inc. to manage the common areas at Myrtle Beach Resorts. In turn, Chicora Development had contracted with Eagle Services, Inc. to supply, train, and manage security personnel for the Myrtle Beach Resort.
6. Upon information and belief, Chicora Development and Eagle Services, Inc. were corporations which were separate and distinct from the Association. They keep their own records, have their own employee handbooks, and are independent companies that provided services to the

Myrtle Beach Resort Homeowners' Association, Inc. The Myrtle Beach Resort Homeowners' Association, Inc. did not pay the security guards; they received their checks directly from Eagle Services, Inc.

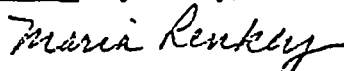
7. Myrtle Beach Resort Homeowners Association, Inc. did not hire, train, manage or control any security personnel but rather hired Chicora Development, an independent contractor, to manage the property and that such contract was in force September 8, 2005. Chicora, in turn hired Eagle Services, Inc. who would have hired, employed, trained and supervised the individual security guards who had contact with Lisa Lomonaco.
8. The Myrtle Beach Resort Homeowners Association, Inc. did not provide the security guards their equipment, tools or uniforms. The security uniform had an Eagle Services, Inc. patch and did not have the name of The Myrtle Beach Resort or otherwise identify the security guards as employees of the Myrtle Beach Resort Homeowners' Association.

FURTHER AFFINED SAYETH NAUGHT



Mel Renkey  
K.A. Diehl & Associates, Inc.

Sworn to before me this  
27<sup>th</sup> day of May, 2009



Notary Public for South Carolina  
My Commission Expires:

~~Maria Renkey~~  
~~South Carolina~~  
~~Notary Public~~  
My Comm. Exp. Oct. 20 2013

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

2008-CP-26-7002

Lisa Everitt Lomonaco, )

Plaintiff, )

Transcript of Record

vs. )

Hearing

Myrtle Beach Resort )  
Homeowners Association, )  
Inc., )

July 14, 2009

Defendant. )

B E F O R E :

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

A P P E A R A N C E S:

Frank J. Bryan, Esquire  
Attorney for Plaintiff

Timothy A. Domin, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM  
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (On the record, July 14, 2009.)

2 THE COURT: All right, this is case number 2008-CP-26-  
3 7002, Lisa Everitt Lomonaco versus the Myrtle Beach Resort  
4 Homeowners Association, Inc. I've got that the matter is  
5 before the Court on a motion to compel and a motion for  
6 summary judgment.

7 MR. DOMIN: The motion to compel is resolved. I got  
8 those discovery responses last week. We're squared away on  
9 that.

10 THE COURT: All right.

11 MR. DOMIN: It is still the Defendant's motion for  
12 summary judgment, Your Honor.

13 THE COURT: All right.

14 MR. DOMIN: If I may approach, I do have a memo of law  
15 and a copy of the supporting materials previously filed as  
16 well as depositions and discovery previously exchanged between  
17 the parties.

18 THE COURT: All right, present at the call of this  
19 motion is Timothy A. Domin.

20 MR. DOMIN: Domin.

21 THE COURT: Domin, Domin as attorney for the  
22 Defendant, also, Frank J. Bryan is present as Plaintiff's  
23 counsel; correct?

24 MR. BRYAN: Yes, Your Honor.

25 THE COURT: All right, all right, Mr. Domin, this is

1 your motion?

2 MR. DOMIN: It is, Your Honor.

3 THE COURT: All right.

4 MR. DOMIN: I represent the Myrtle Beach Resort  
5 Homeowners Association. Very briefly, Your Honor, the basic  
6 premise of this case is first the Plaintiff sued the wrong  
7 people; second, that the proximate cause of the Plaintiff's  
8 injuries in this case as a matter of law are either a hundred  
9 percent or certainly exceed 50 percent as a matter of law.  
10 Very briefly, the Myrtle Beach Resort Homeowners Association  
11 is like many of these beachfront condominiums just an  
12 association of owners. There are actually four separate  
13 regimes of property owners that each elect their own  
14 membership to have officers of the condominium regime which  
15 then send a representative on to the master regime of this  
16 four-unit complex.

17 As you can imagine these property owners, some of whom  
18 don't even live in Horry County, need to have a property  
19 manager in order to tend to the day-to-day affairs. They  
20 hired a property manager, in this particular case by the name  
21 of Chicora Property Management. It is a separate South  
22 Carolina corporation. It was a separate South Carolina  
23 Corporation in good standing at the time of this accident.  
24 The property owners association, in order to provide security  
25 for the common areas, hires yet a separate company which is

1 called Eagle Security, Incorporated. It is again a separate  
2 South Carolina corporation duly licensed by the state with the  
3 appropriate paperwork on file with the Secretary of State at  
4 the time of this incident.

5 Your Honor, the Plaintiff claims that as a result of  
6 certain interactions with those security guards she sustained  
7 injury, and in a moment I'm going to tell you how she  
8 sustained injury and that goes to the issue of how this is  
9 obviously a case of a hundred percent negligence on the part  
10 of the Plaintiff, but it's important for the first argument to  
11 understand that the security guards with whom she interacted  
12 are employees of this Eagle Security, their patches say Eagle  
13 Security. They get their paychecks from Eagle Security. They  
14 have no training that's provided by my client. My client  
15 doesn't oversee them on a day-to-day basis, and in fact, this  
16 whole company is hired by yet a separate property manager  
17 which effectively would be the cushion in between the regime  
18 and its president, vice president and officers and the day-to-  
19 day administration of who's scooping the pool out, who's  
20 taking care of making certain that broken glass is picked up  
21 and the whatnots of running a condominium resort complex.

22 What Lisa Lomonaco, the Plaintiff in this case, alleges  
23 and she does so in her complaint is that she was invited by a  
24 resident of this complex to come hang out with some friends  
25 for a day at the beach, nothing too unusual about that. She

1 alleges, according to her own complaint, that she was grossly  
2 intoxicated, and that in hanging out there with her friends  
3 she became more intoxicated. To be absolutely clear, there is  
4 no allegation that my client or any of its agents, any of its  
5 workers in any way, shape or form provided any alcohol to her.  
6 She brought her own vodka and proceeded to get drunk off of  
7 her own vodka and her and her friends were drinking this  
8 alcohol.

9       According to the various statements, there are slight  
10 inconsistencies but trying to bring us down to summary  
11 judgment grounds where there is no dispute of material fact,  
12 she got into an argument with her boyfriend. By her own  
13 answers to interrogatories, her boyfriend threw her into the  
14 pool, she sank to the bottom. Her boyfriend pulls her out.  
15 They are arguing, creating a ruckus, she's being belligerent,  
16 and security is called by various people because there's a  
17 commotion going on. The security encounters this inebriated  
18 young woman, and says, "You need to go up to the room and  
19 sleep this off." She proceeds to go up to the room with her  
20 friend, who had invited her for the day at the beach. It is  
21 alleged that the boyfriend was told, "You're fighting with  
22 her. You don't need to go up there." It's alleged that they  
23 stopped him from going upstairs immediately. That's disputed,  
24 but for the purposes of this summary judgment motion, I have  
25 to accept that they put in an affidavit from that boyfriend

1 saying that the security guards told him to stay away from  
2 her, stay downstairs.

3 She proceeds to go upstairs with her friend. They get  
4 into the room. While the friend goes into the kitchen this  
5 Plaintiff opens the door on this eighth floor unit, goes out  
6 on the balcony, climbs up on the railing and then either  
7 proceeds to voluntarily jump or fall off. Nobody is real  
8 clear which because she claims to have complete and total  
9 amnesia as a result of the eight floor fall, eight floors  
10 fall.

11 She lands on the ground. Amazingly by the grace of God  
12 she is not killed. She survives but does sustain injury. She  
13 brings this action against the Myrtle Beach Resort and she  
14 alleges that we're negligent as it relates to the operation of  
15 the security force.

16 So, to put those facts in perspective to the law, first  
17 of all, Your Honor, we have a clear situation here where these  
18 security guards are independent contractors. My regime, its  
19 president, vice president, treasurer, they don't control the  
20 day-to-day operations of the security. They don't control the  
21 day-to-day operations of the resort. That's why they hire a  
22 property management company and we have adequately shown that  
23 the Plaintiff here did not have any interaction with the  
24 Defendant. It had interaction with this separate security  
25 company and she has not sued the separate security company.

1           Your Honor, the second point here is that we believe that  
2 the resort complex itself was not negligent at all. Certainly  
3 under any conceivable situation it's not foreseeable that  
4 telling a young woman to go up to the room is going to result  
5 in her climbing up on an eighth floor balcony and jumping off.  
6 Certainly any suggestion of negligence on the part of the  
7 security guards could not be the proximate cause of her  
8 injuries. The sole and unquestionable proximate cause of her  
9 injuries in this case would be the fact that in an intoxicated  
10 state she decided to climb over the balcony and proceeded to  
11 jump or fall off of it. We believe that in that situation at  
12 a minimum that the negligence of the Plaintiff would exceed 50  
13 percent as a matter of law.

14           Your Honor, I would point out to you just two cases.  
15 First would be Bloom versus Ravoira where the Court said that  
16 it was appropriate to look at the negligence of the parties  
17 and to grant summary judgment in a situation where clearly the  
18 negligence of the Plaintiff exceeds that of the Defendant.  
19 That happened to be a car accident where the Plaintiff  
20 admittedly walked between two parked cars into the middle of a  
21 busy road on a foggy day and a person who was traveling the  
22 speed limit and presumably paying attention ran into them.  
23 They said, "You know, well, there could be a scintilla of  
24 question as to negligence given the, you know, the operation  
25 of the Defendant's vehicle. Clearly the negligence of the

1 Plaintiff exceeds that of the Defendant in this case."

2 Your Honor, that's to be followed up by a case that was  
3 decided just days ago, July 1<sup>st</sup> that of Bass versus Gopal.  
4 Your Honor, Bass versus Gopal is interesting because it is a  
5 hotel case, and once again, the Court said in this case, the  
6 Gopal case that was decided just a couple of weeks ago the  
7 Plaintiff admittedly did not follow the security procedures  
8 that would have been appropriate and when he was ultimately  
9 assaulted on the premises, even if a negligence case could be  
10 proven, they concluded that the trial court was correct in  
11 granting summary judgment to find that the Plaintiff's  
12 negligence would exceed 50 percent as a matter of law. What's  
13 interesting about the Gopal case is then they also go into  
14 discussion of independent contractor analysis, which harkens  
15 back to the first argument that I raised with the Court,  
16 namely in that case they were trying to sue the hotel  
17 franchise or the Court reviewed the independent contractor  
18 analysis and said, "If you don't have control, if you don't  
19 have control over the day-to-day affairs you can't be  
20 responsible when an independent contractor commits some  
21 negligence." So, for those reasons, on the basis of both the  
22 recent case, as well as the Bloom case we submit that the  
23 Defendant should be entitled to summary judgment. Thank you.

24 THE COURT: All right, thank you. Mr. Bryan.

25 MR. BRYAN: Your Honor, let me just hand up some

1 things that - and I'm going in kind of the same order that Mr.  
2 Domin went.

3 The first case, Your Honor, deals with the argument that  
4 Mr. Domin's making that if it's an independent contractor the  
5 employer is not responsible. Well, that's just a small part  
6 of what South Carolina law is. That first case says and it  
7 says it real well, and it, it says on page, what you see in  
8 page five of the case or page six of eight of the print says,  
9 "This Court has recently described the exception, the non-  
10 delegable duty doctrine and its legal consequences in the  
11 following way: A person may delegate a duty to an independent  
12 contractor, but if the independent contractor breaches that  
13 duty by acting negligently or improperly the delegating person  
14 remains liable for that breach." Now, they're saying it's not  
15 actually the duty that's non-delegable it's the liability.  
16 That's the next thing they say. "It is actually the liability  
17 not the duty that is non-delegable. The party which owes the  
18 non-delegable duty is vicariously liable for the negligent  
19 acts of the independent contractor," and that's the case of  
20 Rock Hill Telephone Company, Inc. versus Global  
21 Communications.

22 Now, the next case - that, that basically is dicta in  
23 that case, Your Honor, but the next case is the one which sets  
24 that forth and that's the Tuomey Hospital case. In the Tuomey  
25 Hospital case in the emergency room they had signs all over

1 saying that, "The doctors here are not employed by the  
2 emergency room. We are not responsible for anything the  
3 doctors do." The doctors' contract said the same thing, said  
4 the doctor is an independent contractor. The Plaintiff sued  
5 Tuomey Hospital and the Defendant took the same position Mr.  
6 Domin is taking here, "Hey, he's an independent contractor.  
7 We're not responsible. The general law is that anybody  
8 employing an independent contractor is not responsible." The  
9 Court said there and they, they said they were finding for the  
10 Plaintiff based on - well, let me get back to the end, the  
11 very last thing in the very last page says, "We reverse the  
12 grant of summary judgment to Tuomey Hospital on the ground of  
13 non-delegable duty." On the page before that it says, "The  
14 Court of Appeal's decision to impose a non-delegable duty on  
15 hospitals with regard to the physicians who practice in their  
16 emergency rooms," and then on the page before that, "We hold  
17 that a hospital owes a non-delegable duty to render competent  
18 service to its emergency room patients."

19 Now, in the first case I gave you they list some non-  
20 delegable duties that are set by case law and then what I  
21 provided you, the next thing in order that I provide you is  
22 Section 27-31-160 of the Code of Laws of South Carolina which  
23 deals with the Horizontal Property Act and it says bylaws must  
24 necessarily provide for at least the following, and you go  
25 down to C, care, upkeep and surveillance of the property and

1 its general or limited common elements and services. They can  
2 do it any way they want to but they've got this non-delegable  
3 liability for that. They have to do that. They have to  
4 provide that for their members. They have to provide it for  
5 anybody on there. So, it's a non-delegable duty. I think  
6 it's real clear that if they hired a security force instead of  
7 having their own employees they can't avoid liability in this  
8 way. I think the case law and that statute is real clear.

9 Now, if Your Honor, please I would move on to the other  
10 then.

11 THE COURT: All right, go ahead.

12 MR. BRYAN: I have not handed up yet, did I hand,  
13 yeah, did I give you the affidavit of Phil Stegal? I know I'd  
14 sent it to counsel.

15 THE COURT: Yes, sir.

16 MR. BRYAN: Okay, this addresses the other questions.  
17 Now, it is, it is not a question in this case that she was  
18 inebriated and didn't know any better from what she was doing.  
19 She was, she was helpless, and that, that is our position in  
20 this case. No question this would have been a better case  
21 under the old last clear chance doctrine because hers was  
22 finished and theirs took in. We're dealing with comparative  
23 negligence, which is a jury question, but here's what Phil  
24 Stegal says. He was her fiancé, and he didn't realize until  
25 right at the end that she was that drunk. He'd been over

1 there playing volleyball. When she came over to the  
2 volleyball court he could see she was staggering around. He  
3 decided to take her home. As he's going by it, and I didn't  
4 put this part in the memo, in the affidavit because I didn't  
5 think it was real relevant, but I can put it in an affidavit,  
6 I've got it in my notes that he said and he'll confirm this,  
7 that as they - as he was taking her by the pool she said,  
8 "Throw me in." So, it wasn't like he was throwing her in out  
9 of anything other than she said, "Throw me in." He said, "I  
10 threw her in, she went straight to the bottom." I dove in and  
11 got her and then it was after that that the security guards  
12 were coming up. Now, what happened and he's going to take her  
13 home. There would have been no problem. The absolute  
14 proximate cause of this thing was the guards not allowing him  
15 to take her home; and so, he confronts, the guards confront  
16 him and he acknowledges she's drunk. They said, "Have you had  
17 anything to drink?" He said, "A part of one drink is what I  
18 said," and he says and so did the deposition witness that Mr.  
19 Domin gave you her - did you hand him Jennifer Lundy's?

20 MR. DOMIN: I did.

21 MR. BRYAN: Anybody could tell that Phil was not  
22 intoxicated, not under the influence and she didn't know  
23 exactly what he had - I think she had said at one time in her  
24 - the first time she ever talked to me she told me she had a  
25 part of one drink and it was, it was fixed weak, but anybody

1 could tell that Phil was not under the influence. Well, the  
2 guard admitted that he should not have told them that, that he  
3 could not tell them that, in fact, he denied that he did, but  
4 Adam Buckley knew that Phil was taking her home, knew that he  
5 couldn't - didn't get to do it. Phil says that the guard told  
6 him after he asked him, "Have you had anything to drink," he  
7 said, "Well, you can't, you can't take her home. You need to  
8 take her" - he didn't let Phil take her to the room, but that  
9 was the first thing that they did. If Phil had taken her home  
10 this would not have been a problem, nothing would have  
11 happened. This tragedy occurred first because of that.

12 Then instead of letting Phil, her fiancé, take control of  
13 the situation and be in control what they then decided was  
14 that she needed to go up to the room. Well, she told Jennifer  
15 Lundy to take her up to the room. Poor Lisa just wanted to  
16 get back with Phil; and so, she didn't want to go with  
17 Jennifer. She didn't want to do anything. So, she's fighting  
18 that and she's arguing against it, and what happened then was  
19 the security guard designated another guy who was there in the  
20 party, Overdu Haradinta [spelled phonetically] is his name,  
21 and he picked Lisa up and took her upstairs. Phil said, "Let  
22 me go," and it's in his affidavit, but I think - he said, "Let  
23 me go with her. I'm the only person that can control her when  
24 she's like this. Let me go," and the guard put a hand,  
25 restrained him. I don't - I think Phil would acknowledge that

1 he could break away from the guard but he didn't know what, he  
2 thought he was being respectful to authority. He thought that  
3 was the authority that could stop him from going up there; and  
4 so, he didn't go. He did - he could not understand and  
5 neither could Jennifer Lundy, did not understand why Phil  
6 wasn't coming up because he was the only person that could  
7 control her in a situation like that.

8 Now, if you like, Your Honor, I can go into other facts  
9 about the thing, but I think that responds to any argument  
10 that the Defendant makes with regard to summary judgment. In  
11 the first place we didn't sue the wrong party. We sued the  
12 party that had a responsibility for this, delegated the duty,  
13 but cannot delegate the liability. They're responsible if  
14 whoever they hired to do their job caused this problem. Then  
15 with regard to whether it's who's got 50 percent, in this case  
16 since the negligence or willfulness of the guards was so  
17 important and the main cause of what happened here it should  
18 be a jury question to decide. Now, I will acknowledge that if  
19 she hadn't got drunk this wouldn't have happened, but I will  
20 not acknowledge that but for the security guards it would have  
21 happened. It only happened because of three things as Mr.  
22 Domin pointed out: one, they stopped Phil from taking her  
23 home; two, they stopped him from going up and being with her  
24 and taking care of her when she was in a state where she  
25 didn't - and all she was trying to do when she went over the

1 rail she just didn't realize where she was. She was trying to  
2 get back to Phil. She's trying to get back to him. She goes  
3 over and she's holding on. She's holding on. She wasn't  
4 jumping. She was holding on, and Jennifer, when she saw what  
5 happened, went and grabbed hold of her but eventually what  
6 happened she became dead weight and she couldn't pull her up  
7 and she fell, but it wasn't a matter of jumping. She was  
8 drunk.

9 THE COURT: All right, well, you all have given me  
10 some cases and some pretty voluminous stuff. I'm going to  
11 have to take it under advisement so I'll have opportunity to  
12 read these cases and review everything.

13 MR. DOMIN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. BRYAN: I think I handed you up everything.

16 THE COURT: All right.

17 (Adjourned.)

18

19

20

21

22

23

24

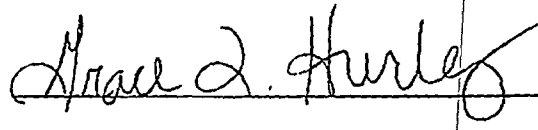
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Lisa Everitt Lomonaco versus Myrtle Beach Resort Homeowners Association, Inc., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on July 14, 2009.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM  
Official Reporter

December 6, 2010.

1 Q: Okay. And he was, for lack of a better word,  
2 your partner on this particular day?  
3 A: Yes.  
4 Q: Okay. Now, were there other security guards that  
5 fell under the security detail there at the  
6 resort?  
7 A: The only other ones was at the front gate.  
8 Q: Okay. Now, the time frame, September 8th, 2005,  
9 when you received a paycheck, was it from the,  
10 the resort regime or was it from another company?  
11 A: It was from Eagle Services.  
12 Q: Okay. And to your understanding, was Eagle  
13 Services a company that contracted with the  
14 resort?  
15 A: Yes.  
16 Q: Okay. And do you know what all Eagle Services  
17 provided? Do you know what, what services Eagle  
18 handled or did there?  
19 A: They were just in charge -- well, at the time  
20 they was in charge of security and maintenance.  
21 Q: Okay. Now, are you familiar with this Eagle  
22 Services company; in other words, did it have a  
23 separate office?  
24 A: Yes. They was in the Chicora office.  
25 Q: Okay. And when you say the Chicora office, are

**Prestige Court Reporting, Inc.**

413 Paul Street  
Conway, South Carolina 29527  
(843) 248-5252

LOMONACO 000050

1 you talking about Chicora Property Management?

2 A: Yes.

3 Q: Okay. And what was Chicora Property Management?

4 A: They, they was in a separate building right there  
5 on the resort and they, they was in charge of  
6 maintenance and security.

7 Q: Okay. And so this Chicora Property Management,  
8 do you understand that they were the property  
9 manager for the resort?

10 A: Yes.

11 Q: Okay. And then under Chicora, they had a  
12 maintenance division as well as, you're saying,  
13 this Eagle Securities?

14 A: Yes, they did.

15 Q: Okay. And the role of the securities people, you  
16 told me, was to take care of the front gate and  
17 then there were two men who would also patrol  
18 around the area; is that right?

19 A: Yes. It had two patrolmen on it all the time.

20 Q: Okay. Twenty-four hours a day?

21 A: Twenty-four hours a day.

22 Q: Okay. So there were other security people who  
23 worked other shifts; is that correct?

24 A: Yes. We worked eight hour shifts.

25 Q: Now, I understand that this, as we sit here

1 today, is over three years ago. Can you tell me  
2 your general recollection of that day? Let's  
3 start off, you know, in general terms. Were you  
4 working with your normal partner?

5 A: I was working with Johnny Spivey.

6 Q: Okay.

7 A: And we was on patrol and we got a call from the  
8 front gate, said they was having trouble with  
9 this intoxicated couple coming in the gate and  
10 they wanted us to keep an eye on them.

11 Q: Okay. Now, you did mention Johnny Spivey and I,  
12 I meant to get into that a minute ago. Johnny  
13 Spivey is no longer on this earth, correct?

14 A: No. he's deceased.

15 Q: And when, when, approximately, did he pass away?

16 A: It's been, probably three years ago.

17 Q: Okay. Do you know Johnny Spivey's background?  
18 You gave us your background. Do you know  
19 Johnny's background?

20 A: I really can't say. I don't know what he did.

21 Q: Okay. Now, you indicated that you'd received a  
22 call from the, from the gate and you -- I stopped  
23 you at that point in time. What else do you  
24 recall about that day, September 8th, 2005?

25 A: Well, we, we was patrolling and everything and

1 then we got another call from the front gate. I,  
2 I don't remember who called. There was quite a  
3 few people up there, that there was a disturbance  
4 at the tower pool, said there was people  
5 roughhousing around and knocking people into the  
6 pool and trying to drown people and stuff like  
7 that, so we went immediately over there, and we  
8 talked to -- the people were setting around the  
9 pool and they, they pointed out these, this  
10 couple. There was two women and two men that was  
11 fooling around, and the, the people pointed them  
12 out, so we went over and we started talking to  
13 them, and asked them what the problem was, and  
14 they said they was just playing around, and all,  
15 all of them was very intoxicated. So we, we  
16 decided just tell them all to go up to their room  
17 and, and sleep it off, don't come back down the  
18 rest of the day. So the, the last we seen, all  
19 four people was going into the building. I don't  
20 know whether they went up to their room or not.  
21 I didn't follow them up there, but I do know they  
22 went into the building. So we stood out, outside  
23 there and talked to people for a while, and this  
24 -- probably ten minutes passed and we heard all  
25 that screaming from out around the bar area.

**Prestige Court Reporting, Inc.**

413 Paul Street  
Conway, South Carolina 29527  
(843) 248-5252

LOMONACO 000053

1 A: Yes, I did.

2 Q: Okay. And as it relates to the four of them, was  
3 one of them more impaired than the others?

4 A: Lisa was the, the worse intoxicated.

5 Q: Okay. And as a result of that, you directed  
6 everybody to go on up to the room?

7 A: Yes, I did.

8 MR. BRYAN: EXCUSE ME. I'M GOING TO  
9 OBJECT TO THE LEADING.

10 MR. DOMIN: OKAY.

11 Q: Well, let me ask it to you this way. What did  
12 you do after you had talked with them, after she  
13 had fallen in the pool?

14 A: I, I told her boyfriend to get her out of the  
15 pool and everybody go up to the room and sleep it  
16 off.

17 Q: And did you see them all go off?

18 A: I seen them all go into the building.

19 Q: Okay. Was Lisa walking under her own power or  
20 was she being carried?

21 A: No. She was -- they, they had -- mostly carrying  
22 her.

23 Q: Okay.

24 A: They had a hold of her.

25 Q: And which ones were carrying her, both the men or

1 Q: And so you had no authority to arrest somebody  
2 who is, in your opinion, guilty of public  
3 drunkenness ---

4 A: No.

5 Q: --- or disorderly conduct?

6 A: No authority whatsoever.

7 Q: Okay. What you should do if you see something  
8 like that is you report it to what, Horry County  
9 Police where you were?

10 A: If, if we have a problem we can't handle and, and  
11 they're going out onto the highway drunk, then we  
12 call the Horry County Police.

13 Q: Now, if somebody wants to leave the premises, can  
14 you stop them from leaving the premises?

15 A: No..

16 Q: Okay. So if one of these people said, "I'm going  
17 to take her home," you couldn't stop him from  
18 doing that?

19 A: No.

20 Q: Now, with regard to the -- You made a lot of  
21 statements about "We did so and so," and I'm  
22 going to try to see if you can be more specific  
23 about who did what. Now, what conversation did  
24 you specifically have with any of these people?

25 A: We, we talked to them ---

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q Nobody had stayed with you?

2 A Huh-uh.

3 Q Who had come to visit you at the apartment in the  
4 weeks prior to September 8th?

5 A Nobody.

6 Q You hadn't had any family come down to visit you?

7 A No.

8 Q And how about any friends coming to the resort to  
9 visit you?

10 A No, we didn't have any friends when we moved down  
11 here.

12 Q Okay. Talk to me about the balcony off the  
13 apartment for a minute. How high would you say that balcony  
14 came on you?

15 A You mean the railing?

16 Q The railing, right.

17 A I know it came up pretty -- I would say about  
18 right to here. (Indicating.)

19 Q And you would say pretty far up?

20 A Yeah.

21 Q And you're indicating -- let the record reflect  
22 you're indicating about chest height?

23 A Yeah. Yeah.

24 Q Okay. And how often did you use the resort pool  
25 and the amenities such as the volleyball court in the weeks

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 you know?

2 A I don't think she worked there that long. I want  
3 to say maybe three to four weeks.

4 Q Three to four weeks?

5 A Yeah.

6 Q After Lisa and Phil arrived at the resort, did  
7 y'all go up to the room?

8 A Uh-huh. Yes.

9 Q And at that point was Lisa intoxicated?

10 A Yes.

11 Q And had Phil had anything to drink yet?

12 A I don't believe so, because he had just gotten off  
13 work. He might have had a drink at home; I don't know.

14 Q So at that time after they -- you let them in the  
15 gate guard?

16 A Uh-huh.

17 Q And by that you called the gate guard?

18 A Yes.

19 Q And what did you tell the gate guard?

20 A I probably just gave them their names and said we  
21 were expecting --

22 Q That's all you had to do, you just called the  
23 front gate?

24 A Yes, and give them names.

25 Q Okay. They parked their vehicle and they came up

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 to your room?

2 A Uh-huh.

3 Q And what did they have with them when they arrived  
4 at the resort at your room?

5 A I believe they had brought the vodka with them.

6 Q Okay. Had they -- did they bring any beer?

7 A I don't think so.

8 Q Were they already in their swimsuits or did they  
9 change in your room?

10 A I know Lisa definitely had her -- I'm going to say  
11 they were both in their swimsuits.

12 Q Both in their swimsuits?

13 A Yeah.

14 Q What were they wearing then when they arrived at  
15 the resort?

16 A I know Phil was wearing a t-shirt and swim trunks  
17 and Lisa had on a -- I remember it was a blue bikini with a  
18 coverup over it.

19 Q How long were y'all in the room at that point  
20 then?

21 A I'm going to say we maybe stayed up in the room --  
22 not long, maybe 20 minutes.

23 Q And did y'all make drinks at that point?

24 A Yes.

25 Q What sort of drinks did you make?

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1           A     I'm not sure. I know they made them in a blender,  
2 but I'm not -- I don't know what they made.

3           Q     You didn't make those drinks?

4           A     No, Adam made those.

5           Q     Adam made the drinks?

6           A     Yes.

7           Q     And would they have used the vodka that Phil and  
8 Lisa would have brought?

9           A     Yes.

10          Q     Did y'all also have drinks in the room?

11          A     I think we -- I think we -- yeah, I think we did  
12 have one in the room.

13          Q     Did you have like a mini bar with vodka and other  
14 mixed drinks?

15          A     No.

16          Q     What would you have had in the room then as far as  
17 alcohol goes?

18          A     Probably just that vodka.

19          Q     Did you have any beer in the refrigerator?

20          A     Possibly we did, but I don't remember now.

21          Q     While y'all were in the room for those 20 minutes,  
22 did y'all go on the balcony?

23          A     I don't think so.

24          Q     Did Lisa walk around the room?

25          A     Yeah.

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 Q Did y'all watch TV? What did you do in these 20  
2 minutes?

3 A Well, I think we just kind of talked and -- yeah,  
4 maybe watched a little TV and drank a little bit, but we all  
5 wanted to go to the pool so.

6 Q Was the balcony door open at that point?

7 A I'm going to say probably not, because it was hot.

8 Q So the air conditioning would have been on?

9 A Uh-huh.

10 Q And the balcony door would have been closed?

11 A Yeah.

12 Q Would it have been locked as well?

13 A More than likely not since we were on the 8th  
14 floor.

15 Q Would you say at that point that Lisa knew her way  
16 around the apartment?

17 A Yeah.

18 Q And that was the first time she'd been to the  
19 apartment?

20 A Uh-huh.

21 Q What'd she spend, 20 minutes in the apartment?

22 A Yeah.

23 Q And she knew where everything was? Did she know  
24 where the bathroom was in the apartment?

25 A Yeah.

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 Q Tell me about the point at which y'all left the  
2 volleyball courts; where did you go?

3 A I believe -- I think we started -- I think that  
4 that was when Phil decided, you know, he'd had enough, Lisa  
5 was getting out of control. So that -- I think at that  
6 point is when we all six of us started walking towards the  
7 pool; we were going to go back up to the room.

8 And I believe that's when the security guard  
9 started walking towards us, because people had started  
10 complaining, because she was so intoxicated.

11 Q What did people notice about her at the pool or at  
12 the volleyball courts?

13 A Probably just how loud she was being. And I guess  
14 from what you say, climbing on the bar and --

15 Q Would you say that she was being rambunctious?

16 A A little bit, yeah.

17 Q When y'all walked back to the pool, who walked  
18 back to the pool, all six of you?

19 A Yeah, I think we all kind of started moving back  
20 towards that way.

21 Q Who walked back to the pool first?

22 A I want to say -- I know it was definitely me and  
23 Lisa, because I definitely -- I think at that point Phil had  
24 said something to me about, you know, let's try and get her  
25 back to the room.

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q Right.

2 A So I was definitely with Lisa. And I believe Phil  
3 was, you know, starting to follow.

4 Q Right. Phil had said let's try and get her back  
5 up to the room, you said?

6 A Uh-huh.

7 Q And why did Phil want to do that?

8 A Just because she was so intoxicated, she was  
9 getting to that point of being out of control.

10 Q Okay. And at that point you walked back with her  
11 and the other four were back behind you?

12 A Uh-huh. I believe so, yeah.

13 Q So Stephanie was back behind you as well?

14 A Uh-huh.

15 Q So you and Lisa leave the volleyball courts  
16 and walk back towards the pool?

17 A Uh-huh.

18 Q And at that point are you making your way back to  
19 the room?

20 A That was the plan, yes.

21 Q Had you left towels at the pool maybe?

22 A Yeah. Yes.

23 Q So maybe -- were you going back to the pool to get  
24 your towels?

25 A Yeah. Yeah.

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 Q And then go back to the room?

2 A Uh-huh. Yeah.

3 Q And at that point Phil was under the understanding  
4 that you were trying to go back to the room?

5 A Uh-huh.

6 Q And he had recommended that?

7 A Yes.

8 Q Was Lisa being cooperative with you at that point?

9 A Not -- no, she didn't want to go back, she was  
10 having a good time.

11 Q And by a good time you just mean she was just  
12 partying--

13 A Yes. Yes.

14 Q -- at the volleyball courts?

15 A Yes.

16 Q Was she resisting you?

17 A She had started to, yeah.

18 Q And were you -- what did you do to respond?

19 A Just, you know, tried to reason with her. But at  
20 that point -- I know when she's telling me to get away from  
21 her, she's -- I'm being -- you know, can't reason with her.  
22 Because her and I -- like I said, were so close, she would  
23 never do that to me sober, you know.

24 Q Right. How big is Lisa?

25 A She's definitely taller -- I want to say she's

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 about five-eight. She was tall and thin.

2 Q Five-eight?

3 A Yeah.

4 Q Usually when she gets drunk are you able to kind  
5 of control her?

6 A Usually, yes. Yeah.

7 Q And y'all had been out before drunk in which  
8 you've had to control her?

9 A Not -- not really. That's -- usually that's when  
10 she starts fighting with Phil and you can't reason with her  
11 so I just kind of stay out of it.

12 Q Uh-huh. Y'all walked back to the pool and what  
13 happens next?

14 A The security guards had come up and Lisa had  
15 started, you know, arguing with me and arguing with Phil and  
16 that's when the --

17 Q And so at that point Phil walked up behind--

18 A Yes, he was still --

19 Q -- you and Lisa by the pool and Phil walked up  
20 behind--

21 A Yes. So I believe at that point it was the two  
22 security guards, me, Lisa and Phil.

23 Q And was Adam there as well?

24 A He eventually came up, yeah.

25 Q But at that point he was still at the volleyball

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 court?

2 A Yeah, I believe it was just me and Lisa and Phil.

3 Q What happened when the security guards arrived at  
4 the pool?

5 A They were -- they saw how Lisa was fighting with  
6 me and Phil and so they decided -- they didn't want Phil to  
7 go up to the room with her. I guess because, you know, they  
8 thought they might help keep them separated, they wouldn't  
9 fight and --

10 Q What do you mean they were fighting at the pool?

11 A They were just arguing. She didn't want to go  
12 back up to the room, you know. And I think at that point  
13 Phil wanted -- you know, he wanted to leave, because he --  
14 you know, he wasn't having a good time anymore.

15 Q Phil had been drinking at that point though?

16 A He had, but he -- God, he probably had maybe two  
17 drinks the whole day.

18 Q Two liquor drinks?

19 A Yeah.

20 Q And they had only been there for, what, maybe an  
21 hour or so?

22 A Yeah.

23 Q So he had two liquor drinks within an hour?

24 A Possibly. Yeah.

25 Q Did he have a drink in his hand at the point he

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 walked up to the pool?

2 A I don't think so. He was not a partier like Lisa  
3 was. He was -- you know, he was very responsible like that.  
4 Like, you know, if he was going to leave, he wasn't going to  
5 have a drink in his hand and go drive down the street.

6 Q Right. But at this point, he was still at the  
7 pool?

8 A Yeah. And I don't believe -- I don't think any of  
9 us had drinks at this point.

10 Q Okay. Why did -- why was it that Phil wanted to  
11 leave?

12 A Because she was just getting belligerent and, you  
13 know, just being too loud and too -- you know, when you get  
14 to the point where people are complaining and calling  
15 security, you know.

16 Q Right. Tell me what happens next with security.

17 A They suggested that I take her up to my room and  
18 that Phil stays down in the pool area. And I really -- I  
19 don't know why. Like I said, I think they should have just  
20 made us all go to the room or kicked Lisa and Phil off the  
21 property.

22 Q Uh-huh.

23 A But at this point Lisa was so belligerent, she was  
24 just uncontrollably crying. She had to be -- Stephanie's  
25 boyfriend had to carry her--

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q Not Adam. Stephanie and Ovidiu?

2 A Yes.

3 Q And yourself?

4 A Uh-huh.

5 Q Was she able to walk up to the room?

6 A I'm not sure. Maybe not, that's why he was  
7 carrying her. But as soon as we got up to the 8th floor,  
8 she walked down the hall.

9 Q Uh-huh. Did she know where the room was at that  
10 point, when she got up on the 8th floor?

11 A Probably not.

12 Q And did she walk in the right direction or--

13 A There was only -- yeah, it was only one direction  
14 to go.

15 Q Was she aware of the fact that she was back in --  
16 was she upset because she was going back to the room?

17 A Oh, yes. Yes.

18 Q And she didn't want to go back to the room?

19 A She was still crying. No.

20 Q And so she was conscious to the fact that she was  
21 going back to the room?

22 A Yes.

23 Q And she didn't want to go back to the room?

24 A No.

25 Q Was she upset because she was going back to the

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 room?

2 A Probably. But I think at that point she was so  
3 intoxicated she was just upset at everything. She  
4 probably -- you know, she probably didn't want to go home,  
5 didn't want to go to the room, didn't want to go back  
6 down -- you know, she just -- I don't think she knew what  
7 she wanted at that point; she was just so intoxicated.

8 Q Tell me who goes in the room at that point.

9 A All four of us had gone into the room. And then I  
10 think Stephanie and her boyfriend were starting to argue  
11 about something, so they left and went out in the hallway.  
12 And that door automatically locks; you can't unlock it and  
13 keep it unlocked. So once you go out the door, you're  
14 locked out unless you have a key.

15 Q Does that door have a -- a latch you can turn to--

16 A Yes.

17 Q -- that jams between the door so it doesn't lock?

18 A Yes, it does.

19 Q Had you ever used that before when you were moving  
20 in, to keep the door open?

21 A Probably, but, yeah, not often.

22 Q Right. How long were y'all in the room before  
23 Stephanie and Phil left? [sic]

24 A Not long. I think they just pretty much dropped  
25 Lisa in the room and they had some personal issue going on

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 with them and they -- so within minutes they were gone.

2 Q And they were there for a few minutes though at  
3 least in the room?

4 A Yeah. Uh-huh.

5 Q And did they walk out or did you ask them to leave  
6 or--

7 A No, they just walked out, because I was trying to  
8 -- Lisa was soaking wet, I was trying to get her, you know,  
9 to change clothes, you know, wrap a towel around her. So I  
10 wasn't even paying attention to them.

11 Q And where were you and Lisa in the room at that  
12 point?

13 A I believe we were in the kitchen area still.

14 Q And you were drying her off?

15 A I was trying to. And she still kept telling me  
16 get away from her. I was just trying to let her be, I  
17 didn't want to upset her any further.

18 Q And she was one of your best friends?

19 A Yes.

20 Q You were trying to talk to her?

21 A Yeah.

22 Q Did you also get her anything to drink at that  
23 point?

24 A No. Oh, God, no.

25 Q Did she throw up at that point in the room?

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 Q So you're not sure where Phil was at that point?

2 A No. Somewhere outside, that's all I know.

3 Q You say you watched her as she walked out on the  
4 balcony?

5 A Uh-huh.

6 Q Tell me what happens.

7 A She walked out on the balcony, and like I said, I  
8 was standing in the kitchen and so I saw her; she walked on  
9 the balcony. She kind of sat down on the ground -- the  
10 floor of the balcony out there.

11 Q Did she know she was on the balcony at that point,  
12 she was looking around?

13 A She wasn't really looking around. She was -- she  
14 was sitting -- the balcony faces out, and she was sitting  
15 against the wall facing in. She wasn't like looking out at  
16 the ocean or anything.

17 Q But she knew that wasn't the door out of the  
18 apartment?

19 A Right.

20 Q And she knew where she was in the apartment?

21 A Yeah.

22 Q And you say she was sitting on the balcony; there  
23 were chairs on the balcony?

24 A There were, but she was sitting on the floor of  
25 the balcony.

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q On the floor of the balcony?

2 A Yeah.

3 Q Why did you allow her to go out on the balcony?

4 A Just because I figured Phil and everybody else  
5 would be up there in a minute and, you know, I was just  
6 watching -- you know, like I said, she was very upset. So I  
7 wasn't going to tell her don't go out there, you can't sit  
8 out there. But like I said, I just watched and --

9 Q You had no reason to know or foresee that she  
10 would try and go over the balcony?

11 A Oh, no, at all.

12 Q And did any of your friends think that she might  
13 go up to the room and go over the balcony?

14 A No.

15 Q And all of y'all knew her really well--

16 A Yeah.

17 Q -- is that correct?

18 A Yes.

19 Q And even though y'all knew her well, y'all had no  
20 reason to know that she would try and go over the balcony?

21 A Right. Right.

22 Q And that's -- and you let her go onto the porch?

23 A Uh-huh.

24 Q Did she open the porch, or was it open, the  
25 balcony?

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1           A     She must have opened it. Because like I said, we  
2 had the air conditioner on, so she must have opened the door  
3 and walked out there.

4           Q     And once she did that, you didn't tell her not to  
5 or close it behind her?

6           A     No, I just -- like I said, just stood and watched  
7 her for a minute.

8           Q     How long was she out on that balcony?

9           A     It wasn't long, because I was about to walk out  
10 there with her. And I remember there was some kind of a  
11 knife sitting on the counter in the kitchen and I was -- I  
12 put it -- I personally hid it, you know, just in case she  
13 was going to do anything stupid; she was that drunk.

14          Q     Right.

15          A     So I'm like let me put this knife away first and  
16 I'm going to walk out on the balcony with her.

17                    So I turned my back to put the knife away, and as  
18 soon as I turned around, she's climbing over the railing.

19          Q     Okay. This is not -- this railing is high enough  
20 where she couldn't fall over it; isn't that correct?

21          A     Yes.

22          Q     And she climbed over it?

23          A     Climbed over it.

24          Q     Did she use a chair to climb over it or--

25          A     No, she had very long legs.

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q And she climbed up and what did she do, she sat on  
2 the railing?

3 A No, she -- I went running over to her, because I  
4 was going to grab her.

5 Q Right.

6 A She had climbed over so fast, she was standing on  
7 the other side and had her hands up on the railing.

8 Q All right. So -- and indicate -- you just  
9 indicated that she climbed over the railing?

10 A Uh-huh.

11 Q And she was standing on the outside of the  
12 railing?

13 A Yes.

14 Q And she was holding onto the railing?

15 A With her hands.

16 Q Facing back into the apartment?

17 A Into, yes.

18 Q And why did she do that?

19 A The only thing we can come up with is that she was  
20 just trying to get back downstairs.

21 Q Uh-huh. Be she knew at that point that she was on  
22 the balcony?

23 A I'm assuming, yeah.

24 Q At that point you ran out to the balcony?

25 A Uh-huh.

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 Q And what happened?

2 A And I grabbed -- like I said, I tried to grab her,  
3 but she had -- at this point just leaning back with her  
4 hands up there, so I couldn't get her body. So I grabbed  
5 her wrists, and she just kind of just -- at that point let  
6 go. And I had a hold of her for, you know, maybe five  
7 seconds before she just slipped out.

8 Q Uh-huh. Did she try and pose or anything while  
9 she was on the balcony?

10 A No.

11 Q Did you have any reason to believe that she was  
12 suicidal at the time?

13 A No.

14 Q When you put the knife away, were you concerned  
15 that she might stab herself intentionally or  
16 unintentionally?

17 A Just -- like I said, she was so upset at that  
18 point she might just do something stupid just because she's  
19 so upset.

20 Q And what was she so upset about?

21 A Like I said, having to, you know, leave the pool  
22 and, you know, go back to the room or go home.

23 Q Was she also upset because of her arguing with  
24 Phil?

25 A Probably but, you know, I don't think she knew

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 that he was doing this for her own good, you know.

2 Q Right. And you said that her and Phil would  
3 occasionally argue; what would they usually argue about?

4 A I don't -- it was never usually unless they were  
5 drinking, and it was always Lisa that started it. So I'm  
6 not sure, I think she just -- whatever it was that was  
7 bothering her, nothing in particular.

8 Q Would you say that when she was around Phil that  
9 sometimes the arguments would get worse? I mean, sometimes  
10 it would be better for her to get away from Phil?

11 A Well, yes, but like I said, they only really  
12 argued when they were drinking together. So other than  
13 that, I mean they were inseparable.

14 Q Right. But when they were drinking, the arguments  
15 would happen when they were together and once they were  
16 separated they would -- they would argue less?

17 A Well, you couldn't separate them. She wouldn't --  
18 she didn't want to leave his side.

19 Q At the point at which she was on the balcony, was  
20 somebody knocking on the door to try and get in the  
21 apartment?

22 A I don't believe -- no, because they had no clue  
23 what was going on.

24 Q So they had no reason to try and get back into the  
25 apartment?

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 A No.

2 Q And he wanted to take her home just because they  
3 weren't having any more fun?

4 A Yeah. At that point she needed to just go to  
5 sleep, you know?

6 Q Would Phil have needed to go back to the room  
7 before leaving to get his keys and her purse?

8 A Probably. Because like I said, we were just  
9 sitting up in the room; I was waiting for them to come up.

10 Q How fast did she go over the balcony when you were  
11 in the room? You said -- you indicated it wasn't enough  
12 time for you to --

13 A Yeah, it was quick. Like within seconds. Yeah.

14 Q And she was sitting on the floor, you said?

15 A Uh-huh.

16 Q And then you said within seconds she went over the  
17 balcony?

18 A Yep.

19 Q And did she lose her footing at that point or how  
20 was it that she --

21 A I think he just stepped off. And that's it.  
22 Yeah.

23 Q Did it seem to you that she intentionally stepped  
24 off?

25 A I would -- I think so, because if I'm there trying

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 to help her--

2 Q Right.

3 A -- you know, she would have, you know, held on or  
4 something, you know.

5 Q Right. But she didn't?

6 A No.

7 Q Was she -- after this incident, when's the next  
8 time you talked to Phil? At the scene there?

9 A Yeah.

10 Q And what did Phil say?

11 A I don't really -- like I -- I mean, I remember  
12 apologizing to him, you know, that I couldn't, you know,  
13 hold -- you know, grab her and bring her over, you know.

14 Q Uh-huh. What did Phil say?

15 A He was just -- we were all just shocked. So I  
16 don't think he's really saying much at that point.

17 Q Did he tell you it wasn't your fault?

18 A I don't know. I think he was just so shocked that  
19 he wasn't really saying much. And he was just very  
20 concerned about her.

21 Q Did Phil indicate where he had come from to -- to  
22 the ground where she was?

23 A I don't -- I don't even know if he saw her -- I  
24 know Adam saw her fall. I don't know if Phil did or not.

25 Q Did you ride with her to the emergency room?

JENNIFER LUNDI  
Direct Examination by Mr. Cangelosi

1 A No.

2 Q Who stayed back at the hotel when she left for the  
3 emergency room?

4 A I know it was definitely me and Adam.. And I don't  
5 know if -- the police came and we had to talk with them.

6 Q Uh-huh.

7 A And I think Stephanie and her boyfriend might have  
8 already left at that point. But I know it was definitely me  
9 and Adam.

10 Q Do you recall a nurse giving her attention when  
11 she was on the ground right there?

12 A No. To me it was just a bunch of vacationers; I  
13 had no idea who they were.

14 Q Did you have any reason to believe that you  
15 couldn't take care of Lisa in the room?

16 A No.

17 Q Would Phil have any reason to believe that you  
18 couldn't have taken care of Lisa in the room?

19 A No.

20 Q Would any of the friends have had any reason to  
21 believe she would have hurt herself in the room?

22 A No.

23 Q And you said that the balcony door would have been  
24 closed?

25 A Uh-huh.

## JENNIFER LUNDI

Direct Examination by Mr. Cangelosi

1 You know, so --

2 Q Right. Do you have any reason to believe that it  
3 might have been better -- I mean, would it not have been  
4 better for you and her in the room without Phil since they  
5 were arguing?

6 A Because usually he's the only one that can really  
7 control her when she gets like that. And she didn't -- you  
8 know, she didn't want me around her at that point.

9 Q And she didn't want Phil around her at that point  
10 either though, did she?

11 A I don't think -- I don't think she wanted any --  
12 you know, at that point she was just so intoxicated I don't  
13 think she really knew what she wanted.

14 Q And y'all had been best friends for a long time?

15 A Yeah, at that point I had known her for probably a  
16 little over a year.

17 Q Would you say that she was your best friend?

18 A Probably.

19 Q Would you say that she would say you were her best  
20 friend?

21 A Possibly. I mean, we never -- we were close, but  
22 we never talked a lot on the phone when we weren't together;  
23 but I saw her almost on a daily basis so.

24 Q So in the three weeks that you had been in Myrtle  
25 Beach, you saw her mostly at her house?

JENNIFER LUNDI  
Cross Examination by Mr. Bryan

1 railing are you talking about?

2 A On the balcony.

3 Q Okay. "When she turned around, Lisa was going  
4 over the balcony railing, which was about four feet high."  
5 Was that your estimate at that time?

6 A Uh-huh.

7 Q Okay. "She does not think that Lisa intended to  
8 commit suicide and believes that is real far fetched."

9 A Uh-huh.

10 Q Do you still believe that?

11 A Yes.

12 Q "The most reasonable explanation is that she was  
13 trying to get back down to Phil."

14 A Yeah.

15 Q That's what you believe?

16 A Yes.

17 Q Now, a little while ago you were asked a question  
18 by Trevor -- I was going to stay Mr. something, but Mr.  
19 Congalosi. [sic]

20 MR. CANGELOSI: Trevor's fine.

21 MR. BRYAN: Tangelosi. [sic]

22 MR. CANGELOSI: Cangelosi.

23 BY MR. BRYAN:

24 Q With regard to her being aware that she was on the  
25 8th floor, now, at the time we're talking about, she is

JENNIFER LUNDI

Redirect Examination by Mr. Cangelosi

1 Q And so they didn't tell them they had to leave  
2 because they thought that y'all wanted to stay?

3 A Yeah, I think they were trying to resolve it  
4 nicely so our guests wouldn't have to leave.

5 Q Okay. And so the officers thought that the guests  
6 probably wanted to stay and continue partying and they  
7 didn't want them to -- they didn't want to force them to  
8 leave?

9 A Right.

10 Q And that's why they didn't?

11 A Uh-huh.

12 Q So it wasn't that the officers were preventing  
13 them from leaving. If they had insisted upon leaving, the  
14 officers would have let them leave?

15 A I think -- I would think so, but I -- you know, we  
16 would have had -- I'm sure they had stuff up in our room,  
17 they all would have had to go to the room.

18 Q Right.

19 A But the guard was not letting Phil go up to the  
20 room so.

21 Q And by not letting him go up to the room, you said  
22 earlier that he didn't hold him back, was he just talking  
23 with him?

24 A Yes, they, I guess, were just standing back there  
25 talking with him.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

Lisa Everitt Lomonaco.....Appellant

v.

Myrtle Beach Resort Home Owners Association, Inc..... Respondent

**CERTIFICATE OF SERVICE**

The undersigned employee of The Floyd Law Firm, Attorneys at Law, P.O. Drawer 14607, Surfside Beach, SC 29587, does hereby certify that the following named individuals were served with a copy of the pleading indicated below by forwarding a copy of same to said persons by United States Postal Service on the date indicated below:

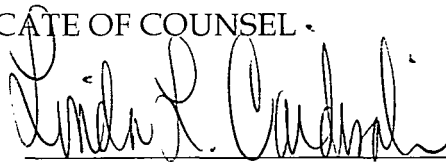
INDIVIDUALS SERVED:

The Honorable Jeanette Barber  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
(15 copies)

Timothy A. Domin, Esq.  
Clawson & Staubes, LLC  
126 Seven Farms Dr., Suite 200  
Charleston, SC 29492-8144

PLEADING:

RECORD ON APPEAL AND CERTIFICATE OF COUNSEL .



Linda L. Cardinali, Paralegal

July 25, 2011  
Surfside Beach, SC

RECEIVED  
JUL 26 2011  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2008-CP-26-7002

Lisa Everitt Lomonaco.....Appellant,

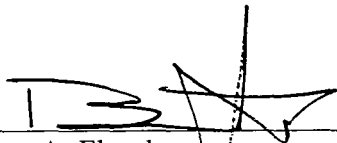
v.

The Myrtle Beach Resort  
Homeowner's Association, Inc.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 25, 2011

  
\_\_\_\_\_  
Bradley A. Floyd  
The Floyd Law Firm  
15 Highway 17, South  
P.O. Drawer 14607  
Surfside Beach, SC 29587  
843-238-5141 (phone)  
843-238-9060 (facsimile)  
*Attorney for Appellant*