

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No.: 2019-002099

Machelle Smith.....Appellant,

-v-

Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts and Spa;
Columbia Sussex Management, LLC; and,
Columbia Properties Hilton Head, LLC.....Respondents

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

Matthew V. Creech
P.O. Box 2500
Ridgeland, S.C. 29936
Phone: (843) 726-6131

Attorneys for Appellant

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING RESPONDENT IMMUNE FROM LIABILITY UNDER THE INKEEPER STATUTE OF S.C. CODE ANN. §45-1-40 AND GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S CLAIMS UNDER THE DOCTRINE OF *RESPONDEAT SUPERIOR*?**

STATEMENT OF THE CASE

This case arises from Appellant Machel Smith's ("Smith") claims against Respondent Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa, Columbia Sussex Management, LLC, and Columbia Properties, LLC (collectively referred to herein as "Columbia Sussex") over the theft of her personal property – jewelry – from Respondent's hotel room where Smith was a guest.

On March 31, 2016, Machel Smith brought this action in the Beaufort County Court of Common Pleas. (Complaint). Her Complaint alleges that shortly after she checked into her room, an employee of Columbia Sussex entered Smith's room with an access key issued to her by Respondent and stole Smith's jewelry directly from her luggage. Complaint ¶¶ 1-8). In her lawsuit Smith asserted a cause of action for negligence against Respondent Columbia Sussex, in numerous particulars. (*Id.* ¶¶ 9-16). The lawsuit furthermore claimed that Respondent was responsible for the acts of its employee under the doctrine of *respondeat superior*. (*Id.*, ¶12).

Respondent's Motion for Summary Judgment was filed and asserted entitlement to relief on numerous grounds, the core arguments centering upon the "Innkeeper" statute of S.C. Code Ann. §45-1-40. The Court granted summary judgment by Order of February 5, 2019. (Order). Appellant timely file her Motion to Alter, Amend, and/or Reconsider Pursuant to Rule 59(e), SCRCPP on February 5, 2019. (Motion to Reconsider). The trial court entered an Order Denying Plaintiff's Motion to Alter, Amend, and/or Reconsider on November 19, 2019.

On December 18, 2019, Smith served her Notice of Appeal of two decisions by the trial court: (1) the November 19, 2019 Order Denying Plaintiff's Rule 59 Motion to Reconsider, Alter, and/or Amend; and, (2) the February 5, 2019 Order granting Defendant's Motion for Summary Judgment.

STATEMENT OF THE FACTS

On April 26, 2016, Machel Smith and her then-husband were registered guests of Columbia-Sussex's hotel/resort located on Hilton Head Island, South Carolina. (Complaint, ¶6; Deposition of Plaintiff). They were guests while Smith's husband attended a professional conference hosted by Respondent. (Id.) After checking into the hotel, Smith went to their assigned hotel room 618. Shortly after arriving at the room, Smith was due for a spa treatment that she had scheduled. After finishing at the spa she returned to Room 618 and realized that her jewelry was missing from her luggage, and she had secured the jewelry deep in her suitcase. (Id. ¶ 6; Depo. of Plaintiff). Smith immediately reported to the Respondent's management that there had been a theft. (Id.) Following an investigation Smith learned that a hotel employee had used the all-access card issued to her by the hotel to gain entry to Room 618 and stolen the jewelry. (Id.) None of Smith's jewelry was ever located or recovered. (Id.)

STANDARD OF REVIEW

"Since it is a drastic remedy, 'summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.'" Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E. 2d 537 (1991).

The standards governing summary judgment are well established, and appellate courts apply the same standard as the trial court. Summary judgment is only appropriate

where there is no genuine issue of material fact, and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). On a motion for summary judgment, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Summary judgment is an extreme remedy to be cautiously invoked.” Hollomon v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986). “This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” Baughman, 306 S.C. at 112, 410 S.E. 2d at 543.

ARGUMENT

I. The Trial Court Erred in Finding Respondent was Entitled to Immunity pursuant to S.C. Code Ann. §45-1-40, and in Finding that Respondent Could Not be Liable to Appellant for the Acts of its Employee.

The trial court’s grant of summary judgment covered three grounds: (1) immunity under the Innkeeper Statute; (2) the Respondent’s employee’s acts falling outside of the scope of employment and Respondents therefore not being liable under the doctrine of *respondeat superior*; and, (3) a finding that Respondent was not negligent in their hiring, firing, supervision or retention of its employee. In her underlying Motion to Reconsider, Smith waived and abandoned all of her claims for liability against Respondent for negligent supervision, hiring and retention. Nevertheless, the trial court erred in its grant of immunity

under the Innkeeper statute and in granting summary judgment to Smith's claims of liability through the doctrine of *respondeat superior*. For the reasons that follow, the trial court's orders should be reversed and this case remanded for trial.

S.C. Code Ann. §45-1-40 is commonly referred to as "the Innkeeper Statute." The statute has existed for well over a century and sets forth the conditions, exceptions, and limitations of an "Innkeeper's" liability for the loss of baggage, money, jewels, and other personal property.¹ In this case, the loss complained of was Ms. Smith's personal property in the form of jewelry.

S.C. Code Ann. §45-1-40 provides absolute an Innkeeper immunity from liability for a patron's loss of property in certain circumstances:

Whenever an innkeeper shall post and keep posted in a conspicuous manner in the room occupied by any guest a notice requiring such guest to bolt the door of his room, or on leaving his room to lock the door and leave the keys at the office, and also to deposit such money and jewels as are not ordinarily carried upon the person in the office safe, and the guest shall neglect to comply with the requirements of such notice, the innkeeper shall not be liable for the loss of any baggage of such guest which may be lost or stolen from his room or for the loss of any money or jewels not deposited in the safe.

Id.

However, the legislative grant of immunity is not absolute. Rather, the statute carves out two circumstances where an Innkeeper may be liable for its guests' losses. In the first instance, the Innkeeper's liability is limited to a nominal amount and the statute specifically excludes the type of property at issue here (jewelry):

Provided, however, that notwithstanding the provisions of this section any innkeeper who by his own negligence

¹ Smith does not dispute that Respondents are an "Innkeeper" under the statute, nor that the statute applies.

contributes to the loss or damage to baggage or personal property, other than money or jewelry, from guest rooms, or to the loss or damage to money or jewelry from his safe, may be liable to the guest for the actual value of such baggage or personal property or five hundred dollars, whichever is less, or the actual value of such money or jewelry or two thousand dollars, whichever is less.

Id.

The statute also provides for circumstances where an Innkeeper's absolute immunity or limited liability are removed completely. In the event that an "Innkeeper" itself (or himself under the dated terms of the statute) *causes a guest to lose property by the Innkeeper's willful action*, there is no limitation of liability. The statute reads:

Provided, however, that, notwithstanding the provisions of this section, any innkeeper who by his own wilfulness contributes to the loss or damage to the personal property of a guest shall not have his liability limited in any manner by the provisions of this section.

Id. This Court previously summarized this final circumstance in Ippolito v. Hospitality Management Associates, (Insert full citation) (Ct. App. 2003). There, the Court wrote that the Innkeeper Statute provides "no protection from liability when an Innkeeper's willful or wanton conduct contributes to the guest's property loss, even where the innkeeper complies with the statute's notice requirements."

In the case at hand, there is no dispute that Columbia Sussex is an "Innkeeper" under the terms of the statute. Columbia Sussex seeks the protections of the statute and Smith argues too that the statute should apply. What the Order below fails to consider is that the Innkeeper Columbia Sussex is a corporation that can only act through its agents or its employee. Here, there is ample evidence that the Innkeeper's employee, using the Innkeeper's all access key entrusted to that employee, took Smith's jewelry. Applying the

terms of the statute here, Respondent's Employee (thus, Respondent) by her own willfulness (the willful act of entering, secreting, and stealing Smith's jewelry) contributed to the loss of property by the guest, Ms. Smith. Therefore, application of the Innkeeper Statute to the Innkeeper here requires that Columbia Sussex is not entitled to immunity from liability to Smith, nor is there any limitation on its liability to her.

Under this same analysis, the trial court should not have granted summary judgment on the doctrine of *respondeat superior*. The finding that Columbia-Sussex was not liable for the intentional, criminal acts of its employee works directly against the plain language of the statute governing the Innkeeper's liability. Theft and stealing are willful and wanton acts, and the Innkeeper statute makes clear that if the Innkeeper acts in such a manner, there is no protection.

CONCLUSION

For the reasons above, the trial court's grant of summary judgment to Respondent Columbia Sussex Corporation must be reversed.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.



Matthew V. Creech
Post Office Box 2500
Ridgeland, SC 29936
Phone: 843-726-6131
Fax: 843-726-6057

ATTORNEYS FOR THE APPELLANT

February 18, 2020
Ridgeland, S.C.

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-v-

Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts and Spa;
Columbia Sussex Management, LLC; and,
Columbia Properties Hilton Head, LLC.....Respondents

PROOF OF SERVICE

The undersigned certifies that the foregoing *Initial Brief of Appellant* and *Designation of Matter to be Included in the Record on Appeal* have been served upon the Court and counsel of record by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 18th day of February, 2020.

The Honorable Jenny Abbott Kitchings
CLERK OF THE SOUTH CAROLINA COURT OF APPEALS
Post Office Box 11629
Columbia, S.C. 29211-1629

Christian Stegmaier, Esquire
COLLINS & LACY, P.C.
Post Office Box 12487
Columbia, S.C. 29211

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PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.



February 18, 2020
Ridgeland, South Carolina

BY: _____

Matthew V. Creech

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

OVER 100 YEARS OF LEGAL SERVICE-EST. 1910

JOHN E. PARKER
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY
NEIL E. ALGER

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)
J. PAUL DETRICK
(1948-2016)
CLYDE A. ELTZROTH, JR. - RET

February 18, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

**Re: *Machelle Smith v. Columbia Sussex, et al.*;
Appellate Case No.: 2019-002099**

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Dear Ms. Kitchings,

Enclosed for filing please find the following documents:

- (1) One copy of Appellant's Initial Brief;
- (2) One copy of Appellant's Designation of Matter to be Included in the Record on Appeal; and,
- (3) One copy of Appellant's Proof of Service of the same.

Should you need anything more, please do not hesitate to contact me.

With kind regards, I am

Sincerely,



Matthew V. Creech

Enclosures as stated
Cc: Christian Stegmaier, Esquire

LAW OFFICES

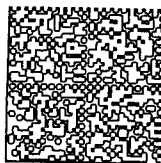
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

POST OFFICE BOX 2500

RIDGELAND, SOUTH CAROLINA 29936

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The Honorable Jerry Abbott Kitchens
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211-1629

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