

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Amanda Creel Godfrey,)
)
Plaintiff,)
)
v.)
)
City of Columbia, Richland County, Alta)
Planning & Design and AOS Contractors,)
Inc.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2019-CP-40-01358

**ORDER GRANTING DEFENDANT
RICHLAND COUNTY'S MOTION FOR
SUMMARY JUDGMENT**

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SC Court of Appeals

This matter is before the Court on a motion for summary judgment by Defendant Richland County, filed March 27, 2020. A hearing was held with appearances by counsel of record for all parties on July 16, 2020. After review of the written submissions by the parties, applicable legal authority and oral argument of counsel at the hearing, the Court grants the aforementioned motion for summary judgment on behalf of Defendant Richland County.

FINDINGS OF FACT

This civil action involves Plaintiff's residential property located at 1715 Gadsden Street, Columbia, South Carolina, for which Plaintiff alleges that an embankment adjacent to her property is unstable and has caused damages to her residence. Plaintiff has further alleged that Defendants are liable for the claimed damages with regard to a previously constructed pedestrian walking path known as Phase II of the Vista Greenway Project, in late 2015 and 2016. Phase II of the Vista Greenway Project is located in downtown Columbia, South Carolina, and in the vicinity of the aforementioned embankment and the Plaintiff's property.

Richland County contracted with the City of Columbia and provided funding for Phase II of the Vista Greenway Project, and subsequently contracted with AOS Contractors, Inc. as the awarded bidder for construction of the project. The applicable Notice to Proceed for the project was issued on November 20, 2015, subsequent to the historic rainfall and flooding which occurred in the Columbia, South Carolina, area in early October 2015.

In Plaintiff's current Complaint filed in this action, causes of action are asserted against all Defendants for negligence and nuisance.

ANALYSIS AND CONCLUSIONS OF LAW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. The Court, in considering a motion for summary judgment, must view the facts and reasonable inferences in the light most favorable to the nonmoving party. *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Rule 56(e), SCRCP; *see also Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

In its motion, Defendant Richland County sets forth several grounds for which it seeks the granting of summary judgment and dismissal as a party to this action as a matter of law. Foremost, Richland County asserts that it has no ownership, control or maintenance responsibility for the real property or property interests in controversy which are the subject of this lawsuit, and as such, the

Plaintiff has failed to establish that it owed the Plaintiff any duty of care as to the claims set forth in this matter. Alternatively, Richland County contends that to the degree that evidence of a legal duty exists as to the Plaintiff's claims, they would be barred pursuant to the Public Duty Rule.

“An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437, 451 (2005); *Charleston Dry Cleaners Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 586 S.E.2d 586, 588 (2003). “One who controls the use of property has a duty of care not to harm others by its use. Conversely, one who has no control owes no duty.” *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997).

In support of the position asserted by Richland County it was argued that the extensive submissions by the parties, including affidavits, exhibits and deposition transcript excerpts, lacked evidence establishing a genuine issue of material fact with regard to Richland County's contention that no duty of care existed on its behalf to the Plaintiff for the subject claims. Having reviewed the aforementioned submissions, testimony and exhibits in this case, the Court agrees with Richland County's position and finds that the Plaintiff has not established that Defendant Richland County owed the Plaintiff a duty of care, or any proximate breach thereof, as it pertains to the claims in this action.

As such, as to Richland County the Plaintiff has not “set forth . . . specific facts in the record showing that there is a genuine issue of material fact.” *Bravis*, 316 S.C. at 265, 449 S.E.2d at 496. Rather, there is a lack of evidence in this case to support the Plaintiff's claims as against this party, and Defendant Richland County is therefore properly entitled to summary judgment as a matter of law.

Given the ruling and findings as to the lack of a legal duty existing to the Plaintiff by Richland County in this civil action as referenced herein, the Court does not need to further address the additional arguments set forth by this Defendant in support of its motion for summary judgment, including application of the Public Duty Rule or the various immunities asserted pursuant to South Carolina Code Ann. § 15-78-60 of the South Carolina Tort Claims Act.

IT IS, THEREFORE, ORDERED that the motion for summary judgment filed on behalf of Defendant Richland County is hereby GRANTED, and Defendant Richland County is therefore dismissed, with prejudice, as a party to this action.

IT IS SO ORDERED.

The Honorable Robert E. Hood
Presiding Judge,
Fifth Judicial Circuit

Columbia, South Carolina

July __, 2020



Richland Common Pleas

Case Caption: Amanda Creel Godfrey vs City Of Columbia , defendant, et al

Case Number: 2019CP4001358

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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