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Court of Appeals

RE: Stephan Shugart v. Historic Hospitality, LLC, et al.
Appellate Case No. 2020-001453

To Whom it May Concern,

The purpose of this letter is to request that Historic Hospitality, LLC ("Historic") be removed as a respondent from the appeal caption as it is not an appropriate respondent to this appeal.

This appeal relates to a summary judgment granted in favor of Shah Investments, LLC ("SIL"), a co-defendant in the underlying action giving rise to this appeal. The Honorable Courtney Clyburn Pope granted the order for summary judgment in favor of SIL on September 29, 2020 (attached hereto as "Exhibit A").

Six months prior to Judge Pope's order, on March 12, 2020, the Honorable Michael G. Nettles signed the order granting summary judgment in favor of Historic (attached hereto as "Exhibit B").

Pro se Appellant's Notice of Appeal, dated October 20, 2020, provides that "Stephan Shugart appeals the order of the Honorable Country Clyburn Pope dated September 29, 2020. . ."

It is clear that Pro se Appellant Shugart is appealing Judge Pope's order granting Summary Judgment in favor of SIL. As such, Historic respectfully requests to be removed as a named respondent in this appeal.

Truly yours,

James F. Knox, Esq.

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Docket No.: 2019-CP-02-02426
	)	
STEPHEN SHUGART,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING SUMMARY JUDGEMENT AS TO DEFENDANT SHAH INVESTMENTS, LLC**
v.	)	
	)	
HISTORIC HOSPITALITY, LLC, SHAH INVESTMENTS, LLC, SHAH ENTERPRISES, LLC, AND SOUTHERN HOTEL PROPERTIES, LLC,	)	
	)	
Defendant.	)	

This matter came before the Court on August, 31, 2020, for a hearing on Defendant Shah Investments, LLC's ("SIL") Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. James F. Knox was present on behalf of SIL. Plaintiff, proceeding pro se, was also present. After carefully considering the pleadings, arguments of Plaintiff and counsel, and the applicable law, the Court grants summary judgment for the reasons set forth below.

STATEMENT OF THE CASE

This case arises from an incident that occurred on or about September 29, 2016, at the Hotel Aiken ("the Hotel") located in Aiken, South Carolina. Plaintiff alleges he was exiting the Hotel and entering the parking lot when he hit his head on the branch of a shrub that knocked him unconscious. Defendant SIL owned and operated the Hotel Aiken on that date.

According to his Complaint, Plaintiff is "seeking damages for the injury caused by the negligence of the Hotel Aikens to properly maintain a safe environment for my safety as a guest there."

Defendant SIL filed its Motion for Summary Judgment on July 6, 2020. As grounds for its motion, SIL denied a breach of any duty and also denied any

negligence by SIL that proximately caused Plaintiff's injuries. SIL also argued the doctrine of comparative negligence bars Plaintiff's claim.

STATEMENT OF FACTS

Based on the arguments presented at the hearing and the transcript of Plaintiff's deposition, the following facts are undisputed:

1. At the time of the alleged accident, Plaintiff was a guest at the Hotel and was placed on the second floor. (Plaintiff's Deposition ("Pl.'s Dep.") pg. 26).

2. Immediately before the accident, Plaintiff exited his hotel room and walked down the stairs in the breezeway to exit the building and enter the adjacent parking lot. (Pl's Dep., pg. 27). The stairwell leads directly into the parking lot in front of the Hotel annex. (Pl's Dep. pg. 27, Pl's Dep. Exhibit 2). Upon entering the parking lot, Plaintiff stated he struck his head on branches of an ornamental shrub that were "protruding into the opening leading out into the parking lot." (Pl's Dep. pg. 27).

3. The alleged accident occurred in the afternoon to late afternoon during daylight. (Pl. Dep. pg. 33, 40).

4. Plaintiff admitted to entering and exiting the Hotel annex prior to the accident, which would require him to traverse up and down the stairs leading out into the parking lot where the shrubs were planted. (Pl. Dep. pg.44 - 47).

5. Plaintiff testified that "the bush that I came in contact I couldn't see because of the foliage that was concealing behind the limb. And that's what I struck my head on….There was foliage. If you look for the foliage, yes, you would see the foliage." (Pl. Dep. pg. 34).

SUMMARY JUDGMENT STANDARD

"[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Nelson v. Charleston County Parks & Recreation Comm., 362 S.C. 1, 4, 605 S.E.2d 744, 746 (Ct. App. 2004); see also S.C.R.C.P. 56(c). All evidence and inferences reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party in determining whether any triable issues of fact exists. Faile

v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 539 (2002); Young v. South Carolina Dep't of Corr., 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Moore v Weinburg 373 S.C. 209, 217, 644 S.E.2d 740, 744 (citing Regions Bank v. Schmauch, 354 S.C. 648; 582 S.E.2d 432 (Ct. App. 2003)). Ultimately, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. Id. (citing Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 214; 609 S.E.2d 565, 568 (Ct. App. 2005)).

ANALYSIS

I. Summary Judgment is granted because there are no facts showing a genuine issue for trial, as SIL had no duty to warn Plaintiff of an open and obvious condition.

SIL argues it had no duty to warn Plaintiff of an open and obvious condition; thus, there can be no negligence. This Court agrees.

It is well settled that in order to prevail in a negligence action, the plaintiff must show the defendant owes a duty of care to the plaintiff, the defendant breached the duty by a negligent act or omission, the breach was the actual and proximate cause of the plaintiff's injury, and the plaintiff suffered an actual injury or damages. Moore v. Weinberg, 373 S.C. at 220; 644 S.E.2d at 746 (citing Steinke v. S.C. Dept. of Labor, Licensing & Regulation, 336 S.C. 373, 387; 520 S.E.2d 142, 149 (1999) (citation omitted). The issue of negligence is a mixed question of law and fact, and the court must first determine whether the law recognizes a particular duty. Id. at 221 (citing Miller v. City of Camden, 317 S.C. 28, 31; 451 S.E.2d 401, 403 (Ct. App. 1994); Ellis v. Niles, 324 S.C. 223; 479 S.E.2d 47 (1996)). If there is no duty, the Defendant is entitled to judgment as a matter of law. Id. (citing Ellis, 324 S.C. at 223; 479 S.E.2d at 47).

A property owner has a duty to warn an invitee only of latent or hidden dangers of which the property owner has or should have knowledge, but he

generally does not have a duty to warn others of open and obvious conditions. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256; 607 S.E.2d 362, 365 (Ct. App. 2004) (citing Larimore v. Carolina Power & Light, 340 S.C. at 445; 531 S.E.2d at 538-39). Further, the entire basis of an invitor's liability rests upon his superior knowledge of the danger that caused the invitee's harm; if that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable. Id. (citing Larimore, 340 S.C. at 448; 531 S.E.2d at 540). Here, since the only conclusion that can be reached is that the exposed branch of the ornamental shrub constituted an open and obvious condition, SIL had no duty to warn Plaintiff of that condition.

It is undisputed that Plaintiff knew about the shrub. Plaintiff testified he had exited and entered the Hotel several times prior to the accident, thus providing Plaintiff with knowledge of the shrubs' conspicuous placement in front of the Hotel. Plaintiff also parked his truck in front of the Hotel along the row of shrubs. The alleged accident occurred in the afternoon in broad daylight. Plaintiff also stated in his deposition that he had seen the foliage of the shrub's limb before it impacted his head: "the bush that I came in contact I couldn't see because of the foliage that was concealing behind the limb. And that's what I struck my head on….There was foliage. If you look for the foliage, yes, you would see the foliage." (Pl. Dep., pg. 34).

Further, Plaintiff has failed to provide any evidence that the alleged danger should have reasonably been anticipated by SIL. There is no evidence to even suggest that SIL unreasonably maintained the premises. No evidence is presented to show that the shrub was unreasonably maintained nor any reason as to why it should have been. The only evidence of SIL's negligence offered by Plaintiff is a conclusory allegation in the last sentence of his Complaint that the Hotel failed to "properly maintain a safe environment for my safety as a guest there."

Given Plaintiff's undisputed knowledge of the shrub and its limb, SIL had no duty to warn Plaintiff of the obvious danger of walking head first into the shrub. Therefore, because no genuine issue exists as to any material fact for trial, summary judgment is appropriate in this case.

II. **The sole reasonable inference that may be drawn from the evidence is that Plaintiff's negligence exceeded fifty percent.**

SIL also argues that even if it was negligent, summary judgment is proper because the evidence of Plaintiff's greater negligence is overwhelming. The Court agrees.

"Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." Bloom v. Ravoira, 339 S.C. 417, 422-424; 529 S.E.2d 710, 713-714 (2000) (upholding the trial court's grant of summary judgment because the plaintiff's fault was overwhelming); Singleton v. Sherer, 377 S.C. 185, 207; 659 S.E.2d 196, 208 (Ct. App. 2008) (same). Here, Plaintiff had knowledge of the shrub's location and admitted that he saw its foliage just prior the alleged accident. Despite seeing the eye level foliage, Plaintiff proceeded to walk towards the shrub, which resulted in the alleged accident. The evidence of Plaintiff's greater negligence is overwhelming and SIL is, therefore, entitled to summary judgment.

CONCLUSION

Based upon the evidence, SIL's memorandum, and deposition transcript provided, SIL has shown there is an absence of evidentiary support for Plaintiff's case, and Plaintiff has failed to meet its burden to show that there is a genuine issue for trial. For the reasons previously stated, Defendant SIL's Motion for Summary Judgment is hereby granted.

IT IS SO ORDERED.

_____

The Honorable Courtney Clyburn Pope
Circuit Court Judge

Aiken County, South Carolina

Dated:_____

Aiken Common Pleas

Case Caption: Stephan Shugart VS Historic Hospitality Llc , defendant, et al

Case Number: 2019CP0202426

Type: Order/Summary Judgment

So Ordered

The Honorable Courtney Clyburn Pope

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Docket No.: 2019-CP-02-02426
STEPHEN SHUGART,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**ORDER GRANTING SUMMARY JUDGMENT AS TO DEFENDANT HISTORIC HOSPITALITY, LLC**
HISTORIC HOSPITALITY, LLC, SHAH INVESTMENTS, LLC, SHAH ENTERPRISES, LLC, AND SOUTHERN HOTEL PROPERTIES, LLC,	)	
	)	
Defendant.	)	

This matter comes before the Court upon Defendant Historic Hospitality LLC's (hereinafter "Historic") Motion for Summary Judgment. As set forth below, the motion is granted.

1. The alleged accident giving rise to this action occurred on the property of the Hotel Aiken on or about September 29, 2016.
2. On the date of the alleged accident, Shah Investments, LLC, a named defendant to this suit, owned and was doing business as the Hotel Aiken.
3. Historic was not incorporated until February 2017, and did not exist on the date Plaintiff allegedly sustained injuries at the Hotel Aiken. Therefore, Historic is an improper party to this lawsuit.
4. This motion was supported by the Affidavit of Ramesh Shah, registered agent of Historic.

Based upon the foregoing and after careful consideration of the record before the Court and applicable law, this Court concludes that Historic is entitled to summary judgment, and it is hereby

ORDERED, that summary judgment be entered in its favor.

_____
The Honorable Michael Nettles

Aiken, South Carolina
March _____, 2020

Aiken Common Pleas

Case Caption: Stephan Shugart VS Historic Hospitality Llc , defendant, et al

Case Number: 2019CP0202426

Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140