THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-001824
Trial Court Case Nos. 2016-CP-04-02464 and 2016-CP-04-02468

John Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents,

And

Steven P. Cross, ... Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and Jason Seagraves, ... Respondents.

PETITION FOR REHEARING

The Appellants, John Cross and Steven P. Cross, respectfully move and petition, pursuant to Rules 219 and 221(a) SCACR, as well as all other applicable law, for an Order granting rehearing in this case as to certain issues and submits the below memorandum in support of the same. In an opinion filed April 7, 2021, this Court may have overlooked or misapprehended certain points of law affecting the disposition of this case.

In the April 7, 2021 Opinion, this Court found the Respondents Gregory A. Weaver and Earl E. Weaver [hereinafter landlords] did not owe a duty to the Appellants [hereinafter victims] to stop a dangerous condition on their property created by Terrie Fallow and Jason Seagraves [hereinafter tenants]. The dangerous condition was a dog owned by tenants with known previous bites to be present in an area outside of a commercial building frequented by the public.

The Court cited to Mitchell v. Bazzle, 304 S.C. 402, 404 S.E.2d 910 (Ct. App. 1991) and Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000), regarding non-liability of landlords to victims of dog bites when the dog is not in a common area. Additionally, the Court cited Jackson v. Swordfish Invs., LLC, 365 S.C. 608, 620 S.E.2d 54 (2005) in recognizing two (2) exceptions to the traditional rule of non-liability of landlords: the "affirmative acts" exception and the "common areas" exception.

I. While the victims in this case were injured by a dog, this is not a dog bite case. This case is a negligence action based upon the landlords re-leasing commercial property to the tenants when the landlords had actual knowledge of a dangerous condition on the commercial property that could harm members of the public.

It is respectfully submitted that the Court of Appeals too narrowly interpreted the landlords' duty. "A duty may arise under the particular circumstances of an individual case based upon a showing of negligence constituting the proximate cause of the loss, even though the law does not impose a general duty on landlords to protect tenants or their guests from the criminal acts of third parties." Cramer v. Balcor Property Management, Inc., 312 S.C. 44, 443, 441 S.E.2d 317, 319 (1994). In Blyerly v. Connor, the Supreme Court stated, "*[a]fter the premises are surrendered in good condition*, the lessor typically is not responsible for hazardous conditions which thereafter

develop or are created by the lessee. Blyerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992) (emphasis added). "A lessor of land who transfers its possession in a condition which he realizes or should realize will involve unreasonable risk of physical harm to others outside of the land, is subject to the same liability for physical harm subsequently caused to them by the condition as though he had remained possession." RESTATEMENT (SECOND) OF TORTS § 379 (2ND 1979).

This Court correctly points out that two (2) exceptions to the general rule of non-liability of landlords are: the "affirmative acts" exception and the "common areas" exception. Jackson v. Swordfish, Invs., 365 S.C. 608, 613, 620 S.E.2d 54, 56 (2005). However, it is respectfully submitted that the Court of Appeals overlooked another exception; that is: when the landlord transfers possession knowing of a hazardous condition. See Blyerly at 443, 415 S.E.2d at 798.

The key element with all three (3) exceptions is control. If a landlord takes affirmative acts to rectify a dangerous condition, the landlord controls his or her actions to ensure that such affirmative acts are done correctly. Common areas are controlled by a landlord for the benefit of multiple tenants in the same location. A landlord therefore ensures the safety of the common area. Likewise, a landlord controls the condition of the premises prior to surrendering the premises to the tenant, and must ensure that it is being turned over free of hazards to others. See also Watson v. Sellers, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989).

In this case, the landlords and tenants had a month-to-month lease constituting a new lease each month. S.C. Code Ann. § 27-35-30 (1976). The tenants could be evicted with 30 days' notice. S.C. Code § 27-35-120 (1976). Every day, the landlords drove by the premises and saw the dog chained on its long chain. (R. p. 128, lines 13-16). The landlords admitted it was a dangerous dog. (R. p. 132, lines 6-16; p. 146, lines 11-15). The landlords testified the dog hid under debris outside

of the building. (R. p. 130, lines 19-21; p. 131, lines 4-7). The landlords themselves would not approach the dog. (R. p. 131, line 22 – p. 132, line 5; p. 145, line 22 – p. 146, line 10). More than 30 days prior to the attack against the victims in this case, the landlords became aware that the dog attacked someone outside of the store. (R. p. 82, lines 3-7; p. 146, line 19 – p. 147, line 4; p. 135, line 19-25). Yet, the landlords took no action to require tenants to remove the dog prior to re-leasing the property the following month. (R. p. 132, line 22 – p. 133, line 4; p. 146, lines 16-18; p. 146, line 23 – p. 147, line 4). Had the landlords taken such action, the dog would not have been present on the date of the attack, and the victims would not have been injured.

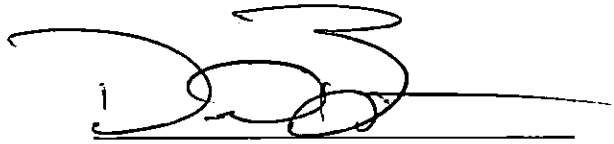
Appellants ask this Court to consider the persuasive arguments in the cases of Shields v. Wagman, 350 Md. 666, 714 A.2d 881 (Md. 1998) and Portillo v. Aiassa, 27 Cal. App. 4th 1128, 32 Cal. Rptr.2d 755 (Ca. Ct. App. 1994). In particular, Portillo deals with the issue of a landlord re-leasing a month-to-month commercial lease after having notice of a dangerous dog on the premises. Portillo distinguishes dog-bite cases in the residential lease context versus a commercial lease context. In discussing the difference, the California Court of Appeals opined, "[t]hose cases involved a family pet kept in a single-family residence. In contrast here the animal was a guard dog in a liquor store which was open to the public. The risk that someone would be seriously injured was far greater in the instant case." Id., at 1137, 32 Cal. Rptr.2d at 760.

One of the major purposes of tort law is to encourage socially responsible behavior and deter wrongful conduct. J. Wade, et. Al., Prosser, Wade and Schwartz's Cases and Materials on Torts (9th Ed.), 1 (1994). While this Court's opinion is an unpublished opinion, it still sends a message to commercial landlords that it is acceptable behavior to know of a dangerous condition

on property that may harm the public, but still re-lease it each and every month to the same tenants who cause the dangerous condition.

Appellants respectfully ask the Court to reconsider its opinion, grant a rehearing and reverse the decision of the trial court regarding landlords' legal duty in this particular case.

Respectfully submitted,



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April 19, 2021

THE STATE OF SOUTH CAROLINA
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R. Lawton McIntosh, Circuit Court Judge

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CERTIFICATE OF SERVICE

I certify that I have served the Appellants' Petition for Rehearing on Respondents Gregory A. Weaver and Earl E. Weaver's attorney of record, David F. Stoddard, Esq., by hand delivering a copy of the same to his address at 320 East River Street Anderson, South Carolina 29624. Additionally, I have served Respondent Jason Seagraves with the Appellants' Petition for Rehearing by mailing a copy of the same to 601 Calhoun Road Apt. 30-D Belton, South Carolina 29627. Lastly, I have served Respondent Terrie Fallow with the Appellants' Petition for Rehearing by mailing a copy of the same to 2315 Broadway Lake Road Anderson, South Carolina 29621. All mailing was via United States mail, postage prepaid this 20th day of April, 2021.

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April 20, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *Cross, et al v. Weaver, et al*
Appellate Case No. 2018-001824

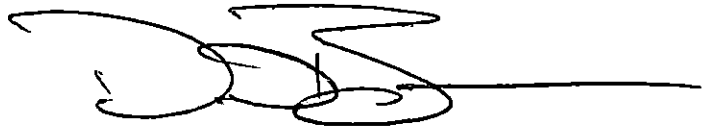
Dear Ms. Kitchings;

Enclosed for filing please find the following:

(1) Appellants' Petition for Rehearing and 6 copies of the same;
(2) A check for $50 for the filing fee; and
(3) Certificate of Service on Respondents.

With kindest regards, I remain

Yours very truly,



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