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SC Court of Appeals

FORM 13
BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Case No. 2019-CP-02-02426

Historic Hospitality, LLC,
Shah Investments,
Shah Enterprises, LLC,
Southern Hotel Properties

Respondent,

v.

Stephan Shugart,

Appellant.

FINAL REPLY BRIEF OF APPELLANTS

s/ Stephan Shugart
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TABLE OF CONTENTS

Table of Authorities ii

Argument in Reply----- 1

TABLE OF AUTHORITIES

CASES

Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998)

Brown v. Smalls, 325 S.C. 547, 481 S.E.2d 444 (Ct.App. 1997)

Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997)

Creech, 328 S.C. at 33, 491 S.E.2d at 575

Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App. 1996)

Hopson, 321 S.C. at 314, 468 S.E.2d at 307

Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991)

Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)

OTHER AUTHORITIES

163. *Didiet v. J.C. Penny Co.*, 868 F.2d 276,281 {8 Cir. 1989}.

164. *Id.*

South Carolina Bar Continuing Legal Education Division publication "Better Notion Practice-Tips, Suggestions and Ideas from the Court, Plaintiff and Defense Perspective dated Thursday, February-13,-2020 Page-125

S.C. Code Ann. § 56-5-3150(a) (1991)

S.C. Code Ann. § 56-5-3150(c) (1991)

S.C. Code Ann. § 56-5-3230 (1991)

ARGUMENT IN REPLY

In response to the Respondent's Attorneys of Turner and Paget initial brief concerning my appeal received on August 4, 2021.

Please accept my sincere apologies for the ongoing matter between myself and the attorneys at Turner and Paget. I greatly appreciate the courts time and effort in this matter although I have diligently and sincerely have tried to resolve the matter without taking any more of the courts time to no avail.

I have not heard back from the Attorney James Knox and have now been informed by the Respondent's brief that he has left the firm. I tried calling Mr. Knox a few times in the past weeks but have to date not received any response. Mr. Knox was very understanding and pleasant and I greatly miss the rapport that we had developed.

I would like to point out some of the inconsistencies I believe exist in the Respondent's initial brief that was recently filed with the South Carolina Court of Appeals. After reading the Respondent's brief, I was left with an overwhelming sense that my rights as an American citizen are being violated.

1. One point is the Respondent's statement concerning my United States Service Dog asserting that the reason for my being negligent and causing my injury was in fact my Service animals responsibility. My disabilities that I was suffering from at the time of my accident have come into question as to my not being able to see concealed obstacles. Clearly my rights under the Disabilities Act afford me protection from such remarks. The sole reason for having a Service Dog is to prevent such accidents at all possible costs and not to cause them.

2. The Respondent's Attorney assertion of my seeing the foliage is not correct as per the deposition I attended at the offices of Turner and Paget held by the previous attorney James Knox. I humbly request be stricken from the record, Deposition TT pg.34 line 3 It is clear that the answer I provided was not in response to the question that I was asked. The question put forth by Mr. Knox was " could you not see the bushes due to the transition from going from dark to bright?". I answered Deposition-TTpg 14 line 8, "I couldn't see because of the foliage that was concealing the limb behind. And that's what I struck my head on". I did not answer the question asked and was not asked again to make it clear what was being asked. The answer I provided was taken completely out of context as to the question being asked at the time. It is clear that the Respondent's attorneys are using this statement to prove over Fifty Percent Negligence under the rules of the South Carolina civil code Under the South Carolina Bar Continuing Legal Education Division publication "Better Notion Practice-Tips, Suggestions and Ideas from the Court, Plaintiff and Defense Perspective dated Thursday, February 13, 2020 Page 125 Personal Injury and Products Liability, Whether a store customer assumed the risk when she stepped on a slippery floor was the "type of inquiry {that} is a textbook example 'of an issue of fact' inappropriate for determining through summary judgment" 163. *Didier v. J.C. Penny Co.* 868

F.2nd 276, 281 (8th. Cir. 1989), The trial court erred in finding as a matter of law that the customer had assumed the risk. 164. Id. This issue falls squarely within the experience of most jurors and has traditionally been entrusted to them. The jury's determination involves primarily

2

common sense and knowledge of human affairs".

I also need to make the court aware that I was given no opportunity to correct or address any of the statements I had given at the deposition. Furthermore, at the time of the deposition I was very weary from travelling from Philadelphia to Columbia, South Carolina by train. I also spent a very cold and freezing night due to no heat at a local hotel in Colombia City Center.

3. I would like to object to the previous and current use of the matter of Marc J. Bloom, Respondent, v. James Ravoira, Petitioner. The case was and is used inappropriately in my case to assert liability on my behalf to prove that the Fifty Percent rule of contributory negligence is breached. The case Marc J. Bloom, Respondent, v. James Ravoira, Petitioner of is being used as a roadblock for further cases that do not meet the Fifty Percent criteria. A summary of the case is as follows: It should be clear to the court that this case involves the Plaintiff putting himself in harm's way by not crossing at a designated crossing and risking personal harm by attempting a crossing from between two parked cars. My case is clearly not related to these issues of fault. I was not putting myself in harm's way by using entrances and exits that are open to the public and hotel guests. The proprietor of the Hotel Aiken had a duty (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. E.g., Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998).

"Summary judgment is warranted if there is no genuine issue as to any material fact and 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 non-moving party." Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Id.

Bloom alleged in his complaint that Ravoira negligently caused his injuries. To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. E.g., Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant. Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991).

Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide. Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997); accord Brown v. Smalls, 325 S.C. 547, 481 S.E.2d 444 (Ct.App. 1997). In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that

the plaintiffs negligence exceeded fifty percent. Creech, 328 S.C. at 33, 491 S.E.2d at 575 (discussing directed verdict standard); see also Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct.App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created" and a directed verdict motion is properly granted). Therefore,

3

summary judgment is generally not appropriate in a comparative negligence case.

Under South Carolina law, Ravoira, as a driver, and Bloom, as a pedestrian, owed certain duties. Regarding pedestrian duties, a "pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." S.C. Code Ann. § 56-5-3150(a) (1991). In addition, where traffic-control signals operate between adjacent intersections, "pedestrians shall not cross at any place except in a marked crosswalk." S.C. Code Ann. § 56-5-3150(c) (1991). Drivers are charged with the duty to exercise due care to avoid colliding with any pedestrian. S.C. Code Ann. § 56-5-3230 (1991).

On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. Koester, supra. Nonetheless, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Hopson, 321 S.C. at 314, 468 S.E.2d at 307 (discussing directed verdict motion). In our opinion, a verdict for Bloom is not reasonably possible under the facts of this case".

Respectfully Submitted

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