THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2010-CP-21-2170

Susan Anne Bell Lynch, ... Appellant-Respondent,

v.

Carolina Self Storage Centers, Inc., ... Respondent-Appellant.

INITIAL REPLY BRIEF OF RESPONDENT-APPELLANT

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I. THE DOOR WAS NOT IN A DEFECTIVE OR UNREASONABLY DANGEROUS CONDITION.

The door that forms the predicate for this lawsuit met all applicable building codes; its performance fell within the range of acceptable standards set by the manufacturers; and it violated no safety standards. Lynch would have the Court perceive an issue of fact despite uncontradicted evidence that the premises met known standards for safety on the basis of a purely subjective opinion by an expert. In the absence of known safety standards, such a subjective opinion would unquestionably be enough to create an issue of fact, but that is not the situation presented here.

The cases Lynch cites that involve doors illustrate Defendant's point by contrasting sharply with the facts presented here. In each case Lynch cites, there was a recognizable defect that resulted in an injury. Not so in this case.

In *Sterling Stores Co. v. Martin*, 386 S.W.2d 711 (Ark. 1965), evidence submitted at trial showed that "the hinges . . . didn't appear to have been adjusted lately." *Id.* at 713. In other words, the evidence revealed that the hinges of the door were out of adjustment from the original manufacturer's setting and should have been adjusted by the owner to allow the door to swing more easily.

In *Jackson v. Cherokee Drug Co.*, 434 S.W.2d 257 (Mo. Ct. App. 1968), the evidence showed the door in question "banged" shut for months, causing "the glass [to] rattle[]," which "could be heard one-half block" away. *Id.* at 261-62. This evidence was sufficient to prove a dangerous or defective condition existed.

In *Franconia Associates v. Clark*, 463 S.E.2d 670 (Va. 1995), a door closed too rapidly, as evidenced by testimony that "if you opened the door to a certain point . . .

halfway or not quite halfway, there was some tension on the door, and if you pulled it anymore, it would spring back." *Id.* at 674.

In *Hall v. Medical Building of Houston*, 251 S.W.2d 497 (Tex. 1952), an entranceway was situated in the direct path of an interior door, so that persons passing through the entranceway were in danger of being struck by the door. *Id.* at 500.

In the present case, there is no evidence that any part of the door at issue was out of adjustment or that it otherwise violated applicable building codes, safety standards, or manufacturer's recommendations. Rather, all of the evidence regarding the condition of the door was that it was maintained in the same condition as when it was installed. Plaintiff's expert witness admitted that the door's closing speed fell within the timeframe recommended by the manufacturer of its closer, which was constructed in compliance with the ANSI standards for such devices. (Trial Tr. p. 330, line 19 – p. 331, line 17.). All other aspects of the door were similarly compliant with applicable standards. (Trial Tr. p. 531, lines 1-8, 20-24.)

Whether additional safety precautions could have been taken is irrelevant in a case where no dangerous or defective condition exists. In *Bernstein v. Reforzo*, 379 A.2d 181 (Md. Ct. Spec. App. 1977), the court stated:

> The glass in question was recommended by an architect and met the building code requirements. It was installed in 1959 or 1960 and from the date of installation until 1970 there were no incidents involving the glass doors. The mere fact that stronger materials could have been used in construction or were available for replacement is insufficient to support a finding of negligence.

Id. at 186. Moreover, As the Supreme Court of Texas noted:

> There are many cases in which an invitee has been struck and injured by a revolving or swinging door violently or suddenly moved by another invitee. In many of them liability was denied because the door was an

> ordinary door in general use, the danger incident to using it being open and obvious, and there being no evidence of any defect in the construction or condition of the door.

Medical Bldg. of Houston at 502[1]. The court noted that liability has been found only in cases where "there is evidence that the braking device or friction strips on the door that struck the plaintiff were out of adjustment or worn so as to permit the door to revolve at a speed that created unusual danger, or the door was permitted to become defective or was so placed that the invitee would be in danger of being struck by it when pushed open by one who was not an agent or employee of the proprietor." *Id.* None of these conditions is present here.

Because the door met the building code requirements and its closing performance fell within the recommended range of standards set by the manufacturer, the question of whether the closing mechanism could have been adjusted to close more slowly, or the door could have been lower to the ground, or the bottom edge could have been shielded are not relevant to the question of whether there was a defect or an unreasonably dangerous condition on the premises. There was not.

II. DEFENDANT HAD NO ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF ANY DEFECT.

The present case is likewise distinguishable from the cases cited by Lynch because even if the door's characteristics make it defective or unreasonably dangerous, there was no evidence that Defendant knew or should have known that those characteristics were likely to cause injury. Unlike the cases cited in Lynch's brief,

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[1] *Citing Sheridan v. Great Atlantic & Pacific Tea Co.*, 44 A.2d 280 (Penn. 1945); *Dolan v. Callender, etc., Co.*, 58 A. 655 (R.I. 1904); *Callaghan v. R.H. White Co.*, 22 N.E.2d 10 (Mass. 1939); *Sterns v. Highland Hotel Co.*, 29 N.E.2d 721 (Mass. 1940); *Mangel v. Bronx Borough Bank*, 271 N.Y.S. 432 (N.Y. App. Div. 1934); *Leybold v. Fox Butte Theater Corp.*, 62 P.2d 223 (Mont. 1936); *Wiedanz v. May Department Stores Co.*, 156 S.W.2d 44 (Mo. Ct. App. 1941).

Defendant was never notified of a previous injury caused by the door or that it was behaving in some unexpected way. The only evidence presented by Plaintiff on the issue of notice was that Defendant had knowledge that its customers used furniture or other objects to prop open the door when moving their belongings in and out of the building. That knowledge is insufficient to establish actual or constructive notice of a defective or dangerous condition.

In *Cherokee Drug*, 434 S.W.2d 257, the court affirmed the trial court's denial of summary judgment on the grounds that the owner had knowledge that the door at question "banged" violently. Even though the store owner did not have any knowledge that the hydraulic fluid in the door check was low, which was the cause for the slamming door, it did have constructive knowledge that something was causing the door to slam shut in a dangerous fashion. *Id.* The owner's knowledge that the door was violently slamming shut provided the basis for finding that a jury could reasonably conclude that the owner had constructive knowledge of a dangerous or defective condition. *Id.* Unlike *Cherokee Drug*, Defendant had no knowledge of an unexpected or latent aspect of the door at issue. There was no evidence that the door closed too quickly or that it behaved in some way that a user would not expect.

Likewise, in *Franconia*, the evidence revealed that "there was some tension on the door, and if you pulled it anymore, it would spring back." *Franconia* at 673. One of the owners' customers testified at trial that "he had observed patrons of the mall who experienced difficulty using the same door." *Id.* The Court found that "at the very least [the owner] had constructive knowledge that the door closed too rapidly." *Id.* In the case at bar, there is no evidence that any customers or employees experienced difficulty or

exercised caution when using the door at issue. The Defendant's knowledge of customers' mere propping open of the door in order to haul their belongings to and from the storage unit does not equate to evidence that Defendant had actual or constructive knowledge of a dangerous or defective condition. Rather, it demonstrates Defendant's knowledge of its invitees taking measures to promote their own convenience.

Finally, there is no evidence in this case that Defendant had knowledge of previous injuries caused by the door. Conversely, in *Hall v. Medical Bldg. of Houston*, 251 S.W.2d 497 (Tex. 1952), cited by Plaintiff, the Supreme Court of Texas found the defendant liable by relying on evidence that only a month before the plaintiff's accident, the building manager "suddenly opened the door at the foot of the stairs and the knob of the door struck on the arm of a maid . . . who was a tenant" of the building. *Id.* at 499. Nevertheless, "[a]fter th[is] [and other] incidents[,] nothing was done 'to correct the situation.'" *Id.* Similarly, in *Sterling Stores*, 386 S.W.2d 711 (Ark. 1965), cited by Plaintiff, the Supreme Court of Arkansas relied on testimony by the manager of the store that he had knowledge that other people had been hurt by a door. *Id.* at 714. The Court ruled that such testimony was admissible to show the store owner knew or should have known of a dangerous condition of the door. *Id.*

Here, Jay Wallace, President of Carolina Self Storage Centers, testified that there are over a hundred doors that are similar or exactly the same as the one at issue in this case in use at his company's various self-storage facilities in South Carolina. (Trial Tr. p. 491, line 3.) "At any given time, there's 6,000 and over the course of a year, ten to 15,000 people . . . on our properties." (Id. at lines 6-7.) Despite this high number of customers moving belongings in and out of identical storage units, no previous reports of

an injury like the one suffered by Plaintiff in this case were ever made. (Id. at lines 8-10.)

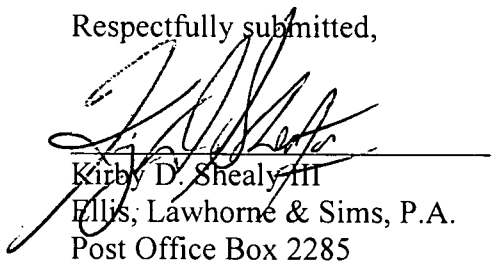
This case is similar to *Herbert v. Jefferson Parish Hosp. Dist. No. 1*, 91 So.3d 1126 (La. Ct. App. 2012), in which the court held as a matter of law that the defendant hospital did not have actual or constructive notice of defective hospital door, which allegedly closed too fast and caused the plaintiff to fall. The defendant's maintenance supervisor averred that prior to the plaintiff's incident, there had been no reported problems with the door or injuries attributable to it. *Id.* at 1128; *see also Fontana v. R.H.C. Development, LLC*, 69 A.D.3d 561, 892 N.Y.S.2d 504 (N.Y. App. Div. 2010) (Slip Op.) (holding door did not constitute defective or dangerous condition, regardless of possibility that door could close fast enough and hard enough to cause injuries, where no one had ever taken special precautions while holding the door and no one had ever complained about the door); *Lezama v. 34-15 Parsons Blvd. LLC*, 16 A.D. 3d 560, 792 N.Y.S.2d 123 (N.Y. App. Div. 2005) (Slip Op.).

In this case, there is no evidence that Defendant had knowledge of a dangerous or defective condition of the door, and therefore Defendant cannot be held liable for Plaintiff's injuries.

CONCLUSION

For the foregoing reasons, the trial court should have directed a verdict in Defendant's favor. Defendant respectfully requests that the result below be reversed and that judgment be entered for Defendant.

Respectfully submitted,



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May 9, 2013.

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PROOF OF SERVICE

I certified that I have served the Initial Reply Brief of Respondent-Appellant on Appellant-Respondent, Susan Anne Bell Lynch, by depositing a copy of each in the United States Mail, postage prepaid, on May 9, 2013, addressed to her attorney of record, Kevin M. Barth, Esquire, Ballenger, Barth, Hoefer & Lewis, LLP, P.O. Box 107, Florence, SC 29503.

Victoria H. Moody – Paralegal

May 9, 2013.

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May 9, 2013

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, SC 29201

Re: Susan Anne Bell Lynch v. Carolina Self Storage Centers, Inc.
C/A No: 10-CP-21-2170 / Appellate Case No. 2012-212109
ELS File No. 434-00008

Dear Ms. Kitchings:

I enclose the Initial Reply Brief of Respondent-Appellant for filing. I have enclosed an extra copy that I would appreciate your file-stamping and returning to me via my courier. By copy of this letter, I am serving opposing counsel with the brief as set forth in the enclosed Proof of Service. Thank you for your attention to this matter.

Sincerely,

Kirby D. Shealy III

KDS/vhm

cc: Kevin M. Barth, Esquire
Mr. Steve Oliver
Mr. Jay Wallace