Application of Intervening and Superseding Act in Negligence Cases as a Basis for Summary Judgment

By Christian Stegmaier

Most personal injury actions in South Carolina sound in negligence. In a negligence action, the plaintiff must prove proximately-caused damages. *Hurd v. Williamsburg Cty.*, 363 S.C. 421, 611 S.E.2d 488 (2005); *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993).

Proximate cause requires proof of both causation in fact and legal cause. *Oliver v. South Carolina Dep't of Hwys. & Pub. Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992). Causation in fact is proved by establishing the plaintiff's injury would not have occurred "but for" the defendant's negligence. *Id.* at 316, 422 S.E.2d at 130. Legal cause is proved by establishing foreseeability. *Id.* An injury is foreseeable if it is the natural and probable consequence of a breach of duty. *Hurd*, 363 S.C. at 428, 611 S.E.2d at 492.

But what happens when an intervening and superseding act occurs between the original act of alleged negligence and injury, which calls into question whether the original alleged tortfeasor is liable for the plaintiff's purported damages? Is there a prospect for summary judgment or is the defendant absolutely forced to submit the case to a trial jury?

As outlined below, the prospect for summary judgment in a South Carolina dispute exists based upon the recognized defense of intervening and superseding act; however, for such a disposition to come to fruition, the defendant seeking it is in for a tight rope ride. It can be achieved, but it's a challenge. *See Ballou v. Sigma Nu Gen. Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986) ("Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law.").

It has been held a third party's intervening acts of wrongdoing do not break the causal chain if the acts were foreseeable. *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997) (citing *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978); *see also Bramlette v. Charter–Medical–Columbia*, 302 S.C. 68, 393 S.E.2d 914 (1990) (ruling primary wrongdoer's action is legal cause of injury if either intervening act or injury itself was foreseeable as natural and probable consequence of that action); *Stone v. Bethea*, 251 S.C. 157, 161–62, 161 S.E.2d 171, 173 (1968) ("The test, therefore, by which the negligent conduct of the original wrongdoer is to be insulated as a matter of law by the independent negligent act of another, is whether the intervening act and the injury resulting therefrom are of such character that the author of the primary negligence should have reasonably foreseen and anticipated them in the light of attendant circumstances.").

Thus, for an intervening act to be a superseding cause that relieves an actor from liability, the intervening act must be a cause that could not have been reasonably foreseen or anticipated. *Collins & Sons Fine Jewelry, Inc. v. Carolina Safety Sys., Inc.*, 296 S.C. 219, 371 S.E.2d 539 (Ct. App. 1988); *see also Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995) (holding

that for intervening act to break causal link, intervening act must be unforeseeable). Arguably, the lack of foreseeably analysis becomes easier for the moving party when the intervening and superseding act in question is of an intentional and/or criminal nature. This is because our courts have held generally that when, between original negligence and the occurrence of an injury, there intervenes a willful, malicious, and criminal act of a third person producing the injury, but that such was not intended by the negligent person and could not have been foreseen by him, the causal chain between the negligence and the accident is broken. *Stone*, 251 S.C. at, 162, 161 S.E.2d at 173–74 (1968) (citation omitted).

Whether an intervening act breaks the causal connection between the original alleged tortious act and subsequent injury is a typically question for the fact finder and this determination will not be disturbed on appeal unless found to be without evidence which reasonably supports finding. *Collins & Sons Fine Jewelry*, 296 S.C. at 229, 371 S.E.2d at 545 (Ct. App. 1988);

This above-cited case law alone creates a tall hurdle for defendants seeking summary judgment in intervening and superseding act cases. This hurdle got that much higher with the Supreme Court's decision in *Hancock v. Mid–South Management Company, Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), which held that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a "mere scintilla of evidence" in order to withstand a motion for summary judgment.

However, "scintilla of the evidence" does not mean "suspend all disbelief" or give license to the court to refuse to critically examine the fact pattern to determine if a genuine issue of material fact exists. Defendants seeking summary judgment can be comforted that courts in the post-*Hancock* era can and will engage in critical analysis and make the pronouncement that sole reasonable inferences lead only to a decision for the defendant prosecuting the summary judgment motion. *See, e.g.*, *Bass v. Gopal*, 384 S.C. 238, 247, 680 S.E.2d 917 (Ct. App. 2009), *aff'd*, 395 S.C. 129, 716 S.E.2d 910 (2011) (affirming the Circuit Court's grant of summary judgment, which included the conclusion that, as a matter of law, the defendant's negligence exceeded any negligence on the part of the defendants); *see also Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) (holding If the sole reasonable inference that may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent, the circuit court may determine judgment as a matter of law in favor of the defendant); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997) ("The particular facts and circumstances of each case determine whether the question of proximate cause should be decided by the court or by the jury. Only when the evidence is susceptible to only one inference does it become a matter of law for the court.") (citations omitted); Leon Green, *Rationale of Proximate Cause* 132 (1927) ("Causal relation is one of fact. It is always for the jury, except when the facts are such that they will support only one reasonable inference.") (footnote and emphasis in original omitted).

Thus, notwithstanding *Hancock's* "scintilla of the evidence" standard, the trial court's discretion to engage in a critical analysis of the facts, as articulated in *Bass*, *Bloom*, and *Small* remains good law in South Carolina. Thus, to answer the legendary question posed by Lloyd

Christmas from *Dumb and Dumber*, "So, you're telling me there's a chance?" for summary judgment, the answer is "Yes." With that said, the stars must very much align to put a defendant in a position to obtain a summary judgment order, holding the intervening and superseding act (or acts) operate to preclude recovery by the plaintiff as a matter of law.

So, what is the recipe for success for a defendant seeking summary judgment in an intervening and superseding act case? A favorable set of facts—when viewed objectively and honestly–is key. Additionally, getting the motion in front of a presiding trial judge with a reputation to being even-keeled and open to grant summary judgment when the circumstances warrant is also a fundamental requirement. As well, the adroit use of discovery devices from the inception of the case such as well-drafted requests to admit and carefully crafted deposition questions built to engender admissions from the plaintiff and material witnesses, which support the conclusion that the evidence is susceptible to only one inference, is mission critical too. Put all these together and a defendant pursuing such an outcome has a fighting chance.

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