

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
2ND JUDICIAL CIRCUIT

HEATHER CRESPO,
Plaintiff,

v.

RHETT RIVIERE, JOSEE RIVIERE,
CHASE ENTERPRISES, LLC OF SOUTH
CAROLINA, AND R.C. RIVIERE
PROPERTIES, LLC,
Defendants.

C/A No. 2022-CP-02-02323

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
AS TO LIABILITY AGAINST
RHETT RIVIERE ON ALL CLAIMS**

Plaintiff Heather Crespo ("Plaintiff"), by and through her undersigned attorneys, under Rules 26 and 56, SCRPC, hereby moves for an order granting her summary judgment as to liability on all claims against Rhett Riviere.

BACKGROUND / PROCEDURAL HISTORY

Plaintiff filed this lawsuit on October 10, 2022, alleging six (6) claims against Rhett Riviere, as follows: (i) Negligence / Gross Negligence, (ii) Invasion of Privacy (Wrongful Intrusion into Private Affairs), (iii) Intentional Infliction of Emotional Distress, (iv) Constructive Fraud, (v) Negligence *Per Se* for violations of S.C. Code Ann. § 40-57-20 *et seq.*, and (vi) Unfair Trade Practices Act under S.C. Code Ann. § 39-5-10 *et seq.* This motion is also supported by the attached Affidavit of Heather Crespo, dated July 25, 2022.

In her sworn Affidavit (attached here as **Exhibit 1**), Plaintiff sets forth the horrifying account of her discovery in July 2022 that she (and her husband at the time) were secretly recorded by Defendants while in the bedroom and bathroom of the rental property owned and managed by Defendants in 2001. (Affidavit at ¶¶'s 2-6, 9). Plaintiff never consented to any such

recordings. (Affidavit at ¶ 7). Plaintiff immediately met with law enforcement and reported the newly discovered voyeuristic behavior of Riviere. (Affidavit at ¶¶'s 9-11).

Riviere was arrested on July 29, 2022, and charged with two counts of “Voyeurism,” in violation of S.C. Code Ann. § 16-17-470. (Criminal Case Nos. 2022-A-02-10700181 and 0210700182). Riviere had earlier been arrested and charged with “Voyeurism,” on June 3, 2021 related to the events as alleged by another victim that stayed in an Airbnb house owned by Riviere / Chase Enterprises, LLC of South Carolina (“Chase”). (Criminal Case No. 2021-A-02-10700228, and Civil Case No. 2021-CP-02-00889). Riviere settled all claims brought against him in the 2021-CP-02-00889 lawsuit in 2022. Riviere was also sued based on similar voyeuristic activities in Case Nos. 2020-CP-02-01616 and 2021-CP-02-00333, each of which has since been settled, and dismissed, respectively, in June and October of 2021.

Riviere also brought a lawsuit in October of 2019 (Case No. 2019-CP-02-02728) against his former fiancée, Katherine Thomas. Thomas had reported Riviere’s recording activities to Aiken DPS and SLED in August of 2019. The record in the ‘2728 case was sealed by an “Order Confirming Settlement,” dated March 12, 2020, providing, *inter alia*, “[t]he Clerk of Court shall seal this file and render it inaccessible to all persons including court personnel. The seal shall not be opened except upon a Court order issued after notice to all parties with each party having a right to object to or be heard on the question.” *Id.* at ¶ 11. Upon intervention in the ‘2728 case by Julianne Foster and a motion to unseal filed Feb. 11, 2022, the ‘2728 case record was unsealed by an order dated March 10, 2022.

THE RIVIERE DEPOSITIONS

Riviere’s deposition was scheduled to occur in the 2021-CP-02-00889 case on Nov. 3, 2022. Plaintiff Julianne Foster’s claims against Riviere were resolved before the deposition

occurred. On July 12, 2023, Riviere was deposed in this case on a Notice of Deposition also served by counsel to Plaintiff. Despite sitting for the deposition, Riviere provided very little answers to the questions. Instead, he invoked his 5th Amendment Privilege against Self Incrimination throughout, as is shown in the 125-page deposition transcript. (*See Exhibit 2*).

The effect of invoking the 5th Amendment Privilege is that Riviere has offered no evidence to contradict the factual allegations in Plaintiff Heather Crespo’s Complaint or in her Affidavit. (**Exhibit 1**). *See Grosshuesch v. Cramer*, 377 S.C. 12, 22, 659 S.E.2d 112, 117 (2008) (stating, “the privilege against self-incrimination has been explained in practical terms as an assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding.”). In *Griffith v. Griffith*, 332 S.C. 630, 639, 506 S.E.2d 526, 530-531 (Ct. App. 1998), the Court of Appeals stated:

The privilege against self-incrimination is intended to be a shield and not a sword. Therefore, ‘if a plaintiff seeks affirmative relief or a defendant pleads an affirmative defense[,] he should not have it within his power to silence his own adverse testimony when such testimony is relevant to the cause of action or the defense.’

Id. (underline emphasis added). “It is permissible for the fact finder to draw an adverse inference in a civil case against a party invoking the Fifth Amendment privilege against self-incrimination.” *Id.* at 527.

When the plaintiff seeks summary judgment, a defendant invoking the 5th Amendment Privilege has produced **no evidence** for the Court to view “in in the light most favorable to [that defendant as] the non-moving party.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when a properly supported motion sets forth facts

that remain undisputed or are contested in a deficient manner. McLeod Reg'l Med. Ctr., 626 S.E.2d at 5. Summary judgment under Rule 56, SCRPC, is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Gecy v. S.C. Bank & Tr., 422 S.C. 509, 516, 812 S.E.2d 750, 754 (Ct. App. 2018) (underline emphasis added). “[I]n 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.” Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” McLeod Reg'l Med. Ctr., 626 S.E.2d at 3. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). “Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues.” Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

A court is not to grant summary judgment where discovery is incomplete or where further development of the facts is necessary. As explained in Dawkins v. Fields, 580 S.E.2d 433, 354 S.C. 58 (2003):

Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the

party is “not merely engaged in a ‘fishing expedition.’” [Internal citations omitted].

Id.

ANALYSIS OF CLAIMS

Plaintiff’s Affidavit (**Exhibit 1**) sets forth facts in support of her claims. These facts do not require any additional analysis of plausibility or credibility, as they are also supported by the subsequent arrests warrants for Riviere on Criminal Case Nos. 2022-A-02-10700181 and 0210700182. Further, the allegations of Plaintiff’s rental are corroborated by the videos SLED obtained from Riviere’s devices that show the Plaintiff in the most private and intimate moments with her husband in 2001 in the rental unit owned by Riviere “located on Grace Avenue near the corner of Two Notch Road SE in Aiken.” (Affidavit at ¶ 5).

I. Negligence

“To prevail on a negligence claim, a plaintiff must establish duty, breach, causation, and damages.” *Lord v. D & J Enters.*, 407 S.C. 544, 558, 757 S.E.2d 695, 702 (2014) (citing *Daniel v. Days Inn of Am., Inc.*, 356 S.E.2d 129, 131 (Ct. App. 1987)).

Plaintiff’s Affidavit sets forth facts necessary to show “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Gecy*, 812 S.E.2d at 754. A duty was owed and breached by Riviere, as the landlord and person responsible for maintaining the property and protecting the tenant’s privacy. Riviere’s deposition fails entirely in carrying his burden to show a genuine issue of fact.

For example, on page 19, at lines 6-8, Plaintiff’s counsel asked Riviere: “Would you agree that the Crespos had a reasonable expectation of privacy in the bathroom of your rental property?” In response, Riviere invoked the 5th Amendment Privilege, stating, “**I invoke the Fifth.**” (Riviere Depo. at p. 19, line 10). Similarly, and also on page 19, at lines 11-13, Plaintiff’s

counsel asked Riviere: “Did you make the videos of the Crespos so that they would be available to you and to other third parties for sexual gratification?” In response, Riviere again invoked the 5th Amendment Privilege, stating, “**I invoke the Fifth.**” (Riviere Depo. at p. 19, line 16).

Additionally, and also on page 19, at lines 17-18, Plaintiff’s counsel asked Riviere: “Did you put any of the videos of the Crespos on the internet or on the dark web?” In response, Riviere again invoked the privilege, stating, “**I invoke the Fifth.**” (Riviere Depo. at p. 19, line 20).

Riviere was asked, “Did you videotape [the Crespos] having any sexual activity?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 18, lines 6-9). Riviere was asked, “Did you videotape [the Crespos] while they were in the nude and in the bathroom -- while they were nude and in the bathroom?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 18, lines 10-14). “Did the Crespos have any knowledge that you were taping them, either in their bedroom, or in their bathroom?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 18, lines 15-20). “Did the Crespos consent to being videotaped by you, at any time?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 18, lines 21-24).

For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her Negligence Claim and setting a date for a damages hearing.

II. Invasion of Privacy (Wrongful Intrusion into Private Affairs)

“When a plaintiff bases an action for invasion of privacy on intrusion alone, bringing forth no evidence of public disclosure, it is incumbent upon him to show a blatant and shocking disregard of his rights, and serious mental or physical injury or humiliation to himself resulting therefrom.” *Rycroft v. Gaddy*, 281 S.C. 119, 121, 314 S.E.2d 39, 41 (Ct. App. 1984).

Plaintiff’s Affidavit again sets forth facts necessary to show “there is no genuine issue as to any material fact and that [she] is entitled to a judgment as a matter of law [on her Invasion of

Privacy claim].” *Gecy*, 812 S.E.2d at 754. Riviere’s deposition again does nothing to contradict Plaintiff’s Affidavit.

For example, Riviere was asked, “Did you breach the duty by illegally videotaping them in private and intimate moments?” His response, “**I invoke the Fifth.**” (*Riviere Depo.* at p. 35, lines 4-8).

For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her Invasion of Privacy Claim and setting a date for a damages hearing.

II. **Intentional Infliction of Emotional Distress**

To “recover for the intentional infliction of emotional distress, a plaintiff must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct, *Restatement (Second) of Torts* § 46, Comment i; (2) the conduct was so ‘extreme and outrageous’ as to exceed ‘all possible bounds of decency’ and must be regarded as ‘atrocious, and utterly intolerable in a civilized community,’ *Id.*, Comment d; (3) the actions of the defendant caused the plaintiff’s emotional distress; and (4) the emotional distress suffered by the plaintiff was ‘severe’ so that ‘no reasonable man could be expected to endure it.’” *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778-779 (1981).

Plaintiff’s Affidavit again sets forth facts necessary to show “there is no genuine issue as to any material fact and that [she] is entitled to a judgment as a matter of law [on her Intentional Infliction claim].” *Gecy*, 812 S.E.2d at 754. Riviere’s deposition again does nothing to contradict Plaintiff’s Affidavit.

To be sure, the acts of Riviere as set forth in the Plaintiff's Affidavit set forth the elements of criminal voyeurism, which is designated in the S.C. Code as an Offense Against Public Policy. S.C. Code Ann. § 16-17-10 *et seq.*

For example, Riviere was asked, "Do you agree that your conduct was outrageous?" His response, "**I invoke the Fifth.**" (Riviere Depo. at p. 37, lines 22-25). "Do you agree that your conduct was extreme and outrageous?" (Riviere Depo. at p. 49, lines 5-9). Riviere was also asked, "Have you purchased multiple hidden cameras for the purpose of videotaping people?" His response: "**I invoke the Fifth.**" (Riviere Depo. at p. 66, lines 16-19). "Did the kind of cameras that you purchased, were they designed to be concealed?" His response: "**I invoke the Fifth.**" (Riviere Depo. at p. 66, lines 20-23).

Riviere not only did not deny any of the specific allegations, he did not even deny the reprehensible nature of his repeated voyeuristic activities. For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her Intentional Infliction of Emotional Distress Claim and setting a date for a damages hearing.

IV. **Constructive Fraud**

"Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feator, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests." *O'Quinn v. Beach Associates*, 272 S.C. 95, 102, 249 S.E.2d 734, 737 (1978). "Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud." *Id.* "To establish constructive fraud all elements of actual fraud except the element of intent must be established." *Id.*

Accordingly, "[t]o prevail on a cause of action for [constructive] fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2)

its falsity; (3) its materiality; (4) [Riviere ought to have known of its falsity]; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.” *See e.g., Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010).

Plaintiff’s Affidavit, for example, at ¶ 6ⁱ alone, again sets forth facts necessary to show “there is no genuine issue as to any material fact and that [she] is entitled to a judgment as a matter of law [on her Constructive Fraud claim].” *Gecy*, 812 S.E.2d at 754. Riviere’s deposition again does nothing to contradict Plaintiff’s Affidavit.

For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her Constructive Fraud Claim and setting a date for a damages hearing.

V. Negligence Per Se

“The doctrine of negligence *per se*, on the other hand, provides that where a cause of action does exist at common law, the standard of conduct to which a defendant will be held may be defined as that required by statute, rather than as the usual reasonable person standard.” *Denson v. Nat’l Cas. Co.*, 439 S.C. 142, 148, 886 S.E.2d 228, 231 (Mar. 29, 2023).

Plaintiff’s Affidavit once again sets forth facts necessary to show “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Gecy*, 812 S.E.2d at 754. A duty was owed and breached by Riviere, as the landlord and person responsible for maintaining the property and protecting the tenant’s privacy. Riviere’s deposition fails entirely in carrying his burden to show a genuine issue of fact.

For example, on page 52, at lines 23-25, Plaintiff’s counsel asked Riviere: “Do you agree that Airbnb, and you, and Ms. Thomas acted in violation of South Carolina Code 40-57-20, which

requires that real estate brokers must be licensed in the State of South Carolina?” In response, Riviere invoked the 5th Amendment Privilege, stating, “**I invoke the Fifth.**” (Riviere Depo. at p. 53, line 4). Similarly, on page 39, at lines 23-25, Plaintiff’s counsel asked Riviere: “Okay. Do you agree that, by Statute, you had a duty as the landlord of the Crespos, that you had a duty and a special relationship with?” In response, Riviere stated, “**I invoke the Fifth.**” (Riviere Depo. at p. 40, line 4).

For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her Negligence *Per Se* Claim and setting a date for a damages hearing.

VI. S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq.

“To recover in an action under the [Unfair Trade Practices Act], the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Turner v. Kellett*, 426 S.C. 42, 48, 824 S.E.2d 466, 469 (Ct. App. 2019) (citing *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)).

Plaintiff’s Affidavit sets forth all facts necessary to show “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law [on her UTPA claim].” *Gecy*, 812 S.E.2d at 754. The other cases against Riviere show he engaged in a repeatable and repeated pattern of leasing hidden-camera laden properties dating back at least as far as 2001.

For example, Riviere was asked, “Did you deceive the people that were renting from you into thinking that they would have privacy in your rental properties?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 26, lines 5-9). “Would you agree with me that the people who rented

from you had an expectation of privacy in these properties?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 26, lines 10-14). “Would you agree with me that you violated their privacy rights by filming them without their knowledge?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 26, lines 15-20). “Did the companies that you operate receive rental income from the people who rented?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 26, lines 21-24).

Riviere was asked, “do you agree that you violated the South Carolina Unfair Trade Practices Act, along with Airbnb and Ms. Thomas, by engaging in unfair and deceptive acts and practices by misrepresenting that the Airbnb rental had certain characteristics or qualities?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 55, lines 14-24). “Did you illegally videotape [RS]? His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 57, lines 15-17). “Was [RS] a tenant of yours during -- several times over the years 2008, 2011, and 2013?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 57, lines 18-22). “Did your former wife, Chris Riviere, find out that you were videotaping young girls while they undressed?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 59, lines 17-21). “Have you placed hidden cameras in all of the rental properties that you have owned throughout the years?” His response, “**I invoke the Fifth.**” (Riviere Depo. at p. 58, lines 3-7).

For these reasons, Plaintiff is entitled to an order granting her summary judgment on liability for her SC UTPA Claim and setting a date for a damages hearing.

CONCLUSION

For the reasons set out above, the Court should grant Plaintiff’s motion and set a date for a damages hearing as against Rhett Riviere.

[signature on next page]

Respectfully submitted,

/s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565
WESLEY D. FEW, LLC
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906 | wes@wesleyfew.com

Deborah B. Barbier, S.C. Bar No. 6920
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
803-445-1032 | dbb@deborahbarbier.com

Ryan L. Beasley, S.C. Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street
Greenville, South Carolina 29601
(864) 679-7777 | rlb@ryanbeasleylaw.com

ATTORNEYS FOR PLAINTIFF

August 23, 2023
Greenville, South Carolina

Table of Exhibits

Ex. 1 – Plaintiff’s Affidavit, dated July 25, 2022; and

Ex. 2 – Riviere’s Deposition Excerpts (date: July 12, 2023).

ⁱ Plaintiff’s Affidavit at Para. 6, states, “Rivere never disclosed to me or Gabriel that he had hidden video cameras in the house that we were renting. He never disclosed to us that there was a hidden camera pointing at the bed in which we slept. He never disclosed to us that he was secretly recording Gabriel and I engaged in sexual activity. He never disclosed to us that there was a hidden camera in the bathroom of the house and that he was recording us while we undressed and showered.” (**Exhibit 2**).