

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2015-CP-10-3566

RANDY SKELTON AND PENELOPE
SKELTON ,

PLAINTIFF,

vs.

SUMMERVILLE PLAZA, LLC; BI-LO,
LLC; AND BI-LO, INC.,

DEFENDANTS.

**AMENDED ANSWER OF DEFENDANTS
BI-LO, LLC AND BI-LO, INC.
(JURY TRIAL REQUESTED)**

2016 DEC 12 PM:29
CLERK OF COURT

The Defendants above-named, BI-LO, LLC and BI-LO, Inc., hereby answer the Plaintiffs' Complaint as follows:

1. Each and every allegation of the Plaintiffs' Complaint not hereinafter expressly admitted, qualified and/or explained is denied.

2. The Defendants admit, on information and belief, the allegations contained in Paragraph 1 of the Plaintiffs' Complaint.

3. Paragraph 2 of the Plaintiffs' Complaint is not directed to the Defendants; accordingly, no response is required from the Defendants. By way of further response, to the extent that Paragraph 2 of the Plaintiffs' Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

4. In response to Paragraphs 3 and 4 of the Plaintiffs' Complaint, the Defendants admit only that BI-LO, LLC is a Delaware company that conducts some of its business in Dorchester County, including the operation of the store in question. By way of further response, to the extent that Paragraphs 3 and 4 of the Plaintiffs' Complaint attempt to allege or do allege any

cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

5. Paragraph 5 of the Plaintiffs' Complaint is a statement and/or conclusion of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraph 5 of the Plaintiffs' Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

6. Paragraph 6 of the Plaintiffs' Complaint is not directed to the Defendants; accordingly, no response is required from the Defendants. By way of further response, to the extent that Paragraph 6 of the Plaintiffs' Complaint attempts to allege or does allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

7. Paragraphs 7, 8 and 9 of the Plaintiffs' Complaint are statements and/or conclusions of law, and the Defendants are not required to admit or deny the same. By way of further response, to the extent that Paragraphs 7, 8 and 9 of the Plaintiffs' Complaint attempt to allege or do allege any cause of action, claim, act, error or omission as to the Defendants, those allegations are denied, and strict proof thereof is demanded.

8. The Defendants lack sufficient information with which to fully respond to the allegations contained in Paragraph 10 of the Plaintiffs' Complaint; accordingly, these allegations are denied, and strict proof thereof is demanded.

9. The Defendants deny the allegations contained in Paragraphs 11, 12 and 13 of the Plaintiffs' Complaint, and the "Wherefore" paragraph following Paragraph 13 of the Plaintiffs' Complaint, and strict proof thereof is demanded.

10. In response to Paragraph 14 of the Plaintiffs' Complaint, the Defendants reiterate each and every prior paragraph of this Answer as fully and completely as if set forth herein verbatim.

11. The Defendants admit, on information and belief, the allegations contained in Paragraph 15 of the Plaintiffs' Complaint.

12. The Defendants deny the allegations contained in Paragraph 16 of the Plaintiffs' Complaint, and strict proof thereof is demanded.

13. The Defendants also deny the allegations contained in the final "Wherefore" Paragraph of the Plaintiffs' Complaint, which is the remainder of the Plaintiffs' Complaint, and strict proof thereof is demanded.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE:
(Comparative Negligence)

14. The Defendants, on information and belief, would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the Plaintiffs' own acts of comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness, which acts on the part of the Plaintiffs combined and contributed and concurred with any negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Defendants, which is denied, without which the alleged incident and resulting alleged damages would not have occurred or have been sustained, and the Defendants do plead such comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness on the part of the Plaintiffs as the direct and proximate cause of the injuries and damages sustained by the Plaintiffs as alleged in the Complaint. Accordingly, the Defendants are entitled to a

determination as to the percentage with which the Plaintiffs' own comparative negligence, carelessness, recklessness, heedlessness, willfulness and wantonness contributed to this incident and the Plaintiffs' alleged injuries and damages and to the reduction of any sum awarded to the Plaintiff by an amount equal to the percentage of the Plaintiffs' own comparative negligent, careless, reckless, heedless, willful and wanton conduct.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

15. The Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, and Fourteenth Amendments of the Constitution of the United States in the following particulars:

- a. The Plaintiffs' claims for punitive damages violate the Fifth Amendment for the following reasons:
 - i) The double-jeopardy clause is violated because multiple awards of punitive damages can be imposed upon the Defendants for the same act or omission, and because an award of punitive damages can be imposed upon the Defendants, even though the Defendants were convicted or acquitted of a factually related defense in an underlying criminal proceeding; and
 - ii) The self-incrimination clause is violated because Defendants can be compelled to give testimony against themselves;
- b. The Plaintiffs' claims for punitive damages violate the Sixth and Fourteenth Amendments because such damages may be imposed according to the lesser standard of proof applicable in civil cases, whereas punitive damages are a fine or penalty and are quasi-criminal in nature and, as such require the "beyond the reasonable doubt" standard of proof;
- c. The Plaintiffs' claims for punitive damages violate the Defendants' right to access to the courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Defendants' exercise of that right;
- d. The Plaintiffs' claim for punitive damages violate the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

- i) The standard or test for determining the requisite mental state of defendant for imposition of punitive damages is void for vagueness;
- ii) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left up to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of Defendants' alleged egregious conduct;
- iii) In cases involving more than one defendant, the evidence of the net worth of each is admissible, and the jury is permitted to award punitive damages in differing amounts based upon the affluence of a given defendant;
- iv) The tests or standards for the imposition of punitive damages differ from state to state, such that a specific act or omission of a given defendant may or may not result in the imposition of punitive damages, or may result in differing amounts of punitive damages, depending upon the state in which the suit is filed, such that the defendant is denied equal protection of law; and
- v) Punitive damages may be imposed without a requisite showing of hatred, spite, ill will or wrongful motive.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Improper Claim for Punitive Damages)

16. Punitive damages are inappropriate in this case since the Defendants did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. 15-32-510 et. seq.)

17. The Defendants do plead the limitations on damage awards found in S.C. Code Ann. 15-32-510 et. seq., and request bifurcation in accordance with these code sections.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)

18. The Defendants would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom the Defendants had no supervision or control, and the Defendants do plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiffs as alleged in the Complaint.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(No Duty to Warn of the Unknowable)

19. The Defendants had no duty to warn about possible dangers or hazards, if any, which were not known or which were not capable of being known.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)

20. The Plaintiffs' claims are barred by the doctrine of assumption of the risk and/or applicable statutory law of the State of South Carolina in that assuming, but not admitting, the area in question was dangerous, the Plaintiffs discovered and were aware of such, assumed such risk and proceeded unreasonably, thus resulting in the alleged injury.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)

21. The Plaintiffs' Complaint fails to state any claims upon which relief can be granted as to the Defendants, and the Plaintiffs' Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)

22. The Defendants would allege and show that the Plaintiffs were, at all times, fully aware of the alleged dangers as set forth in the Complaint, and that the Plaintiffs were negligent and careless in failing to take necessary precautions and that the Plaintiffs assumed any alleged risk incident to the allegations set forth in the Complaint, and that this negligent, careless, reckless, heedless, willful and wanton assumption of the risk was the proximate cause of the Plaintiffs' alleged injuries and damages as set forth in the Complaint; therefore, the Plaintiffs are herein barred from recovery.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Laches, Waiver and/or Estoppel)

23. The Plaintiffs' claims are barred by the doctrines of laches, waiver and/or estoppel.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Substantial Compliance)

24. The Defendants would allege and show that they have substantially performed all requirements, contractual or otherwise, in a workmanlike manner.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 42-1-540 et. seq.)

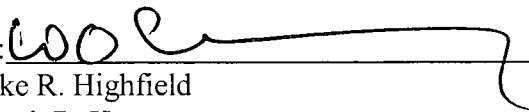
25. The Defendants do plead that Plaintiffs' claims are barred by S.C. Code Ann. § 42-1-540 et. seq. and the doctrines of statutory employer and sole remedy.

FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE
(Reliance on Additional Defenses)

26. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend their Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendants pray that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper. The Defendants also request a trial by jury.

YOUNG CLEMENT RIVERS, LLP

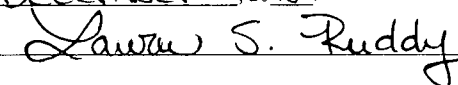
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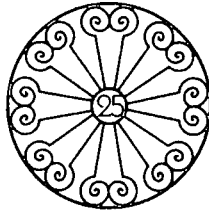
Charleston, South Carolina

12/12, 2018

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 12 day of

December, 2018.




YCR LAW

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December 12, 2018

Via Hand Delivery

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Randy Skelton and Penelope Skelton v. Summerville Plaza, LLC; BI-LO, LLC; and
BI-LO, Inc.
Appellate Case No. 2016-001486
Case No.: 2015-CP-10-3566
YCR File: 903-20120985

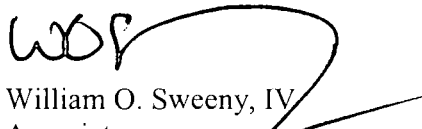
Dear Ms. Armstrong:

Enclosed please find the original and one copy of Defendant Bi-Lo's Amended Answer in the above-referenced matter. I would appreciate your filing the same and returning one time-stamped copy to me. By copy of this letter, I am serving counsel for the Plaintiff with a copy of the same.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP


William O. Sweeny, IV
Associate

WOS/lsr

Enclosure(s)

cc: Matthew E. Yelverton, Esquire, Yelverton Law Firm, LLC
D. Summers Clarke, II, Esquire, Barnwell Whaley Patterson & Helms, LLC