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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2023-00044
C/A No. 2021-CP-23-01487

Kevin Dwayne Chavis.....Appellant,

v.

Vansy Saensane and Ra Cha, Inc. d/b/a
Bangkok Tokyo Restaurant a/k/a
Bangkok Thai Restaurant,

of whom

Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant
a/k/a Bangkok Thai Restaurant is Respondent.

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Form 4 Order, filed January 30, 2023

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2301487

Kevin Dwayne Chavis
PLAINTIFF(S)

Vansy Saensane et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before the Court on Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant's Motion for Summary Judgment. The Court finds that as to all four causes of action against Defendant Bangkok, there exists no genuine issue of material fact and Defendant is entitled to judgment as a matter of law. Accordingly, it is ordered that Defendant Bangkok is dismissed from this lawsuit. Counsel for Defendant Bangkok is instructed to prepare a proposed formal order within 10 days and provide it to counsel for Plaintiff at the same time it is provided to the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Kevin Dwayne Chavis vs. Vansy Saensane , defendant, et al
Case Number: 2021CP2301487
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2023-01-29 18:31:13 page 3 of 3

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Lichtenthaler (1987).

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the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion. The number of illiterate people in the world is projected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is projected to reach 1.7 billion by the year 2015.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
KEVIN DWAYNE CHAVIS,	)	Civil Action No. 2021-CP-23-01487
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
VANSY SAENSANE AND RA CHA,	)	
INC. D/B/A BANGKOK TOKYO	)	
RESTAURANT A/K/A BANGKOK THAI	)	
RESTAURANT,	)	
	)	
Defendants.	)	

This matter was before the Court on January 27, 2023 on a Motion for Summary Judgment by Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (hereinafter "Defendant Bangkok"). After consideration of the arguments of counsel and evidence presented in this case, the Court grants summary judgment as to all claims against Defendant Bangkok.

FACTUAL BACKGROUND

Defendant Bangkok is a Thai cuisine restaurant located at 599 Haywood Road in Greenville, South Carolina. In September 2019, Defendant Vansy Saensane (hereinafter "Defendant Saensane" or "Saensane") held a 25% ownership interest in Defendant Bangkok. During operating hours, Defendant Saensane worked in the restaurant doing food prep, cooking, and occasional waitressing. On September 26, 2019, Defendant Bangkok's restaurant closed at 9:00 PM. After the restaurant closes, Defendant Saensane normally stays after hours to help clean up, do paperwork, and count money. After the restaurant closed on September 26, 2019, while doing paperwork/accounting, Defendant Saensane drank wine and served herself.

Defendant Saensane likely left the restaurant for the night around 10:00 PM on September 26, 2019. Defendant Saensane has no recollection of where she was between the hours of 10:00 PM and 12:46 AM the next morning. However, at 12:46 AM, on September 27, 2019, Saensane was traveling on North Pleasantburg Drive in Greenville, South Carolina when she was involved in an automobile accident with Plaintiff Kevin Chavis' ("Plaintiff") vehicle. As a result of this accident, Plaintiff brought this action against Defendant Bangkok for 1) Dram Shop Liability; 2) Negligence Per Se; 3) Negligent Hiring and Retention; and 4) Vicarious Liability.

STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate if "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 judgment as a matter of law." Rule 56(c). SCRCP. "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in the pleadings to withstand a summary judgment motion but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). "[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment

may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

DISCUSSION

I. Defendant Bangkok never served alcohol to Defendant Saensane; thus, Plaintiff’s Dram Shop claim is improper

In South Carolina, a third party injured by the actions of an intoxicated person in violation of S.C. Code Ann. § 61-4-580 may pursue a civil action against the vendor. *Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) (citing *Daley v. Ward*, 303 S.C. 81 (1990)). “Because South Carolina does not have a Dram Shop Act, our civil remedy arises out of criminal statutes.” *Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) (citing *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998)). In *Tobias*, the South Carolina Supreme Court held that:

“South Carolina Code Ann. § 61-4-580 (2) prohibits the knowing sale of beer or wine to an intoxicated person . . . In recognizing a private cause of action for a violation of [this] [statute], the Court of Appeals stated that their purpose is to promote public safety, and to prevent an already intoxicated person from becoming even more intoxicated, and thus a greater risk to the public at large, when he leaves the establishment. We agree.” 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998) (citing *Tobias v. The Sports Club, Inc.*, 323 S.C. 345, 474 S.E.2d 450 (Ct. App. 1996)).

Plaintiff’s Second Amended Complaint does not contain specific reference to any South Carolina statutes but the language of the Second Amended Complaint implies that Defendant Bangkok violated S.C. Code Ann. § 61-4-580 (2). The Courts in South Carolina have established that Dram Shop liability requires the actual sale of alcohol to an intoxicated person under S.C. Code Ann. § 61-4-580 (2). *Hartfield v. McDonald*, 671 S.E.2d 380, 381 S.C. 1 (S.C. Ct. App. 2008).

Defendant Bangkok argues that there is no evidence in this case that Defendant Saensane was sold any alcohol, nor is there any evidence or testimony that Defendant Saensane was served any alcohol by any employee or agent of Defendant Bangkok. The Court agrees. Plaintiff argues that

Defendant Saensane's version of events can result in a dram shop action in this state because Defendant Saensane, as a co-owner of Defendant Bangkok, served herself alcohol. The Court disagrees that South Carolina's dram shop framework operates in such a fashion. Dram shop liability in this state is wholly predicated on South Carolina's penal codes. Therefore, Plaintiff must cite a South Carolina penal statute which Defendant Bangkok violated in order to bring a dram shop action. The most commonly cited statute in South Carolina dram shop actions is S.C. Code Ann. § 61-4-580 (2), which states that "No holder of a permit authorizing the sale of beer or wine to a servant, agent, or employee of the permittee may knowingly . . . sell beer or wine to an intoxicated person." Plaintiff cites this statute in his Memorandum in Opposition to this Motion. The statute is clearly intended to prohibit an employee from selling alcohol to an intoxicated customer. The Court finds that Defendant Bangkok did not violate this statute. Defendant Saensane was not sold or served wine by any employee of Defendant Bangkok. Defendant Saensane was not a customer of Defendant Bangkok on September 26, 2019. There is no evidence of any transaction or sale of any alcohol by Defendant Bangkok to Defendant Saensane.

At oral arguments, Plaintiff's counsel argued that the Court should read S.C. Code Ann. § 61-4-580 (2) differently. Plaintiff's counsel argued that if the legislature intended to prohibit selling alcohol to an intoxicated customer, they would also want to prohibit giving alcohol away, which Plaintiff's counsel argued was similar to a co-owner taking it from the bar. Putting aside whether giving alcohol away is analogous to a co-owner taking it from a bar, the Court is bound by the statute's plain and unambiguous meaning. "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look or impose another meaning." *Richland*

County Sch. Dist. Two v. South Carolina Dep't of Educ., 355 S.C. 491, 496, 517 S.E.2d 444, 447 (Ct. App 1999) (citing *South Carolina Dep't of Revenue and Taxation v. Rosemary Coin Machines, Inc.*, 331 S.C. 234, 245, 500 S.E.2d 176, 182 (Ct. App. 1998)). “Words used in a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the operation of the statute.” *Id.* (quoting *Greenville Hospital System v. Provident Life & Accident Ins. Co.*, 330 S.C. 436, 442, 499 S.E.2d 232, 235 (Ct. App. 1998)).

The Court finds that the statute’s words are plain and unambiguous and clearly prohibit a permittee from selling alcohol to an intoxicated individual. If the legislature intended to use a word other than “sell” to capture the activity of restaurants giving away alcohol, it could have done so. The Court cannot substitute words in the statute based on what it feels the law should be. Additionally, the statute is clearly intended to apply to a transaction between two people, a representative of the permittee and an “intoxicated person”. Here, Defendant Saensane is the only person involved and took the alcohol herself. S.C. Code Ann. § 61-4-580 (2) does not apply to such a situation.

Plaintiff’s interpretation of the statute is also at odds with the public policy goals espoused by the South Carolina Supreme Court in recognizing the dram shop cause of action. The Court’s stated purpose was to promote public safety and hold restaurants responsible if they or their employees served intoxicated individuals. This cause of action encourages restaurants to instruct their employees to recognize when an individual is intoxicated and to stop serving them at that point. It is unclear from Plaintiff’s dram shop theory what Defendant Bangkok could have done to prevent Defendant Saensane from allegedly continuing to serve herself at the restaurant.

In his brief and at oral arguments, Plaintiff also argued that Defendant Bangkok violated

S.C. Code § 61-5-30. The Court need not address this contention, as S.C. Code § 61-5-30 was repealed by the legislature by 1996 Act No. 415 effective January 1, 1997.

In conclusion, the Court finds that Plaintiff has failed to present any evidence that Defendant Bangkok violated any South Carolina penal statutes. Therefore, Plaintiff's dram shop cause of action is dismissed.

II. Plaintiff's *Negligence per se* Claim is functionally identical to his dram shop claim and therefore must also be dismissed

Plaintiff has brought an additional cause of action against Defendant Bangkok for negligence per se. The court in *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988) established the test for determining when a duty created by statute will support an action for negligence. In order to show that the defendant owes a duty of care arising from a statute, "the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect." A statute can establish a duty to a Plaintiff, but the Plaintiff must show a violation of the statute to establish breach of the duty established by the statute. Plaintiff did not assert a specific statute in his Second Amended Complaint that he alleges Defendant Bangkok violated. However, in his Memorandum in Law in Opposition to this Motion, Plaintiff cited S.C. Code Ann. § 61-4-580, which is commonly known as the dram shop statute. As the Court has already discussed, Defendant Bangkok did not violate S.C. Code Ann. § 61-4-580. Therefore, Plaintiff's cause of action for Negligence per se is dismissed.

III. Defendant Saensane was not hired or retained by Defendant Bangkok and Defendant Bangkok had no reason to know that she created an undue risk of harm to the public.

Plaintiff's next cause of action against Defendant Bangkok is for negligent hiring and

retention. Defendant Bangkok argues that Defendant Saensane was not its employee. Rather, Defendant Bangkok argues Defendant Saensane was a 25% owner of the restaurant along with her fiancé Chai, who owned 25%, and the original owner of the restaurant, Allison, who owned 50%.

“Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two elements – knowledge of the employer and foreseeability of harm to third parties.” *Doe v. ATC, Inc.*, 367 S.C. 199, 205, 624 S.E.2d 447, 450 (Ct. App. 2005) (citing *Di Cosala v. Kay*, 91 N.J. 159, 450 A.2d 508, 516 (N.J. 1982)). “From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.” *Id.* “A Plaintiff must demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties.” *Id.* at 205, 624 S.E.2d at 451.

Plaintiff argues that although Defendant Saensane was a co-owner of the restaurant, she was also an employee. The Court disagrees. Defendant Saensane bought a stake in the restaurant in 2017 and began doing work at the restaurant because her personal income was determined by how well the restaurant performed. Defendant Saensane was involved in hiring the employees that staffed the restaurant. Defendant Saensane had no boss, could not be fired, and, most importantly, was not hired by anyone. Essentially, Plaintiff’s negligent hiring claim is based on the theory that Defendant Saensane negligently hired and retained herself by taking on responsibilities at the restaurant. The Court finds that this is not a proper Negligent Hiring and Retention action.

Even if Defendant Saensane was an employee, Plaintiff has not identified any prior

incident or conduct which would put Defendant Bangkok on notice that she should not be retained or hired. One of the fundamental elements of this claim is the “number and nature of prior acts of wrongdoing by the employee” *Doe*, at 205, 624 S.E.2d at 450. Plaintiff’s Second Amended Complaint does not identify a single act of wrongdoing committed by Defendant Saensane prior to this incident.

In summary, Defendant Bangkok did not hire Defendant Saensane and there is no evidence of prior misconduct committed by her sufficient to put Defendant Bangkok on notice of her alleged conduct in this case. Therefore, Plaintiff’s cause of action for Negligent Hiring and Retention is dismissed.

IV. Defendant Saensane was not an employee, and even if she was, she was not acting within the scope of her employment at the time of the accident.

Lastly, Plaintiff has brought a cause of action for Vicarious Liability against Defendant Bangkok. “The modern doctrine of *respondeat superior* makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant’s employment.” *Froneberger v. Smith*, 406 S.C. 37, 52, 748 S.E.2d 625, 633 (Ct. App. 2013) (quoting *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986)). “An act falls within the scope of the servant’s employment if it was reasonably necessary to accomplish the purpose of the servant’s employment, and it was done in furtherance of the master’s business.” *Id.* (quoting *Wade v. Berkeley Cnty*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998)). “As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, any injury sustained by accident at such time does not arise out of and in the course of his employment.” *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998) (citing *McDaniel v. Bus Terminal Restaurant Management*

Corp., 271 S.C. 299, 247 S.E.2d 321 (1978)).

As previously discussed, Defendant Saensane was a co-owner, not an employee, of Defendant Bangkok. Therefore, Plaintiff's claim for vicarious liability is not proper. Additionally, even if Defendant Saensane was an employee, she was not acting in the scope of her employment with Defendant Bangkok when the accident occurred on September 27, 2019. The accident occurred at 12:56 AM, nearly four hours after the restaurant had closed for the day. Defendant Saensane left the restaurant two to three hours prior to the accident. South Carolina law is clear that even if Defendant Saensane had been driving straight home after leaving the restaurant, the commute would still not take place within the scope of her employment.

Plaintiff has also alleged vicarious liability against Defendant Bangkok under a theory of joint enterprise. South Carolina case law regarding this cause of action is extremely limited. However, the 2nd Restatement of Torts defines a Joint Enterprise as: (1) an agreement, express or implied, among the members of a group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control. Restat 2d of Torts § 491, cmt. c.

Our case law is unclear regarding whether our state has adopted the Restatement definition of a joint enterprise and the Court sees no reason to address that issue here. However, after review of the relevant case law in this state, it appears South Carolina courts have only discussed joint enterprise liability in the context of automobile accidents in which two or more people were in the subject vehicle. In *Pruitt v. Bowers*, the South Carolina Court of Appeals affirmed the circuit court's grant of summary judgment in favor of the passenger of a vehicle where he had become intoxicated with the driver before the subject incident. 330 S.C. 483, 499

S.E.2d 250 (Ct. App. 1998). The court held that “to establish joint venture or enterprise liability between a driver and passenger, there must be a common purpose or community of interest, and the passenger must have an equal right to control the direction and management of the vehicle.” *Id.* at 487, 499 S.E.2d at 252 (citing *Lollar v. DeWitt*, 255 S.C. 452, 179 S.E.2d 607 (1971)). “[Plaintiff] failed to present any evidence to support a finding that [the driver] was [the passenger’s] agent or that [the passenger] had a voice in the management or direction of movements of the vehicle . . . [the driver] owned the vehicle, drove the vehicle, and ultimately controlled the vehicle.” *Id.* at 487, 499 S.E.2d at 253.

Plaintiff has not cited any South Carolina case which has extended joint enterprise liability in a motor vehicle accident to any defendant other than the passenger of the vehicle. Plaintiff’s theory appears to be that Defendant Bangkok, a business entity, is engaged in a joint enterprise with Defendant Saensane, the entity’s co-owner, such that any of her actions in a motor vehicle can be imparted onto Defendant Bangkok. The Court finds that this is not a proper cause of action. Defendant Bangkok had no common purpose or pecuniary interest in wherever Defendant Saensane was headed when the accident occurred and had no control of Defendant Saensane’s management or direction of movements of the vehicle. Further, South Carolina’s case law regarding joint enterprise is clearly limited to situations involving two individuals. Here, Defendant Saensane was the only person in the vehicle and there has been no allegation that any other agent of Defendant Bangkok was even aware of Defendant Saensane’s movements on the date of this incident. For these reasons, Plaintiff’s causes of action for and related to Vicarious Liability are dismissed.

CONCLUSION

In conclusion, the Court finds that there exist no genuine issues of material fact and that Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant is entitled to judgment as a matter of law regarding all four of Plaintiff's causes of action against it. Therefore, Defendant Bangkok's Motion for Summary Judgment is GRANTED and Defendant Bangkok DISMISSED as a Defendant in this action with prejudice.

IT IS SO ORDERED

Letitia H. Verdin
Thirteenth Circuit Court Judge

February __, 2022
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Kevin Dwayne Chavis vs. Vansy Saensane , defendant, et al
Case Number: 2021CP2301487
Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2023-02-15 18:44:45 page 12 of 12

Form 4 Order, filed March 7, 2023

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2301487

Kevin Dwayne Chavis
PLAINTIFF(S)

Vansy Saensane
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before the court on Plaintiff's Motion to Reconsider the court's decision granting summary judgment in favor of Defendant RA CHA, Inc. After careful reconsideration of the memoranda filed on behalf of each party, the court respectfully denies Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/07/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Kevin Dwayne Chavis vs. Vansy Saensane , defendant, et al
Case Number: 2021CP2301487
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2023-03-07 11:57:10 page 3 of 3

ELECTRONICALLY FILED - 2023 Mar 07 12:59 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2301487

Summons and Second Amended Complaint

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	

KEVIN DWAYNE CHAVIS, Plaintiff(s), - vs - VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	SUMMONS TO <i>SECOND</i> AMENDED COMPLAINT C/A No. 2021-CP-23-01487 JURY TRIAL DEMANDED
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TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 2006 North Main Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S)HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

LAW OFFICES OF STEVEN M. KRAUSE, PA

s/Steven M. Krause (SC Bar# 3571)

and

THE INJURY LAW FIRM, PC

Daniel L. Draisen (SC Bar# 13536)

April 19, 2022
Anderson, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
KEVIN DWAYNE CHAVIS, Plaintiff(s), - vs - VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	SECOND AMENDED COMPLAINT C/A No. 2021-CP-23-01487 JURY TRIAL DEMANDED

The Plaintiff, by and through his undersigned attorney, would respectfully show unto the Court the following:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Kevin Dwayne Chavis (hereinafter referred to as Plaintiff) is a citizen and resident of the County of Anderson, State of South Carolina.
2. Upon information and belief, Defendant Vansy Saensane (hereinafter "Saensane") is a citizen and resident of Greenville County, South Carolina.
3. Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant a/k/a Bangkok Thai Cuisine (hereinafter "Bangkok") is, upon information and belief, a domestic corporation organized and existing pursuant to the laws of the State of South Carolina with its principal offices located in the County of Greenville, State of South Carolina. As such, it is licensed to conduct and does conduct business in Greenville County, South Carolina and is in fact doing business as a Thai cuisine restaurant/bar in the County of Greenville, State of South Carolina. Further, it possesses, or did at all times relevant hereto, licenses issued by the State of South

Carolina to serve alcohol to the general public at its establishment located at 599 Haywood Road, Greenville, South Carolina.

4. All matters and things herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANT SAENSANE
(Negligence, Gross Negligence, Recklessness, Conscious Disregard)

5. On or about September 27, 2019, at approximately 12:56 a.m., Plaintiff was operating his 2017 Ford automobile in a southerly direction on N. Pleasantburg Drive in Greenville, South Carolina.

6. At the time and place aforementioned, Defendant Saensane was operating a 2019 Lexus automobile in a northerly direction in the south bound lane of traffic on N. Pleasantburg Drive in Greenville, South Carolina, while under the influence of alcohol and/or other intoxicating substances.

7. Suddenly and without any warning whatsoever, Defendant Saensane, while traveling in the wrong direction in the south bound lane of travel while under the influence of intoxicating substances, struck the Plaintiff's vehicle head-on, thereby causing great bodily harm, and excruciating pain and suffering.

8. As a result of the collision, the Plaintiff sustained traumatic and life-threatening personal injuries resulting in permanent impairment, scarring and loss of enjoyment of life.

9. As an operator of a vehicle on the roads of the State of South Carolina, Defendant Saensane had a duty to the Plaintiff to operate her vehicle in a safe and proper manner and to obey all applicable traffic laws.

10. Notwithstanding this duty, Defendant Saensane, in concert with the other named Defendant, negligently, gross negligently, carelessly and recklessly, and in a conscious disregard for the safety of others on the roadway, breached her duty of care to the Plaintiff in each of the following particulars:

- (a) In operating Defendant's said vehicle while under the influence of intoxicating substances that affect the ability to safely drive a motor vehicle, in violation of the laws of the State of South Carolina, when the Defendant knew, or should have known, that to do so would endanger the safety of others, and more particularly, this Plaintiff.
- (b) In driving said vehicle in the opposite lane of travel and failing to yield the right of way to oncoming traffic in violation of the Code of Laws of the State of South Carolina 1976, as amended;
- (c) In failing to keep a proper lookout for others upon the road when to fail to do so the Defendant knew or should have known that damage would result to others upon said road, and, more particularly, to the Plaintiff;
- (d) In failing to devote the Defendant's full attention to the street the Defendant was traveling and to the operation of the Defendant's said vehicle, when the Defendant knew, or should have known, that to fail to do so would result in damage to others traveling upon said road, and, more particularly, to the Plaintiff;
- (e) In failing to take any evasive action when the Defendant knew, or should have known, that a collision was imminent;
- (f) In failing to look or to see what the Defendant should have seen had the Defendant been looking when the Defendant knew, or should have known, that the Defendant would cause an accident by failing to do so;
- (g) In operating the Defendant vehicle in a highly improper manner in view of the circumstances then and there existing;
- (h) In not being mentally and physically alert to the impending dangers and/or to the operation of a motor vehicle;
- (i) In failing to swerve or change the course of the Defendant vehicle when it was apparent, or should have been apparent, by the exercise of due care, that a catastrophe was inevitable;
- (j) In failing to keep herself in proper physical condition to operate the Defendant vehicle;
- (k) In failing to give warning of the dangerous approach and proximity of the Defendant vehicle;
- (l) In failing to exercise the degree of care and prudence a reasonable person would have exercised under the same or similar circumstances;

(m) In failing to keep the Defendant vehicle under proper control at all times in view of the circumstances then and there existing;

(n) In driving a vehicle upon the roadway when such vehicle was not intended to be operated upon the public highways and was not in good working order and adjustment or in safe mechanical condition, in violation of Section 56-5-510 of the Code of Laws of the State of South Carolina 1976, as amended.

11. Defendant **Saensane** was charged with DUI/Driving Under the Influence, Great Bodily Injury, warrant number 20191090054894, in violation of S.C. Code of Laws § 56-5-2945 (1976 as amended), and on December 7, 2021 pled guilty to such offense in the Court of General Sessions for Greenville County, South Carolina.

12. As a direct and proximate result of the negligent, grossly negligent, willful and wanton acts of Defendant **Saensane**, along with the other named Defendant, **Plaintiff** sustained severe personal injuries which resulted in permanent impairment, pain, and discomfort.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT BANGKOK
(Dram Shop Liability)

13. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

14. Upon information and belief, **Saensane** was a co-owner, manager, and employee of Defendant **Bangkok** at Bangkok's place of business located at 599 Haywood Road, Greenville, South Carolina, during the evening of September 26, 2019.

15. While working at Defendant **Bangkok**'s place of business, **Saensane** served herself and/or was served alcoholic beverages by agents, servants or employees of Defendant **Bangkok**.

16. **Saensane** became intoxicated while drinking the alcoholic beverages noted in the Paragraph above, yet she continued to consume alcoholic beverages, and/or the agents, servants and/or employees of Defendant **Bangkok** continued to serve her and to allow consumption of

alcoholic beverages by **Saensane**, when she and/or they knew or should have known that she had become intoxicated, in violation of the laws of the State of South Carolina.

17. **Saensane** departed Defendant **Bangkok**'s place of business while intoxicated. At no time did any she, as co-owner, manager, and employee, or any other agent, servant or employee of Defendant **Bangkok**, seek to prevent **Saensane** from driving or offer **Saensane** alternate transportation.

18. On information and belief of the Plaintiff, Defendant **Bangkok** has a policy which requires its owners, managers, and employees to offer to call a taxicab or other alternative transportation to individuals who appear to be intoxicated and/or impaired.

19. Despite Defendant **Saensane**'s readily-apparent intoxication, at no time did she, as a co-owner, manager and employee of Defendant **Bangkok**, refuse herself service, no co-owner, agent or employee of Defendant **Bangkok** prevented **Saensane** from drinking any additional alcohol, take away the alcohol already served, or offer to call her a taxicab, Uber or other alternative transportation.

20. After consuming alcoholic beverages at Defendant **Bangkok**, **Saensane** left the premises and drove her vehicle in a grossly negligent, reckless, willful, wanton and intoxicated manner, in a conscious disregard for the safety of others on the roadway, which resulted in her causing a horrific collision on N. Pleasantburg Drive in Greenville, South Carolina, that resulted in catastrophic permanent injuries to the Plaintiff.

21. Defendant **Bangkok**, its owners, operators, shareholders, and applicants of the respective liquor licenses, had a statutory duty, common law duty, and had assumed a duty through their own policies and procedures to refrain from serving alcohol to individuals they knew or should have known to be intoxicated, and if a person became intoxicated, to refuse further service of

alcoholic beverages, to prevent the individual from consuming additional alcohol, and offer to call a taxicab, Uber or other alternative transportation.

22. Further, Defendant **Bangkok** had a duty to follow local city and county regulations and state liquor law, as well as the requirements placed upon them by their liquor licenses, including but not limited to, monitoring when and how much alcohol they served to individuals of their establishment.

23. Additionally, Defendant **Bangkok** had a duty to not cause or promote the excessive consumption of alcohol so as to prevent the injuries caused to the **Plaintiff**.

24. Defendant **Bangkok** and **Saensane** are jointly and severally liable for breaching each of these duties to the **Plaintiff** in serving, and by allowing her to serve herself, **Saensane** alcoholic beverages which was the direct and proximate cause of the **Plaintiff's** injuries. Defendant **Bangkok** by its owners, managers, agents, servants and/or employees' actions, were negligent, grossly negligent, careless, and reckless.

25. As a direct and proximate result of the breaches of the above duties by Defendant **Bangkok**, along with the other named Defendant, the **Plaintiff** sustained severe personal injuries which resulted in significant permanent impairment.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANT BANGKO
(Negligence, Gross Negligence, Carelessness, Recklessness *Per Se*)

26. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

27. Defendant **Bangkok**, individually and/or by its owners, managers, agents, servants and/or employees, breached its duty to the **Plaintiff** by having actual or constructive knowledge that **Saensane** was served, served herself, and/or provided alcohol to the point of intoxication and then continuing to serve her alcoholic beverages, which proximately caused and/or contributed to the

automobile accident resulting in Plaintiff's injuries and damages.

28. The Defendants, through their agents and employees, knew or should have known of their legal responsibility pursuant to South Carolina law and regulations, the intent of which, among others, is to protect the Plaintiff from this specific harm.

29. Further, Plaintiff, as a person injured as a result of Defendant **Bangkok** continued service of alcoholic beverages to an intoxicated driver, is a member of an identifiable class of persons that the laws of the State of South Carolina protect.

30. Defendant **Bangkok**, individually and/or by its owners, managers, agents, servants and/or employees, were negligent, grossly negligent, careless, reckless, willful and wanton in the following particulars:

(a) In serving **Saensane** alcoholic beverages, or allowing her to serve herself, to the point where **Bangkok** had actual or constructive knowledge that she was intoxicated and failing to seek to prevent her driving or offering alternate transportation;

(b) In continuing to serve **Saensane** alcoholic beverages, or allowing her to serve herself, even after **Bangkok** knew or should have known that she was intoxicated;

(c) In failing to stop serving alcoholic beverages, and/or allowing her to serve herself, to **Saensane** even after **Bangkok** knew or should have known that she was intoxicated and that the continued consumption of alcoholic beverages by **Saensane** would constitute an unreasonable risk of harm to other persons and in particular to other motorists traveling on the roads leading way from its establishment;

(d) In failing to inquire, observe and monitor **Saensane** to determine the amount of alcohol consumed and if she had too much to drink:

(e) In failing to call a cab or to offer **Saensane** an alternative method of transportation to prevent her from leaving its premises in operation of her own vehicle in a helplessly intoxicated condition when **Bangkok** and its agents knew or should have known that such failure would create an unreasonable risk of harm to people, and in particular to Plaintiff, on the roadways of the State of South Carolina;

(f) In failing to adhere to **Bangkok's** own policies and/or failing to operate a licensed drinking establishment in a proper manner;

(g) In failing to institute adequate policies within the business to ensure the safety of Bangkok's patrons and the general public;

(h) In failing to use the degree of care and caution a reasonable and prudent person would have used under the same or similar circumstances;

(i) In failing to train owners, managers, and employees in accordance with generally recognized standards in the food and beverage industry (such as ServSafe training and certification); and

(j) In such other particulars as the evidence at trial may show.

31. Any one or all of the above particulars were the direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the laws of the State of South Carolina so as to constitute negligence *per se*.

32. As a direct and proximate result of the breach of the above duties by Defendant Bangkok, along with the other named Defendant, Plaintiff sustained severe personal injuries which resulted in permanent impairment.

FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANT BANGKOK
(Negligent Hiring and Retention)

33. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

34. Defendant Bangkok owed Plaintiff a duty to exercise reasonable care in the hiring, retention and supervision of its managers, agents, servants and/or employees.

35. Defendant Bangkok breached its duty by failing to exercise due care in the hiring, training, retention and supervision of its managers, cooks, bartenders and servers.

36. Defendant Bangkok knew or should have known of the danger of serving alcohol to intoxicated persons and its need to adequately protect the public from such intoxicated persons by proper hiring, training, retention and supervision of its owners, managers, agents, servants and/or employees.

37. As the proximate and foreseeable consequence of Defendant's, including its owners, managers, agents, servants and/or employees, negligent acts in failing to prevent the intoxication which caused and/or contributed to the negligent and reckless driving of Defendant Saensane, Defendant Bangkok caused or contributed to the Plaintiff's permanent injuries and resultant damages.

FOR A FIFTH CAUSE OF ACTION AS TO DEFENDANT BANGKOK
(Vicarious Liability)

38. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

39. That at all times relevant herein, the owners, managers, and employees of Defendant Bangkok acted in their capacity as agents and/or servants of Bangkok. As such, Defendant Bangkok is vicariously liable for any and all acts or omissions of their owners, managers, agents, servants and/or employees, including Defendant Saensane as alleged herein, and any damages proximately resulting therefrom.

FOR A SIXTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Joint Enterprise)

40. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

41. In the serving, selling, and drinking of alcoholic beverages, each Defendant acted in concert with the others pursuant to a common design and/or each Defendant herein knew or should have known that the conduct of the other Defendant(s) constituted a breach of duty and gave substantial assistance or encouragement to the other to so conduct herself and/or gave substantial assistance to the other to accomplish a tortious result and each Defendant's own conduct, separately considered, constituted a breach of their duty, resulting in the catastrophic damages to the Plaintiff.

42. That this mutual agency of each Defendant to act for the others, make all liable for the tortious acts of any one of them.

FOR A SEVENTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Punitive Damages)

43. Plaintiff incorporates herein by reference all previous allegations to the extent they are consistent herewith.

44. Defendant Saensane drove her vehicle when she was intoxicated or impaired in a conscious disregard for the safety of others on the road.

45. Defendant Bangkok sold, served, or allowed Defendant Saensane to serve herself and to drink alcoholic beverages on-premises and on the job while intoxicated, or to the point of intoxication, in direct violation of the laws and regulations of the State of South Carolina.

46. The Plaintiff is entitled to a punitive damages award in a sum sufficient to punish the Defendants, and each of them, so as to deter others from driving while under the influence and/or from serving alcohol to intoxicated and/or impaired individuals in violation of the laws of the State of South Carolina.

WHEREFORE, the Plaintiff prays that he have judgment against the Defendants, both jointly and severally, in an amount to be determined by a jury at the trial of this case, to include actual, consequential and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

THE PLAINTIFF HEREBY DEMANDS A JURY TRIAL

Respectfully submitted,

LAW OFFICES OF STEVEN M. KRAUSE, PA

s/ Steven M. Krause

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and

THE INJURY LAW FIRM, PC

s/Daniel L. Draisen

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ATTORNEYS FOR THE PLAINTIFF

April 19, 2022
Anderson, South Carolina

STATE OF SOUTH CAROLINA	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	
KEVIN DWAYNE CHAVIS,	)	Civil Action No. 2021-CP-23-01487
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER OF DEFENDANT RA CHA,
	)	INC. d/b/a BANGKOK TOKYO
VANSY SAENSANE AND RA CHA,	)	RESTAURANT a/k/a BANGKOK THAI
INC. d/b/a BANGKOK TOKYO	)	RESTAURANT TO PLAINTIFF'S
RESTAURANT a/k/a BANGKOK THAI	)	SECOND AMENDED COMPLAINT
RESTAURANT,	)	(Jury Trial Demanded)
	)	
Defendants.	)	

Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (hereinafter "Defendant" or "Defendant Bangkok"), by and through its undersigned counsel, hereby answers the Second Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Second Amended Complaint unless specifically admitted herein.
2. Defendant admits the allegations of Paragraph 1 of the Second Amended Complaint upon information and belief.
3. Defendant admits the allegations of Paragraphs 2 and 3 of the Second Amended Complaint.
4. Paragraph 4 of the Second Amended Complaint constitutes a legal conclusion requiring no response from Defendant. To the extent a response is required, Defendant does not challenge the jurisdiction or venue of this Court based on the information currently available to Defendant.

5. With regard to Paragraphs 5, 6, 7, and 8 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in said paragraphs, and therefore, denies the same.

6. The allegations of Paragraph 9 of the Second Amended Complaint state a legal conclusion and do not refer to Defendant Bangkok.

7. Paragraphs 10, 11, and 12 of the Second Amended Complaint, including all subparts, contain no allegations of fact directed towards this Defendant but, rather, are directed solely at Defendant Vansy Saensane and, accordingly, no response is required from this Defendant. To the extent the Court deems a response is required, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in said paragraphs, and therefore, denies the same.

8. Answering Paragraph 13 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

9. As to the allegations of Paragraph 14 of the Second Amended Complaint, Defendant Bangkok admits the business is located at 599 Haywood Road in Greenville, South Carolina and that on September 26, 2019, Defendant Vansy Saensane was a partial owner of Defendant Bangkok. The remaining allegations of Paragraph 14 of the Second Amended Complaint are denied as specifically worded and strict proof is demanded thereof.

10. Defendant Bangkok denies Paragraphs 15, 16, and 17 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

11. Defendant admits the allegations of Paragraph 18 of the Second Amended Complaint.

12. Defendant Bangkok denies Paragraphs 19 and 20 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

13. Paragraphs 21, 22 and 23 of the Second Amended Complaint are statements of law and/or legal conclusions, requiring no response from Defendant Bangkok. To the extent the Court deems a response is necessary, Defendant Bangkok denies it breached any duties.

14. Defendant Bangkok denies Paragraphs 24 and 25 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

15. Answering Paragraph 26 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

16. Defendant Bangkok denies Paragraphs 27, 28, 29, 30, 31 and 32, including all subparts, of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

17. Answering Paragraph 33 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

18. Paragraph 34 of the Second Amended Complaint states a legal conclusion requiring no response from Defendant Bangkok. To the extent the Court deems a response is necessary, Defendant Bangkok denies that it breached any duty to the Plaintiff.

19. Defendant Bangkok denies Paragraphs 35, 36, and 37 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

20. Answering Paragraph 38 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

21. Defendant Bangkok denies the allegations of Paragraph 39 of the Second Amended Complaint, as specifically worded and strict proof is demanded thereof.

22. Answering Paragraph 40 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

23. Defendant Bangkok denies Paragraphs 41 and 42 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

24. Answering Paragraph 43 of the Second Amended Complaint, Defendant Bangkok incorporates and re-alleges its previous responses as if set forth herein verbatim.

25. With regard to Paragraph 44 of the Second Amended Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in said paragraphs, and therefore, denies the same.

26. Defendant Bangkok denies Paragraphs 45 and 46 of the Second Amended Complaint as specifically worded and strict proof is demanded thereof.

27. Plaintiff's Prayer for Relief beginning "WHEREFORE" is denied.

FOR A SECOND DEFENSE

28. Defendant Bangkok would respectfully show that each and every cause of action set forth in the Second Amended Complaint alleged against Defendant Bangkok fails to state a claim upon which relief can be granted and, therefore, the Second Amended Complaint should be dismissed.

FOR A THIRD DEFENSE

29. Any damages sustained by the Plaintiff were due to and proximately caused by third persons or entities over which this Defendant had no control and therefore this Defendant is not liable.

FOR A FOURTH DEFENSE

30. The Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be in violation of the due process and equal protection clauses of the United States and South Carolina Constitutions.

FOR A FIFTH DEFENSE

31. Plaintiff is barred either in whole or in part because any alleged negligence by Defendant Bangkok was not a legal and/or proximate cause of Plaintiff's damages, if any.

WHEREFORE, having fully answered the Second Amended Complaint, Defendant Bangkok demands that it be dismissed, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Zachary S. Brown

Zachary S. Brown (S.C. Bar No. 103144)

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ATTORNEYS FOR DEFENDANT RA CHA, INC.

May 19, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

KEVIN DWAYNE CHAVIS,

Plaintiff,

vs.

VANSY SAENSANE AND RA CHA,
INC. d/b/a BANGKOK TOKYO
RESTAURANT a/k/a BANGKOK THAI
RESTAURANT.

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-23-01487

**DEFENDANT RA CHA, INC. d/b/a
BANGKOK TOKYO RESTAURANT
a/k/a BANGKOK THAI
RESTAURANT'S MOTION FOR
SUMMARY JUDGMENT**

TO: ALL PARTIES OF RECORD AND THE CLERK OF COURT FOR GREENVILLE COUNTY

Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (hereinafter "Defendant" or "Defendant Bangkok"), by and through its undersigned counsel, hereby moves the Court for an Order granting it summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in the above-referenced case on the grounds that there exists no genuine issue of material fact and that Defendant Bangkok is entitled to judgment as a matter of law. Specifically, Plaintiff's causes of action against Defendant Bangkok all stem from the allegation that Defendant Bangkok violated S.C. Code § 61-4-580 (2), which states that no holder of a permit authorizing the sale of beer or wine may knowingly sell beer or wine to an intoxicated person on the holder's premises.

This motion will be based on the South Carolina Rules of Civil Procedure, the pleadings, discovery, affidavits, exhibits, deposition transcripts, and other admissible evidence as well as the applicable common law and statutory law. Defendant reserves the right to submit a Memorandum in support of this motion prior to hearing.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Zachary S. Brown

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ATTORNEYS FOR DEFENDANT RA CHA, INC.

October 18, 2022

Memorandum in Opposition to Defendant's Motion for Summary Judgment
including Eagerton Affidavit

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
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KEVIN DWAYNE CHAVIS, Plaintiff(s), -vs- VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT C/A No. 2021-CP-23-01487
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TO: DEFENDANT RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT, and its attorney, ZACHARY S. BROWN, ESQ.

COMES NOW the Plaintiff, by and through his undersigned attorneys, and hereby files his Memorandum in Opposition to Defendant's Motion for Summary Judgment.

STANDARD FOR SUMMARY JUDGMENT

South Carolina Rules of Civil Procedure, Rule 56, provides that summary judgment:

shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, 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."

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Marietta Garage, Inc. v. South Carolina Dept. of Public Safety*, 337 S.C. 133, 522 S.E.2d 605 (S.C. App. 1999), citing *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (S.C. App. 1998). Even where there is no dispute as to evidentiary fact, but only as to the conclusions or inferences to be drawn from them, summary

judgment should be denied. Etheredge v. Richland School District, 330 S.C. 447, 449 S.E.2d 238 (S.C. App. 1998).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial. *Id.* At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Tanner v. Florence City-County Bldg. Com'n, 333 S.C. 549, 511 S.E.2d 369 (S.C. App. 1999). It is not for the Court to weigh the evidence, as such is strictly the province of the jury.

South Carolina case law is clear that “the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party.” Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (S.C. App. 1994). See also Etheredge v. Richland School District, *supra*; City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994); Thomas v. Waters, 445 S.E.2d 659 (S.C. App. 1994); State Farm Fire & Casualty Co. v. Breazell, 324 S.C. 228, 478 S.E.2d 831(1996). All ambiguities, conclusions, and inferences must be construed most strongly against the movant, and the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Etheredge v. Richland School District, *supra*.

LEGAL ARGUMENT

- I. Defendant makes only one (1) assertion as the basis for its Motion for Summary Judgment, and that assertion in the instant case is incorrect.

In its Motion for Summary Judgment, Defendant Ra Cha, Inc. asserts that Plaintiff’s causes of action against the Defendant “all stem from the allegation that Defendant Bangkok violated S.C. Code §61-4-580 (2)...” This is simply incorrect.

In fact, in Plaintiff's Second Amended Complaint Plaintiff asserts causes of action against Defendant Ra Cha, Inc. for 1) Dram Shop Liability; 2) Negligence *Per Se*; 3) Negligent Hiring and Retention; and 4) Vicarious Liability. However, in the Amended Complaint the Plaintiff does not cite to any specific SC Code section that creates the Dram Shop or Negligence *Per Se* liability. In fact, the duties owed to the Plaintiff by the Defendant arise out of the S.C. Code of Laws, Ann., 1976, as amended, and as those statutes have been interpreted and applied by the Courts of this State.

In her deposition, Defendant Saensane testified, in part:

4 Q. Okay. I've been provided some documents, just a
little

5 bit of information about, um, Ra Cha, Incorporated.
Can

6 you tell me who the shareholders -- and when I say
7 "shareholders," that's the legal term for the owners
of

8 the company -- are?

9 A. One of the shareholder is myself and part of it's Chai
and

10 Allison is the big holder.

8 Q. Well, the -- let me ask the -- let me rephrase the
9 question. As I understand it from the corporate
records

10 that I see, uh, currently, and at least back in 2018,
um,

11 Allison owns fifty percent (50%), you have twenty-five
12 percent (25%) and Chai has twenty-five percent (25%);
is

13 that right?

14 A. Yes, sir.

This testimony establishes that Defendant Saensane was, at all times relevant hereto, a shareholder and owner of Defendant Ra Cha, Inc.

24 Q. Okay. All right. Now, let me ask you this: Are you, are
25 you an employee of Bangkok Tokyo?

1 A. Yes, sir.

This testimony establishes that Defendant Saensane was, at all times relevant hereto, a servant or employee of Defendant Ra Cha, Inc.

18 Q. Do you know what happened that evening before the wreck?

19 A. No, sir, 'cause I, I do the same thing all the time, like,
20 do the paperwork, get home. That's all I remember.

21 Q. Well, well, I mean -- let me ask you this: Do you drink
22 alcohol every night before you go home?

23 A. Not every day. I drink a glass of wine or two (2), like I
24 ---

25 Q. A glass of wine or two (2)?

3 Q. So, you -- okay. On September 26th, 2019, did you
drink

4 alcohol that evening after close?

5 A. I do, sir. I drink alcohol that day.

6 Q. Okay. And what did you drink?

7 A. I drink some wine.

8 Q. Do you drink red or white or blush?

9 A. A red wine.

10 Q. Red?

11 A. Yes, sir.

12 Q. And do you have a particular brand that you like or a
13 particular bottle that you like to drink?

14 A. No. I just drink whatever we have in there that open.

15 Q. And do you know how many glasses of wine you drank on
16 September 26th, 2019?

17 A. That day, I don't remember, but, you know, if I drink, I
18 don't do past one (1) or two (2). But I don't drink
19 often, like I told you. But I don't remember that day.
20 don't know.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, served herself and consumed wine on the premises of Defendant Ra Cha, Inc.

2 Q. Was the wine that you drank at the restaurant, was it part
3 of your stock?

4 A. Yes, sir.

5 Q. Let me ask you this: Is that the same red wine that
you
6 would serve to customers?

7 A. Yes, sir. It's the same red wine.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, served herself and consumed wine purchased and stocked by the Defendant Ra Cha, Inc. for sale to its customers.

22 Q. Okay. On September the 26th, 2019, that evening after

23 close, was anybody there drinking wine with you?

24 A. No, sir.

25 Q. You'd been drinking by yourself?

1 A. I just drink by myself and do the paperwork. That's -- I
2 remember.

18 Q. What I'm asking you is, from 2017 through September 26th,
19 2019 at closing, has Allison been there at times when
20 you've had a glass of wine and you were doing the
21 paperwork?

22 A. Sometimes she saw and then she left, say, "Good-bye. I've
23 gotta go," okay? 'Cause she have kid. So, she leave
24 before me. But, you know, but most of the time, she not
25 with me.

1 Q. Yeah. So, the question I'm asking you is, is Allison has
2 seen that you drink wine sometimes in the evenings while
3 you're doing paperwork, right?

4 A. Yes, sir, sometime.

This testimony by Defendant Saensane establishes that she, as an owner and employee of the Defendant, was aware that she served herself and consumed alcohol on the premises, and also that Allison, the permittee and one of the other owners, was also aware that Defendant Saenesane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc.

It is undisputed based on this testimony that on the evening of the wreck at issue in this matter Defendant Saensane, who is a shareholder, owner and employee of Defendant Ra Cha, Inc., served herself and consumed alcohol from the bar inventory of the Defendant on Defendant's premises. After consuming the alcohol, Defendant Saensane was allowed to leave and did leave the Defendant's premises in her automobile and soon thereafter collided with the Plaintiff causing him severe, painful and permanent injuries. It is also undisputed that this conduct was known and sanctioned by the major shareholder who Defendant Saensane testified permitted her to drink as she observed her doing so on previous occasions.

Based upon the retrograde analysis performed by David Eagerton, Ph.D., F-ABFT, Defendant Saensane had a whole blood alcohol concentration (BAC) level of 0.273 g/100 mL at the time of the collision. This level is more than 3x the legal limit of 0.08 g/100 mL and is indisputable evidence that Defendant Saensane was intoxicated when she left the Defendant's premises and was grossly intoxicated at the time of the wreck (copy of Dr. Eagerton's report and CV is attached hereto and incorporated by reference thereto).

In her further testimony, Defendant Saensane stated:

24 Q. Okay. So, what I want to know is, is I want to know
from

25 10:30-ish to 12:56 a.m., what you did.

1 A. I don't know. I don't remember, sir. I just know I
get

2 in the car and drive. That's it.

3 Q. Okay. So, when you left the restaurant that night,
did

4 you go somewhere else?

5 A. I don't remember, sir. I don't know.

12 Q. Okay. All right. So, is it correct that your testimony
13 today, under oath, is, is that you can't tell me, at all,
14 what you did from around 10:30 p.m. on September 26th,
15 2019 until the wreck at 12:56 a.m. on the 27th; is that
16 right?

17 A. Yes, sir.

18 Q. So, we just have about, uh, three (3) hours of
unaccounted

19 time? You have three (3) hours that you can't tell
me

20 anything about what happened?

21 A. I don't remember, sir.

22 Q. I, I -- I'm, I'm making sure I understand your
testimony

23 that you, you have no recollection of that three-hour

24 period of time between, say, 10:30 p.m. and 12:56
a.m.; is

25 that right?

1 A. Yes. I don't remember.

2 Q. Okay. Is it possible that you went to a bar?

3 A. I don't know, sir. I don't go out m- -- far as I

4 remember. I don't really go places that much. I just

5 work, come home. That's it. That's all I remember.

This testimony by Defendant Saensane establishes that she does not know what she did from the time she left the Defendant's premises and the time of the collision. The Defendants have provided no evidence establishing that Defendant Saensane consumed additional alcohol at any other location.

LEGAL ARGUMENT

There are a number of SC Code sections that have been enacted by the SC Legislature related to the sale, distribution and consumption of alcohol that are penal in nature, but which have been interpreted to impose civil liability upon those that violate these statutes.

In Tobias v. Sports Club, Inc., 474 S.E.2d 450, 323 S.C. 345 (S.C. App. 1996) the Court of Appeals held:

At common law, a tavern owner had no liability for serving alcohol to an intoxicated person who later injured himself or others. See 45 Am.Jur.2d Intoxicating Liquors § 553 (1969). The rationale for this rule was that consuming, not supplying, the alcohol was the proximate cause of intoxication. *Id.* Many jurisdictions, however, have departed from this common law view. In an effort to deter drunk driving and to compensate innocent victims injured by drunk drivers, many state legislatures have enacted "dram shop acts." These statutes impose civil liability on tavern owners under various circumstances, such as supplying alcoholic beverages to minors or to obviously intoxicated persons. In states where dram shop legislation has not been enacted, some courts have imposed liability on vendors of alcoholic beverages using principles of negligence, often basing a private cause of action on the violation of beverage control statutes. At least three jurisdictions have refused to interpret their penal statutes to create a civil cause of action, while others believe that such public policy decisions should be made by the legislature. Still other jurisdictions, embracing the common law view, have enacted legislation which renders servers of alcohol immune from liability.

South Carolina is among those jurisdictions that have recognized a civil cause of action based upon the violation of a penal statute. Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct.App.1985), cert. denied, S.C. Sup. Ct. order dated June 27, 1985. In Christiansen, as here, the plaintiff, who was also the intoxicated person, brought a private cause of action relying on S.C. Code Ann. § 61-9-410 (1976) which provides, in part:

"[n]o holder of a permit authorizing the sale of beer or wine or any servant, agent, or employee of the permittee shall knowingly do any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to any person while the person is in an intoxicated condition;"....

Appellants also base their action on S.C. Code Ann. § 61-5-30 (1990) which reads:

It shall be unlawful for any person to possess or consume any alcoholic liquors upon any premises where such person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

No person or establishment licensed to sell alcoholic beverages pursuant to this article shall sell such beverages to persons in an intoxicated condition and such sales

shall be deemed violations of the provisions thereof and subject to the penalties contained herein.

No person, corporation or organization for whose premises a license is required shall knowingly allow the possession or consumption of any alcoholic liquors upon such premises unless a valid license issued pursuant to subsection (3) or (4) of § 61-5-20 has been obtained and is properly displayed.

Since this cause of action was judicially created in South Carolina, we have no statutory guidance on the class of persons who may recover or on the availability of defenses. In many states where such a cause of action is statutorily authorized, the dram shop act or cases interpreting it have specifically precluded the intoxicated person from that class of plaintiffs who may bring suit. In addition, many courts in jurisdictions with penal statutes, including most of those relied upon by the Court in *Christiansen*, have precluded first party recovery. *Christiansen*, however, clearly extended the cause of action to the intoxicated person himself. Therefore, our only inquiry today is whether defenses may be asserted against the intoxicated person by the tavern owner.

Appellants argue that to permit a tavern owner to raise traditional tort defenses in a suit against it would undermine the cause of action recognized in *Christiansen*, asserting this cause of action is more in the nature of one grounded in strict liability. We cannot accept this characterization. The cause of action recognized in *Christiansen* sounds in negligence. Under *Christiansen*, the jury must determine if the statutory violation is a proximate cause of the alleged injury. Subsequent decisions of the Supreme Court and the Court of Appeals have held the South Carolina liquor control statutes also create a private cause of action in favor of injured minors who were unlawfully served alcohol as well as innocent third parties injured by the inebriant. See *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991) (sections 61-9-40 and 61-9-410 give rise to civil liability if third party plaintiff can establish negligence per se. After establishing negligence per se, plaintiff must prove the violation of the statute was causally linked, both in fact and proximately, to the injury); *Jamison v. The Pantry, Inc.*, 301 S.C. 443, 392 S.E.2d 474 (Ct.App.1990) (third party plaintiff has cause of action under sections 61-9-40 and 61-9-410); *Daley v. Ward*, 303 S.C. 81, 399 S.E.2d 13 (Ct.App.1990) (third party and intoxicated minor have cause of action under section 61-9-410); cf. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct.App.1986) (social host incurs no common law liability to third party plaintiffs when he serves alcohol to his adult guests). Thus, *Christiansen* and the decisions which followed it clearly indicate liability should be predicated upon a negligence standard, i.e., "whether the bartenders negligently served alcoholic beverages to a person who, by his appearance or otherwise, would lead a prudent man to believe that person was intoxicated." *Daley*, 303 S.C. at 87, 399 S.E.2d at 16.

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 313 S.C. 508 (S.C. App. 1994)

Likewise, S.C. Code §61-4-580 (2) states:

No holder of a permit authorizing the sale of beer or wine or a servant, agent or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to an intoxicated person;

In the instant case, Plaintiff asserts that (1) the penal statutes which govern the sale, distribution and consumption of alcohol were enacted essentially for the purpose of protecting the citizens of South Carolina from the kind of harm the Plaintiff has suffered; and (2) that the Plaintiff is a member of the class of persons the statutes are intended to protect. Undoubtedly, penal statutes that prohibit the permittee, owners, servants and employees from "selling" alcohol to a person that known to be intoxicated (to protect the general public from the consequences of same) likewise prohibit the permittee, owner, servants and employees from a) "giving" alcohol at no charge to a person (i.e., free shots, drinks on the house, etc.) or b) allowing a person to acquire alcohol from the licensed premises when such person is intoxicated.

In Richland County Sch. Dist. Two v. S.C. Dep't of Educ., 335 S.C. 491, 517 S.E.2d 444

(Ct.App.1999), the Court of Appeals held:

The primary rule of statutory construction requires that legislative intent prevail if it can reasonably be discovered in language used construed in light of intended purpose. The legislature's intent should be ascertained primarily from the plain language of the statute. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look for or impose another meaning.

Furthermore, even though penal statutes are to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context." State v. Standard Oil Co. of N.J., 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940). We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. See S.C. Coastal Council v. S.C. State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

The applicable South Carolina Code sections govern the sale, service, and consumption of alcohol on the licensed premises by the permittee, the owner, operator, or person in charge of the premises, by their servants or employees, and by consumers of the alcohol.

CONCLUSION

Based upon the undisputed testimony of Defendant Saensane and a lack of any evidence to the contrary, there is nothing to suggest that Defendant Saensane was sold, served, or that she consumed alcohol at any location other than upon the licensed premises of Defendant Ra Cha, Inc., that she was sold, served, or consumed any alcohol after she left the Defendant's premises, or that she did not consume sufficient amounts of alcohol to achieve the level of her intoxication while upon the Defendant's licensed premises. In addition, Defendant Saensane consumed the alcohol with the owner's express knowledge and consent (she, being one of those owners, and one of the other owners having express knowledge of such conduct) thereby imputing liability for Plaintiff's injuries and damages to Defendant Ra Cha, Inc. Further, Defendant's Motion for Summary Judgment does not address Plaintiff's causes of action for negligent hiring and retention or for vicarious liability.

Accordingly, viewing the facts and inferences that can be drawn from them most favorably to the Plaintiff (the non-moving party), Defendant's Motion for Summary Judgment should respectfully be **DENIED.**

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

s/Daniel L. Draisen

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ATTORNEYS FOR THE PLAINTIFF

January 13, 2023
Anderson, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
KEVIN DWAYNE CHAVIS, Plaintiff(s), -vs- VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	AFFIDAVIT OF DAVID H. EAGERTON, Ph.D., F-ABFT C/A No. 2021-CP-23-01487

1. My name is David H. Eagerton.
2. I am a forensic toxicologist. I received my Doctorate in Pharmacology in 1992 from the University of South Carolina. In February of 1993, I joined the South Carolina Law Enforcement Division (SLED) as a Forensic Toxicologist, was promoted to Lieutenant in August 1997, and served as Chief Toxicologist, overseeing the SLED Toxicology Department, until my retirement in September 2009. I joined the founding faculty of the Presbyterian College School of Pharmacy (PCSP) in October 2009 and was promoted to Associate Professor with tenure in 2015. In June 2017, I joined the faculty at Campbell University College of Pharmacy and Health Sciences as Associate Professor and Chair of the Department of Pharmaceutical Sciences. In January 2022, I joined the faculty of the Edward Via College of Osteopathic Medicine. I am a graduate of the South Carolina Criminal Justice Academy and am Board Certified in Forensic Toxicology (Current CV is attached hereto).
3. I have been qualified in South Carolina Courts as an expert witness in the fields of Forensic Toxicology and Pharmacology and have provided opinion testimony on numerous occasions. I believe I am qualified to give opinions regarding the subject matter at issue in this litigation.
4. I have reviewed a number of records including the Traffic Collision Report, the deposition testimony of Vansy Saensane, and medical records from Prisma Health for the medical treatment rendered to Vansy Saensane after the collision.
5. My opinions are to a reasonable degree of scientific certainty based on the foregoing records. My opinions are also based on my education, training and experience. I do not intend, however, to limit my opinions regarding this matter and I expressly reserve the right, based on any information which becomes available, to alter or modify my opinions and conclusions.

A. Factual Basis for Claim

On or about September 27, 2019, at approximately 12:56 a.m., Kevin Chavis was operating his 2017 Ford automobile in a southerly direction on N. Pleasantburg Drive in Greenville, South Carolina. At the same time and place, Vansy Saensane was operating a 2019 Lexus automobile in a northerly direction in the south bound lane of traffic on N. Pleasantburg Drive in Greenville, South Carolina while under the influence of alcohol and/or other intoxicating substances.

Suddenly and without any warning whatsoever, Ms. Saensane, while traveling in the wrong direction in the south bound lane of travel while under the influence of intoxicating substances, struck the Chavis vehicle head-on thereby causing great bodily injury and harm to Mr. Chavis.

Ms. Saensane was transported via EMS to Prisma Health, Greenville Hospital, in Greenville South Carolina. During the course of her medical treatment, blood was collected at 1:34 a.m. from which it was determined that she had a serum alcohol level of 310 mg/dL, which is equivalent to a whole blood-alcohol level of 0.263 g/100mL.

B. Blood-Alcohol Retrograde Analysis.

Starting with a whole blood BAC level of 0.263 g/100mL at 1:34 a.m., Ms. Saensane's BAC level at 12:56 a.m., the time of the collision, would have been 0.273 g/100 mL. This is the equivalent of the level of intoxication a person such as Ms. Saensane would obtain after consuming seven (7) standard drinks (4 oz of 12% ABV wine) over a two-hour time period. Further analysis indicates that if as Ms. Saensane indicates in her deposition, she stopped drinking and left work at 10:30 p.m., and allowing one hour for complete absorption, Ms. Saensane's BAC level at 11:30 p.m. would have been 0.296 g/100 mL which rises to the level of gross intoxication. Ms. Saensane would most probably have been visibly and appreciably impaired at the time she left work at around 10:30 p.m.

FURTHER AFFIANT SAYETH NOT.

David H. Eagerton
DAVID H. EAGERTON, Ph.D., F-ABFT

Charles W. Jones
WITNESS #1

Heidi White
WITNESS #2/NOTARY

PERSONALLY appeared before me Mark T. Smith and made oath that
(s)he witnessed DAVID H. EAGERTON, Ph.D., F-ABFT, sign the foregoing Affidavit and that
(s)he saw Charles V. Jones witness the execution thereof.

Charles V. Jones
WITNESS #1

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 13th DAY OF January, 2023.

Mark T. Smith
NOTARY PUBLIC FOR South Carolina
My Commission Expires: 12/31/24

**Defendant Bangkok's Memorandum of Law in Support of Motion for Summary
Judgment**

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
KEVIN DWAYNE CHAVIS,	)	Civil Action No. 2021-CP-23-01487
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT BANGKOK'S
	)	MEMORANDUM OF LAW IN
VANSY SAENSANE AND RA CHA,	)	SUPPORT OF MOTION FOR
INC. d/b/a BANGKOK TOKYO	)	SUMMARY JUDGMENT
RESTAURANT a/k/a BANGKOK THAI	)	
RESTAURANT.	)	
	)	
Defendants.	)	

Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (hereinafter "Defendant" or "Defendant Bangkok"), by and through its undersigned counsel, has moved the Court for an Order granting it summary judgment as there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law. Defendant Bangkok asserts that 1) Defendant Vansy Saensane was never sold or served any alcohol by Defendant Bangkok; 2) Plaintiff has not asserted any statutes in support of his cause of action for negligence per se, nor has he provided any evidence of any breach; 3) Defendant Vansy Saensane was not an employee of Defendant Bangkok; and 4) Defendant Bangkok is not variously liable for the actions of Defendant Vansy Saensane. Accordingly, Defendant Bangkok should be dismissed from this lawsuit as a matter of law.

STATEMENT OF FACTS

Defendant Bangkok is a Thai cuisine restaurant located at 599 Haywood Road in Greenville, South Carolina. In September 2019 (time of the alleged incident), Defendant Vansy Saensane ("Defendant Saensane" or "Saensane") held a 25% ownership interest in Defendant

Bangkok. (Vansy Saensane Depo. 26:1-14). During operating hours, Saensane worked in the restaurant doing food prep, cooking, and occasional waitressing. (Saensane Depo. 39:1 - 40:17). On September 26, 2019, Defendant Bangkok's restaurant closed at 9:00 PM. (Saensane Depo. 42:11). Defendant Saensane testified that after the restaurant closes, she normally stays after hours to help clean up, do paperwork, count money, and that she would have done the same thing on September 26, 2019. (Saensane Depo. 42:22 – 44:6). Defendant Saensane testified in her deposition that after the restaurant is closed, it is not unusual for her to have a glass of wine or two while doing final paperwork and accounting before leaving for the night. (Saensane Depo. 44:23 and 45:15-20). Defendant Saensane testified that she drank wine from the restaurant after close on September 26, 2019 and served herself. (Saensane Depo. 45:3-11). Defendant Saensane testified that on September 26, 2019, she followed her normal routine and likely left the restaurant for the night around 10:00 PM. Defendant Saensane testified that she has no recollection of where she was between the hours of 10:00 PM and 12:46 AM the next morning. However, at 12:46 AM, on September 27, 2019, Saensane was traveling on North Pleasantburg Drive in Greenville, South Carolina when she was involved in an automobile accident with Plaintiff Kevin Chavis's ("Plaintiff") vehicle. Plaintiff filed this lawsuit and in Plaintiff's Second Amended Complaint asserts causes of action against Defendant Bangkok for 1) Dram Shop Liability; 2) Negligence Per Se; 3) Negligent Hiring and Retention; and 4) Vicarious Liability.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view both

the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000). Nonetheless, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. *Saluda Motor lines v. Crouch*, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989). The plain language of Rule 56(c), SCRCF, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

LEGAL ANALYSIS

I. Defendant Bangkok never served alcohol to Defendant Saensane; thus, Plaintiff's Dram Shop claim is improper

In South Carolina, a third party injured by the actions of an intoxicated person in violation of S.C. Code Ann. § 61-4-580 may pursue a civil action against the vendor. *Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) (citing *Daley v. Ward*, 303 S.C. 81 (1990)). "Because South Carolina does not have a Dram Shop Act, our civil remedy arises out of criminal statutes." *Hartfield v. Getaway Lounge & Grill*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010) (citing *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998)). In *Tobias*, the South Carolina Supreme Court held that:

"South Carolina Code Ann. § 61-4-580 (2) prohibits the knowing sale of beer or wine to an intoxicated person . . . In recognizing a private cause of action for a violation of [this] [statute], the Court of Appeals stated that their purpose is to promote public safety, and to prevent an already intoxicated person from becoming even more intoxicated, and thus a greater risk to the public at large, when he leaves the establishment. We agree." 332 S.C. 90, 92, 504 S.E.2d 318, 319 (1998) (citing *Tobias v. The Sports Club, Inc.*, 323 S.C. 345, 474 S.E.2d 450 (Ct. App. 1996)).

Plaintiff's Second Amended Complaint does not contain specific reference to any South Carolina statutes but the language of the Second Amended Complaint implies that Defendant Bangkok violated S.C. Code Ann. § 61-4-580 (2). The Courts in South Carolina have established that Dram Shop liability requires the actual sale of alcohol to an intoxicated person under S.C. Code Ann. § 61-4-580 (2). *Hartfield v. McDonald*, 671 S.E.2d 380, 381 S.C. 1 (S.C. Ct. App. 2008).

Plaintiff has not presented any evidence that Defendant Saensane was sold any alcohol, nor is there any evidence or testimony that Defendant Saensane was served by any employee or agent of Defendant Bangkok. Plaintiff appears to recognize and attempt to circumvent this fact by stating in his complaint that Defendant Saensane, as an owner of Defendant Bangkok, failed to "refuse herself service." Pl's Second Amended Complaint ¶ 19. South Carolina's statute does not operate in such a fashion. S.C. Code Ann. § 61-4-580 (2) states that "No holder of a permit authorizing the sale of beer or wine to a servant, agent, or employee of the permittee may knowingly . . . sell beer or wine to an intoxicated person." The statute is clearly intended to prohibit an employee from selling alcohol to an intoxicated customer. Defendant Saensane was not sold or served wine by any employee of Defendant Bangkok. Defendant Saensane was not a customer of Defendant Bangkok on September 26, 2019. There is no evidence of any transaction or sale of any alcohol by Defendant Bangkok to Defendant Saensane.

Plaintiff's wrong interpretation of the statute is also at odds with the public policy goals espoused by the South Carolina Supreme Court in recognizing the dram shop cause of action. The Court's stated purpose was to promote public safety and hold restaurants responsible if they or their employees served intoxicated individuals. This cause of action encourages restaurants to instruct their employees to recognize when an individual is intoxicated and to stop serving them

at that point. It is unclear from Plaintiff's dram shop theory what Defendant Bangkok could have done to prevent Defendant Saensane from allegedly continuing to serve herself at the restaurant.

Finally, Plaintiff has not presented any evidence that Defendant Saensane was intoxicated when she allegedly drank the wine on Defendant Bangkok's premises. Defendant Saensane testified that she left the restaurant at around 10:00 PM. The accident occurred around 12:46 AM the next morning. Defendant Saensane was not able to remember or testify as to her whereabouts in the nearly three hours between her leaving the restaurant and this accident. There is no video of Defendant Saensane on Defendant Bangkok's premises on the night in question. The only person who stated that Saensane drank any alcohol in the restaurant was Defendant Saensane herself. In her deposition, Defendant Saensane also testified that the area where the accident occurred was not on her normal route home and she had no idea what she had been doing in that area. Therefore, it appears extremely likely that Saensane went somewhere else prior to the accident where she may have become intoxicated. Plaintiff has not identified any witness or presented any evidence that Defendant Saensane became intoxicated at Defendant Bangkok's restaurant. For these reasons, Plaintiff's cause of action for Dram Shop Liability against Defendant Bangkok should be dismissed.

II. Defendant owed no separate duty to Plaintiff

Plaintiff has brought an additional cause of action against Defendant Bangkok for negligence per se. The court in *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988) established the test for determining when a duty created by statute will support an action for negligence. In order to show that the defendant owes a duty of care arising from a statute, "the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member

of the class of persons the statute is intended to protect.” A statute can establish a duty to a Plaintiff, but the Plaintiff must show a violation of the statute to establish breach of the duty established by the statute. As stated above, Plaintiff has not asserted a specific statute in his Second Amended Complaint that he alleges Defendant violated. Further, as outlined in detail above, Plaintiff has not presented any evidence that Defendant Bangkok itself breached any duty it owed to the Plaintiff under S.C. Code Ann. § 61-4-580, which is the only statute Plaintiff references in his Memorandum of Law in Opposition to this Motion.

Plaintiff has not presented any evidence that Defendant Bangkok served Defendant Saensane any alcohol on the night of the accident or that any employee was aware that Defendant Saensane had any amount of alcohol. Plaintiff has also not presented any evidence that Defendant Saensane was intoxicated on the premises of Defendant Bangkok. Therefore, even if the Court allows Plaintiff to present a cause of action for Negligence *per se* without asserting any statutes in his pleadings, Plaintiff has not presented evidence that Defendant Bangkok breached that duty. For these reasons, Plaintiff’s cause of action for Negligence *per se* should be dismissed.

III. Defendant Saensane was not hired or retained by Defendant Bangkok and Defendant Bangkok had no reason to know that she created an undue risk of harm to the public.

Plaintiff’s cause of action against Defendant Bangkok for negligent hiring and retention must fail because Defendant Saensane was not an employee of Defendant Bangkok. Rather, Defendant Saensane was a 25% owner of the restaurant along with her fiancé Chai, who owned 25%, and the original owner of the restaurant, Allison, who owned 50%. All of South Carolina’s limited case law regarding the causes of action for negligent hiring and retention presume that an employee was hired by an employer.

“Our review of negligent hiring and retention cases from other jurisdictions leads us to conclude that such cases generally turn on two elements – knowledge of the employer and foreseeability of harm to third parties.” *Doe v. ATC, Inc.*, 367 S.C. 199, 205, 624 S.E.2d 447, 450 (Ct. App. 2005) (citing *Di Cosala v. Kay*, 91 N.J. 159, 450 A.2d 508, 516 (N.J. 1982)). “From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.” *Id.* “A Plaintiff must demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the possible danger to third parties.” *Id.* at 205, 624 S.E.2d at 451.

Defendant Saensane was not hired by Defendant Bangkok. She bought a stake in the restaurant in 2017 and began doing work at the restaurant because her personal income was determined how well the restaurant performed. Defendant Saensane even testified in her deposition that she was involved in hiring the employees that staffed the restaurant. In other words, Plaintiff’s negligent hiring claim is apparently based on the theory that Defendant Saensane negligently hired and retained herself by taking on responsibilities at the restaurant. South Carolina law has never recognized such a claim.

Even if Defendant Saensane was an employee, Plaintiff has not identified any prior incident or conduct which would put Defendant Bangkok on notice that she should not be retained or hired. One of the fundamental elements of this claim is the “number and nature of prior acts of wrongdoing by the employee” *Doe*, at 205, 624 S.E.2d at 450. Plaintiff’s Complaint does not identify a single act of wrongdoing committed by Saensane prior to this incident.

In summary, Plaintiff’s Fourth Cause of Action for Negligent Hiring and Retention should be dismissed because Defendant Bangkok did not hire Defendant Saensane and there is

no evidence of prior misconduct committed by her sufficient to put Defendant Bangkok on notice of her alleged conduct in this case.

IV. Defendant Saensane was not acting within the scope of her employment at the time of the accident.

“The modern doctrine of *respondeat superior* makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant’s employment.” *Froneberger v. Smith*, 406 S.C. 37, 52, 748 S.E.2d 625, 633 (Ct. App. 2013) (quoting *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 179, 348 S.E.2d 617, 621 (Ct. App. 1986)). “An act falls within the scope of the servant’s employment if it was reasonably necessary to accomplish the purpose of the servant’s employment, and it was done in furtherance of the master’s business.” *Id.* (quoting *Wade v. Berkeley Cnty*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998)). “As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, any injury sustained by accident at such time does not arise out of and in the course of his employment.” *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998) (citing *McDaniel v. Bus Terminal Restaurant Management Corp.*, 271 S.C. 299, 247 S.E.2d 321 (1978)).

As previously discussed, Defendant Saensane was a part-owner, not an employee, of Defendant Bangkok. Therefore, Plaintiff’s claim for vicarious liability is not proper. Additionally, to the extent that the Court finds Defendant Saensane is an employee, she clearly was not acting in the scope of her employment with Defendant Bangkok when the accident occurred on September 27, 2019. The accident occurred at 12:56 AM, nearly four hours after the restaurant had closed for the day. Defendant Saensane testified that she left the restaurant two to three hours prior to the accident. This accident occurred several miles away from the restaurant

but South Carolina law is clear that even if Defendant Saensane had been driving straight home after leaving the restaurant, the commute would still not take place within the scope of her employment.

Plaintiff has also alleged vicarious liability against Defendant Bangkok under a theory of joint enterprise. South Carolina case law regarding this cause of action is extremely limited. However, the 2nd Restatement of Torts defines a Joint Enterprise as: (1) an agreement, express or implied, among the members of a group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control. Restat 2d of Torts § 491, cmt. c.

South Carolina case law is unclear regarding whether our state has adopted the Restatement definition of a joint enterprise. However, it does appear that South Carolina has only discussed joint enterprise liability in the context of automobile accidents in which two or more people were in the subject vehicle. In *Pruitt v. Bowers*, the South Carolina Court of Appeals affirmed the circuit court's grant of summary judgment in favor of the passenger of a vehicle where he had become intoxicated with the driver before the subject incident. 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998). The court held that "to establish joint venture or enterprise liability between a driver and passenger, there must be a common purpose or community of interest, and the passenger must have an equal right to control the direction and management of the vehicle." *Id.* at 487, 499 S.E.2d at 252 (citing *Lollar v. DeWitt*, 255 S.C. 452, 179 S.E.2d 607 (1971)). "[Plaintiff] failed to present any evidence to support a finding that [the driver] was [the passenger's] agent or that [the passenger] had a voice in the management or direction of

movements of the vehicle . . . [the driver] owned the vehicle, drove the vehicle, and ultimately controlled the vehicle.” *Id.* at 487, 499 S.E.2d at 253.

Defendant Bangkok is not aware of any South Carolina case which has extended joint enterprise liability in a motor vehicle accident to any defendant other than the passenger of the vehicle. Plaintiff’s theory is apparently that Defendant Bangkok, a business entity, is engaged in a joint enterprise with Defendant Saensane, the entity’s co-owner, such that any of her actions in a motor vehicle can be imparted onto Defendant Bangkok. This theory is contrary to South Carolina law. Obviously, Defendant Bangkok had no common purpose or pecuniary interest in wherever Defendant Saensane was headed when the accident occurred. Further, Defendant Bangkok had no control of Defendant Saensane’s management or direction of movements of the vehicle. For these reasons, Plaintiff’s causes of action for and related to Vicarious Liability should be dismissed.

V. Plaintiff has not proven by clear and convincing evidence that he is entitled to punitive damages

S.C. Code 15-32-520 (C) states that “Punitive damages may be considered if compensatory or nominal damages have been awarded in the first stage of the trial.” Therefore, if the Court finds that Defendant Bangkok is entitled to summary judgment as to all claims against it, the claim for punitive damages must also be dismissed.

However, in the event the Court denies Defendant Bangkok’s motion as to any or all previous causes of action, Plaintiff has still failed to present evidence sufficient to prove he is entitled to punitive damages against Defendant Bangkok. The standard for punitive damages is “clear and convincing evidence” and is higher than that of Plaintiff’s other causes of action. S.C. Code 15-32-520 (D). Plaintiff must prove that “his harm was the result of defendant’s willful, wanton, or reckless conduct” *Id.* Plaintiff has not presented any evidence that Defendant

Bangkok acted in a willful, wanton, or reckless manner. Plaintiff is attempting to impart Saensane's actions as an individual onto Defendant Bangkok as a business entity. For these reasons, Plaintiff's Seventh Cause of Action for Punitive Damages should be dismissed.

CONCLUSION

For the reasons discussed herein, there exist no genuine issues of material fact and Defendant Bangkok is entitled to judgment as a matter of law as to all causes of action against it. Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Bangkok would respectfully ask the Court to grant its Motion for Summary Judgment.

MCANGUS GOUDELOCK & COURIE, L.L.C.

/s/Zachary S. Brown

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ATTORNEYS FOR DEFENDANT RA CHA, INC.

January 24, 2023

Exhibit to Defendant Bangkok's Memorandum of Law in Support of Motion for
Summary Judgment

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
KEVIN DWAYNE CHAVIS,	)	Civil Action No. 2021-CP-23-01487
	)	
Plaintiff,	)	
	)	
vs.	)	EXHIBIT TO DEFENDANT
	)	BANGKOK'S MEMORANDUM OF
VANSY SAENSANE AND RA CHA,	)	LAW IN SUPPORT OF MOTION FOR
INC. d/b/a BANGKOK TOKYO	)	SUMMARY JUDGMENT
RESTAURANT a/k/a BANGKOK THAI	)	
RESTAURANT.	)	
	)	
Defendants.	)	

Please find attached the deposition transcript of Vansy Saensane as an exhibit to the recent filing of Defendant Bangkok's Memorandum of Law in Support of Motion for Summary Judgment.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Zachary S. Brown

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ATTORNEYS FOR DEFENDANT RA CHA, INC.

January 24, 2023

EXHIBIT

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
C.A. No.: 2021-CP-23-01487

Kevin Dwayne Chavis,
Plaintiff,
v.
Vansy Saosano and
Bangkok Tokyo, LLC,
Defendants.

DEPOSITION OF
VANSY SAOSANO

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 10th day of February 2022, beginning at approximately 9:59 a.m. attended by counsel as follows:

Also Present:

KEVIN DWAYNE CHAVIS, Plaintiff

Deposition Reported by:

Melissa A. Hines, CR
Depositions And..., Inc.
(864) 235-3518

Appearances:

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Exhibits (Attached to Deposition):
(None)

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1 Pursuant to Notice and/or agreement to take depositions,
2 the within deposition was taken by the above Reporter, a
3 Notary Public, as required under the South Carolina Rules of
4 Civil Procedure, Rule 10, et al., by consent of all parties
5 via Zoom Conferencing.
6 BY THE COURT REPORTER: The attorneys participating
7 in this deposition acknowledge that I am not physically
8 present in the deposition room and that I am reporting this
9 deposition remotely. The parties and their counsel consent to
10 this arrangement and waive any objection to this manner of
11 reporting. Please indicate your agreement by stating your
12 name and your agreement on the record.
13 BY MR. DRAISEN: I'm Daniel Draisson on behalf of the
14 Plaintiff. I agree.
15 BY MR. KRAUSE: Steve Krause on behalf of the
16 Plaintiff, agree.
17 BY MS. SNYDER: Amy Snyder on behalf of the
18 Defendant, Ms. Vansy Saesane and I -- we agree.
19 BY MS. McMILLAN: And I'm Beth McMillan on behalf of
20 Bangkok Tokyo. I, I agree.
21 The deponent and counsel agreed that both the reading over
22 and signing of the deposition are hereby NOT WAIVED.
23
24 The deponent was duly sworn to tell the truth, the
25 whole truth, and nothing but the truth concerning the matter

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1 Q. If you answer the question, all of us are gonna assume you
2 understood it, is that fair?
3 A. Yes, sir.
4 Q. Okay. All right. Now, since you've been sworn, you know,
5 you're, kind of, like, on an island. You can't ask your
6 lawyer any questions, okay? Um, you have to ask the
7 questions, if you have any, to the lawyer who is, who is
8 asking you questions. So, initially, in this -- for the
9 first long part of this, I'm going to be the one asking
10 questions. And I think Ms. Snyder's told you that if you
11 have questions, you have to direct them to me, okay?
12 A. Yes, sir.
13 Q. All right. If we take any breaks at any time -- which
14 you're more than welcome to do -- this is not an endurance
15 contest. So, if you need something to drink, if you need
16 to go to the restroom, anything like that, you just tell
17 us and we'll stop, okay?
18 A. Yes, sir.
19 Q. Out under our rules, you're not allowed to have a
20 discussion about your testimony with anybody during that
21 break, okay?
22 A. Yes, sir.
23 Q. All right. Um, and, basically, you know, if, if at any
24 point along the way during your testimony, um, you feel
25 like you need to, to ask me something, just, just

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1 herein.
2 DIRECT EXAMINATION BY MR. DRAISEN:
3 Q. All right. My name is Daniel Draisson, uh, and I represent
4 Kevin Chavez in this matter that's been brought regarding
5 an automobile accident that occurred on September the
6 27th, 2019. And we've asked you here today -- this is
7 what we call a "Discovery Deposition." This is just an
8 opportunity for us to find out what you know and what you
9 would say in the event that this case goes to trial, okay?
10 Um, so, testifying today is very much like testifying in
11 court. You've been sworn to tell the truth, okay? And
12 so, there's a couple of basic rules that we have for
13 depositions. I'm going to go over those with you, okay?
14 A. (No response)
15 Q. Can you hear me?
16 A. Yes, sir. I'm listening.
17 Q. Okay. All right. So, uh, number one is, is that, as we
18 were talking about off the record, um, if you don't
19 understand the question that I'm asking you, uh, and it
20 may be that I've, I've poorly-worded a question or I've
21 made it too complicated or you just simply don't
22 understand it, I want to have your agreement that you're
23 gonna stop me and you're gonna tell us all that you didn't
24 understand, okay?
25 A. Yes, sir.

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1 interrupt. Um, also, if you give an answer to a question
2 and/or you don't remember something, that's perfectly
3 fine, but if you remember later, you can add to your
4 testimony at any point along the way. In other words, if
5 you tell me something and you left something out and then
6 you later remember when we ask another question, you can
7 add that at any point along the way, okay?
8 A. Okay.
9 Q. And if we don't know what you're referring to, we'll,
10 we'll ask you what you're referring to and make it clear
11 on the record. But you can supplement anything. Now, the
12 court reporter -- and this is particularly important
13 because we're doing this by video today -- the court
14 reporter is taking down everything we say and she's gonna
15 produce a type-written transcript that's word-for-word.
16 And because we're doing this by video, what we're gonna
17 need to do is make sure that we don't speak over each
18 other, don't talk over each other, okay?
19 A. Okay.
20 Q. And if you'll notice, when I ask you a question, I'm
21 pausing and specifically waiting for you to give an answer
22 and that's because we need to make sure that only one of
23 us is talking at a time. So, if you'll let me ask my
24 question and then pause a second and then you give your
25 answer, I'm gonna try to wait to say anything else until

2 (Pages 5 to 8)

VANSY SAESANE

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1 you've finished your answer, okay?
2 A. Yes, sir.
3 Q. All right. Um, okay. Do you have anything -- any
4 questions about anything that I've asked you so far?
5 A. No, sir.
6 Q. All right. Let me tell you a little bit about how I like
7 to do these. I'm gonna start off by basically going
8 through some demographic information. I want to find out
9 a little bit about you ---
10 A. Yes, sir.
11 Q. --- and so I'm gonna ask you questions. And please
12 understand that just about every one of these questions we
13 ask is standard. We ask it if just about every deponent.
14 Uh, it will seem like we're prying into your life. I
15 apologize in advance for that. But we have to know a
16 little bit about the person who's involved in the case and
17 your background, your education, things of that nature.
18 Uh, we have to know who your family members are that are
19 within the counties because the -- we could have to pick a
20 jury. It's not because I intend to contact your family
21 members or anything like that. But we have specific
22 reasons for asking the, the questions that, that we ask,
23 okay?
24 A. Yes, sir.
25 Q. All right. And then I'm gonna ask you a little bit about

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1 if we refer to him, we can call him something else?
2 A. Um, Chai, C-h-a-i.
3 Q. Chai. And do you know -- do you go by "Vansy"?
4 A. Yes, sir.
5 Q. Would it be all right if we call you "Vansy" today for
6 purposes of the deposition just so that's a shorter name?
7 A. Yes, sir.
8 Q. Okay. And I don't mean to do that to be rude or impolite.
9 I'm just trying to make the record clear and easy. And I
10 think for the court reporter, you know, V-a-n-s-y is
11 probably much easier to spell, uh, and for us to keep
12 track of. If, if that's okay with you?
13 A. Yes, sir. That's fine.
14 Q. And I'm not, I'm not, I'm not calling you by your first
15 name to be rude, so please don't take it that way. I'm
16 just trying to make it easy on the court reporter.
17 A. Yes, sir. I understand.
18 Q. Okay. All right. So, when I refer to Chai, we'll be
19 talking about the gentleman that is -- resides with you at
20 828 East Holloway Drive; correct?
21 A. Yes, sir.
22 Q. Can you tell me, what is your relationship to Chai?
23 A. He's my, um, boyfriend at first and then we engaged the,
24 the same years that, um, I moved into his house.
25 Q. I didn't understand what you said the last part of that

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1 your work and your business and then I'm probably gonna
2 ask you about the wreck, itself. And that's, that's kind
3 of how I plan to go through this today. Is that fair?
4 A. Yes, sir.
5 Q. All right. So, we'll start off with some basic
6 information about you. So, why don't you -- tell us
7 your full name and spell it for the record, because I have
8 a feeling that if you don't spell it, we're not gonna, not
9 gonna get it right.
10 A. My first name, Vansy, V-a-n-s-y. My last name, Saesane,
11 S-a-e-s-a-n-e.
12 Q. Okay. And is that your full, legal name?
13 A. Yes, sir.
14 Q. Okay. All right. And what is your current address?
15 A. 828 East Holloway Drive, Woodruff, South Carolina, 29388.
16 Q. And how long have you been there?
17 A. Um, 2011.
18 Q. Okay. Is that a house or a townhouse or a condominium?
19 A. It's a house.
20 Q. Okay. And who lives at the house with you?
21 A. Chai.
22 Q. You'll probably have to spell that for us.
23 A. Well, C-h-a-i-S-a-n-a. That's his first name. His last
24 name is Tharnavongsa, T-h-a-n-n-a-v-o-n-g-s-a.
25 Q. Okay. And does he go by some shorter name so that we --

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1 was. You said he was your boyfriend and then?
2 A. We engaged after.
3 Q. Engaged.
4 A. Yes, sir.
5 Q. So you're -- you've been engaged for a number of years,
6 but not married?
7 A. No, sir.
8 Q. Okay. Do you have any children that live there in the
9 house?
10 A. No, sir.
11 Q. Okay. Um, and I -- where did you live before 828 East
12 Holloway Drive?
13 A. I lived in Charlotte with my father.
14 Q. Do you know the address there?
15 A. 6024 Paw Creek Road.
16 Q. Is that Paul, P-a-u-l?
17 A. P-a-u-l-C-r-o-o-k Road in Charlotte, NC, 28214.
18 Q. All right. And what's your father's name?
19 A. Lok, L-o-k. And the last name is Saesane,
20 S-a-e-s-a-n-e.
21 Q. Okay. And how long did you live with your father in
22 Charlotte?
23 A. Um, since the year 2000 that my parent move to Charlotte
24 in -- I move in with them the year after, I think, yeah.
25 Q. Around, around 2001?

3 (Pages 9 to 12)

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1 A. Yes, sir.
2 BY MS. SHYDER: Guys, um, they're cutting and
3 constructing in the space below us and, and we can hear it
4 in here. Hopefully, y'all can't hear it. But, but let me
5 know if that becomes a problem.
6 BY MR. DRAISEN: Thank you. Yeah, so far, I don't
7 hear anything but you guys. We're good so far.
8 BY MS. SHYDER: Good, good.
9 Q. All right. So, uh, prior to, uh, moving in with your
10 parents in 2001, where did you live?
11 A. 2001? Um, in Louisiana. I grew up there.
12 Q. Okay. And whereabouts in Louisiana?
13 A. Um, ---
14 Q. What town?
15 A. -- Now Iberia.
16 Q. I'm sorry. What town?
17 A. New Iberia.
18 Q. I, I didn't understand that. I'm sorry.
19 BY MS. SHYDER: New Iberia, like, Iberia, like
20 Spain.
21 BY MR. KRAUSE: Now Iberia.
22 BY MS. SHYDER: Iberian Peninsula.
23 Q. Okay. All right. And who did you live with down there?
24 A. My parents. They lived there before.
25 Q. Okay. Now, let me ask you the -- are you a US citizen?

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1 down, then she'll just show the last four (4) digits,
2 okay?
3 A. Yes, sir.
4 Q. All right. Go ahead.
5 A. XXX-XX-9225.
6 Q. Okay. Thank you.
7 BY MR. DRAISEN: And, Madam Court Reporter, if
8 you'll just make sure you do that on the record, that we
9 just, uh, show the last four (4) digits, please.
10 BY THE COURT REPORTER: Yes, sir.
11 Q. All right. Now, if you've had a Green Card since 1990, I
12 assume, then, that you've had to reapply. Is it every ten
13 (10) years that you reapply?
14 A. Yes, sir. Every ten (10) year.
15 Q. So, the last time you would have reapplied would have been
16 in 2020?
17 A. I don't remember. Every time that I gonna re-, renew my
18 Green Card, you know, I just look through the, um, the
19 expiration date and then I get in contact with those
20 people, uh, with the Immigration and then I apply and --
21 to renew my Green Card, every ten (10) year.
22 Q. Right. Okay. Do you know when your current Green Card
23 expires?
24 A. No, sir. I still -- it expires ---
25 Q. Do you have it ---

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1 A. No, sir. I have a Green Card.
2 Q. Okay. And what, what country is it that you hail from?
3 A. Do you mean where I born?
4 Q. Yeah. Well, I mean, if you're here on a Green Card, where
5 is the country that you, uh, ---
6 A. Thailand.
7 Q. Thailand?
8 A. Yes, sir.
9 Q. Okay. And how long have you had a Green Card?
10 A. Since 1990.
11 Q. Is that when you first came over to the United States?
12 A. Yes, that year.
13 Q. 1990?
14 A. 1990.
15 Q. Okay. And what year -- what's your date of birth?
16 A. May 10, 1976.
17 Q. Okay. And do you have a Social Security number?
18 A. Yes, sir.
19 Q. Okay. Well, here's what I want to do with that. Give me
20 one second to explain, okay? I don't like having these
21 numbers on the record, so what I'm gonna ask you to do is
22 tell us the number and we're just gonna ask the court
23 reporter to put a bunch of X's and the last four (4)
24 digits, okay? That way, we don't have it on a, on a
25 record. But you tell it to us slowly so we can write it

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1 A. Can I, can I take it and look at it?
2 Q. Absolutely.
3 A. No?
4 Q. Yeah, yeah.
5 A. I can?
6 Q. Yeah, you can.
7 A. (Pause - retrieves card) You want to know the expiration
8 date?
9 Q. Sure.
10 A. (Reading from card) Okay. It's on, um, 01/19/28.
11 Q. Okay. Does that, does that card have, like, a number
12 that's different than your pass- -- than your, uh, Social
13 Security number?
14 A. Yes, sir. It's different.
15 Q. Can you give me the number that's on there?
16 A. The number is, um, -- USCIS number is 071-445-394.
17 Q. Oh -- what was the last number?
18 A. Four (4).
19 Q. Four (4). Okay. And, and while you're doing that, do you
20 have a driver's license?
21 A. Yes, sir. (Pause - retrieves driver's license)
22 Q. Is that a South Carolina driver's license?
23 A. It's a South Carolina.
24 Q. Okay. And, um, can you give me the number, please?
25 A. (Reading from driver's license) The DL number is

4 (Pages 13 to 16)

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1 104663415.
 2 Q. Okay. And does -- if you look on there, are there any
 3 restrictions on there, like, glasses or anything else?
 4 A. No, sir.
 5 Q. I see you're wearing glasses, but you're not required to
 6 wear glasses when you drive?
 7 A. Um, just recently, sir, because, um, the past two (2)
 8 years, yeah, um, I can't see close, so I just wear those
 9 when I read.
 10 Q. And has that driver's license ever been suspended or
 11 revoked?
 12 A. Um, I don't understand, but, um, I'm not allowed to drive
 13 after, you know, whatever happened. But I -- they didn't
 14 ask me to return this. But I do ask Aaron. Aaron said at
 15 the end, we will -- send me a letter to mail it back, but
 16 I waiting for that.
 17 Q. Okay. So, since the -- oh, okay. So, how long has it
 18 been a -- that you have not been driving?
 19 A. Um, I've not been driving, um, since that -- after, um, I
 20 got probation and, you know, I'm not allowed to drive.
 21 But before, I, I drive to work.
 22 Q. Did you have to -- did, did the, did the police ever take
 23 your driver's license and you had to go get another one?
 24 A. No, sir. He take it, but, um, he give it back to me.
 25 Q. Okay. So, so the whole time, you've always had that same

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1 Q. Not by blood or by marriage?
 2 A. No, sir.
 3 Q. Okay. And your -- so your dad is, is in Charlotte; is
 4 that right?
 5 A. Yes, sir.
 6 Q. Okay. And so, you don't have any cousins or sisters or
 7 aunts or uncles, uh, or anybody else related to you in
 8 Greenville County; is that right?
 9 A. No, sir. I don't have any.
 10 Q. Okay. All right. Other than this most recent, uh,
 11 criminal charge that you had related to this accident,
 12 have you had any other criminal charges?
 13 A. No, sir.
 14 Q. Do you understand what I'm asking you?
 15 A. You say after, uh, ---
 16 Q. No, before.
 17 A. --- the accident?
 18 Q. Before.
 19 A. I don't have ---
 20 Q. Before. Sorry.
 21 A. No, sir.
 22 Q. Okay. Let me just make sure I'm clear, okay?
 23 A. Yes, sir.
 24 Q. So, a -- how about we do it this way: Since nine --
 25 from 1990 until September of 2019, have you ever been

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1 driver's license?
 2 A. Yes, sir.
 3 Q. What's the expiration date on that driver's license?
 4 A. Uh, 05/10/2024.
 5 Q. Okay. And you, you didn't have to get -- you, you haven't
 6 had to get a special, uh, driver's license that just
 7 allows you a restricted license that allows you to drive
 8 to and from work?
 9 A. No, sir. I -- I didn't go, um, doing that. Because,
 10 like, um, when I talked to Chai, I had to get some kind of
 11 the, uh, insurance. That insurance is very high, so I
 12 just decide not to drive and it ---
 13 Q. Yeah. Yes, ma'am. I understand. I guess I was talking
 14 about since the date of the accident until now, have you
 15 ever had to, uh, get a, a, what they call a restricted
 16 license, that only ---
 17 A. No, sir.
 18 Q. --- allows you to drive to and from work?
 19 A. No, sir.
 20 Q. Okay. Do you have any children?
 21 A. No, sir.
 22 Q. Okay. Do you have any relatives by blood or marriage, uh,
 23 other than Chai, that you live with in Greenville County?
 24 Do you have any other relatives in Greenville County?
 25 A. No, sir.

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1 arrested for anything?
 2 A. No, sir.
 3 Q. Okay. And that would be -- you weren't arrested in
 4 Louisiana or North Carolina or South Carolina; is that
 5 right?
 6 A. No, sir.
 7 Q. All right. Have you ever -- and I have to ask this
 8 question of everybody. Uh, have you ever had to be
 9 treated for alcohol or drug abuse?
 10 A. No, sir.
 11 Q. Have you ever served in the military?
 12 A. No, sir.
 13 Q. Okay. Um, tell me a little bit about your education. Did
 14 you graduate high school?
 15 A. No, sir. I go to -- all the way to 11th grade.
 16 Q. And where was that? In Louisiana?
 17 A. In Louisiana. Martin High School.
 18 Q. Okay. Have you had any education beyond high school, any
 19 technical classes?
 20 A. Um, I take a Mail Technician class.
 21 BY MR. GRAISEN: Mail. (TO MR. KRAUSE)
 22 BY MR. KRAUSE: Yeah, I figured that.
 23 Q. Where did you do that?
 24 A. In Charlotte.
 25 Q. Did you get any kind of a certificate or degree or

5 (Pages 17 to 20)

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1 licensu?
2 A. Yes, sir.
3 Q. What did you get?
4 A. A certificate that certified I graduate from the school.
5 Q. Did you then get any kind of a license from the state of
6 North Carolina?
7 A. Yes, sir.
8 Q. What was the license for?
9 A. For -- to work in the nail salon.
10 Q. And did you work in a nail salon?
11 A. Not anymore, sir.
12 Q. No. Did you?
13 A. I did.
14 Q. Okay. What was the name of the salon that you worked in?
15 A. Um, the last one is, um, -- I worked there, not every day.
16 lot no see. It's been a while. Uh, Nail Style in, um,
17 -- is that, uh, -- where is that? Off of Pelham. Not
18 Inman. (Pause) I don't know the city, but close to
19 Greenville.
20 Q. Close to ---
21 A. The nail place ---
22 Q. --- Greenville, South Carolina or North Carolina?
23 A. In South Carolina, sir.
24 Q. So, did you get a, a license in South Carolina to do
25 nails, as well?

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1 A. Um, I have to transfer from North Carolina to get the
2 South Carolina license.
3 Q. Did you do that?
4 A. Yes, sir, I do.
5 Q. So, so you now have a South Carolina one?
6 A. I have South Carolina license, but I haven't renew -- I
7 have to renew that every year and take uh, um, uh,
8 continue education to get renew.
9 Q. Okay. When's -- when did you last do nails? What year?
10 A. I believe, um, '16, '17?
11 Q. 2017?
12 A. I think so.
13 Q. Okay. Do you know when you started working with Bangkok
14 Tokyo?
15 A. Back in 2017; yes.
16 Q. You started with Bangkok Tokyo in 2017?
17 A. Yes, sir.
18 Q. All right. So, before I get into that, let me ask you,
19 what brought you to the Greenville area?
20 A. Um, I move in with Chal. He live here and he work here.
21 Q. Okay. All right. Now, since this all kind of started, I
22 want to ask you a few questions about Bangkok Tokyo. When
23 did the restaurant, Bangkok Tokyo first open, to your
24 knowledge?
25 A. I don't understand that.

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1 Q. So, there's a restaurant that you work at called Bangkok
2 Tokyo?
3 A. Yes, sir.
4 Q. Okay. Do you know when that restaurant first started
5 operation?
6 A. You mean, like, first start open?
7 Q. When it first opened, first doors, first location.
8 A. They have so many generation, from what I heard, but I
9 don't remember. I don't know.
10 Q. In 2017, is that when you started working at the
11 restaurant?
12 A. Yes, sir, but not, uh, full time at that time. I just
13 kind of go in and learn how to work in there with other
14 coworker.
15 Q. Where was the restaurant located in 2017? Do you know
16 what the address was?
17 A. 599 Haywood Road.
18 Q. Okay. Now, as I understand it, Bangkok Tokyo Restaurant
19 is, is not the legal name of the business. Um, the legal
20 name of the business is Ra Cha, that's R-a C-h-a,
21 Incorporated; is that correct?
22 A. Yes, sir.
23 Q. Okay. And Ra Cha, Inc. does business as Bangkok Tokyo
24 Restaurant; is that right?
25 A. Yes, sir.

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1 Q. Okay. And, uh, do you know when Ra Cha, Incorporated
2 became -- when it first became incorporated?
3 A. No, sir.
4 Q. Okay. I've been provided some documents, just a little
5 bit of information about, um, Ra Cha, Incorporated. Can
6 you tell me who the shareholders -- and when I say
7 "shareholders," that's the legal term for the owners of
8 the company -- are?
9 A. One of the shareholder is myself and part of it's Chal and
10 Allison is the big holder.
11 Q. Did you say Allison?
12 A. Allison. That's what I call her.
13 Q. Would that be a lady by the name of Pouna, P-o-u-n-a,
14 middle initial "A," and last name Wannarat,
15 W-a-n-n-a-r-a-t?
16 A. Yes, sir. That's correct.
17 Q. That's Allison?
18 A. Yes, sir.
19 Q. Okay. All right. So, can you tell me how did the three
20 of you come to be partners, if you will, in Ra Cha,
21 Incorporated?
22 A. Okay. Um, when I first moved to Green -- to Greenville
23 in -- I hop around to find how where is a Thai restaurant
24 to eat, 'cause I'm Thai. And then Chal brought me to her
25 restaurant and then I got to know her. Like, you know,

6 (Pages 21 to 24)

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1 like, we just start talking about, you know, life and
2 things. So, I heard she want to sell the restaurant and
3 then I talked to Chai. And during that time, he don't
4 have much money to buy the whole thing, and so that's how
5 the shareholder and become a partner in work. That's how I
6 know her, but we not a friend.
7 Q. So, can you tell me what year that you're talking about
8 that was that you became involved in the ownership?
9 A. The ownership, you mean like a shareholder?
10 Q. Yes, when did you ---
11 A. When I ---
12 Q. Yes. When did you become a shareholder?
13 A. The same year that I start work there.
14 Q. 2017?
15 A. Yes.
16 Q. So, is it correct for me to say that Pa Cha, Incorporated
17 existed prior to 2017, but it was owned solely by Allison?
18 A. Yes, sir.
19 Q. And that in 2017, you and Chai bought in an interest in
20 the company?
21 A. Yes, sir.
22 Q. Okay. And did you, did you pay a certain amount of money
23 to buy in?
24 A. No, I didn't pay. Chai paid.
25 Q. Okay. But that -- do you know how much Chai paid to buy

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1 Q. Okay. So, when Chai paid the money that he paid, was he
2 paying to buy his twenty-five percent (25%) and your
3 twenty-five percent (25%)?
4 A. Yes, sir.
5 Q. Okay. Do you know how much he paid?
6 A. I don't know. I don't ask.
7 Q. Okay. Do you know if there was any paperwork that was
8 signed about the purchase?
9 A. They should have, you know, -- either Chai or Allison
10 should have all the paperwork.
11 Q. Do you remember signing papers? Did you have to go
12 somewhere?
13 A. I remember I signed a paper.
14 Q. Okay. All right. So, do you know if you had to go to a
15 lawyer's office to do that?
16 A. No. I remember, he come to the restaurant.
17 Q. Okay. Now, did Chai pay the money all at one time or d-
18 -- have y'all had to make payments to Allison?
19 A. I don't know, sir.
20 Q. You don't know anything about that?
21 A. No the one -- no.
22 Q. Okay. That's fine. Does Allison continue to work in the
23 business?
24 A. Yes, sir.
25 Q. So, are all three of you working in the business?

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1 fifty percent (50%) interest for you?
2 A. I don't, I don't know, sir.
3 BY MS. SHYDER: Object to the form. I don't think
4 she has fifty percent (50%) interest. I think she has
5 twenty-five (25%).
6 BY MR. DRAISEN: No, no, the two (2) of them. Yeah,
7 yeah, the two (2) of them, I meant.
8 Q. Well, the -- let me ask the -- let me rephrase the
9 question. As I understand it from the corporate records
10 that I saw, uh, currently, and at least back in 2018, um,
11 Allison owns fifty percent (50%), you have twenty-five
12 percent (25%) and Chai has twenty-five percent (25%); is
13 that right?
14 A. Yes, sir.
15 Q. Okay. And when I asked you about buying in, you said that
16 you didn't pay anything, but Chai paid to buy in; is that
17 right?
18 A. Yes, sir. He paid to buy in. I worked there as a
19 employee.
20 Q. Okay. So, let me ask you this, because I want to make
21 sure I understand. So, in, uh, in 2017, did you have any
22 share interest in Pa Cha, Incorporated?
23 A. You mean, like, uh, the check and stuff?
24 Q. Shareholder. Were you a shareholder in 2017?
25 A. Yes, I am.

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1 A. No, sir. Just me and Allison. Chai got his own job.
2 Q. Okay. And has Chai ever worked in the restaurant?
3 A. He come help sometimes, but not all the time.
4 Q. Was that ever his ---
5 A. He's not on staff.
6 Q. I'm sorry. Was that ever his, his regular job?
7 A. No, sir.
8 Q. So, it's fair to say that Allison and you run the
9 restaurant?
10 A. Yes, sir.
11 Q. Okay. Now, do you -- does Allison have a job title?
12 A. He and her are s- -- we are chef. We cook and, you know,
13 do pretty much everything. I don't know what you mean by
14 a title.
15 Q. Well, I mean, is there a manager or do one of you have a
16 designation as a manager?
17 A. I don't know. We do everything in there.
18 Q. Okay. Who hires employees?
19 A. Both of us. If Allison available, she will do, uh, the
20 interview. If I'm available, I will do the interview.
21 Q. Okay. Do you, uh, do you wait tables?
22 A. If they need help, I will come from the back and help.
23 Q. Okay. Um, does somebody take reservations, answer the
24 phone?
25 A. The staff.

7 (Pages 25 to 28)

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1 Q. Okay. Does -- is there a bar in the restaurant?
2 A. Yes, sir.
3 Q. Okay. Was there a bar in the restaurant in 2019?
4 A. Yes, sir.
5 Q. Okay. Who runs the bar?
6 A. Other staff that work there.
7 Q. Okay. Do you, um, do you know who has the, the alcohol
8 and beer license for either Ra Cha, Incorporated or
9 Bangkok Tokyo?
10 A. I don't know. I think Bangkok Tokyo is in -- you know,
11 like the -- it's under the name Bangkok Tokyo. But
12 Allison handled the, um, the tax and the paperwork,
13 because I don't read very well.
14 Q. I guess what -- let me, let me ask a better question.
15 A. Okay.
16 Q. Do you know who applied with the South Carolina Department
17 of Revenue to get an alcohol and beer license for Bangkok
18 Tokyo?
19 A. Allison.
20 BY MS. McMILLAN: Objection to the form.
21 BY MS. SHYDER: Don't, don't worry about that.
22 Q. Now, in the restaurant, is there a -- is there an alcohol
23 and beer license, uh, posted in the restaurant?
24 A. Yes, sir.
25 Q. Have you seen that piece of paper?

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1 period of time, you have to renew the license. Is that --
2 do you understand that?
3 A. I understand that part, sir.
4 Q. Okay. Do, do you know if there was a period between 2017
5 and now that that license has, has expired?
6 A. Allison would handle that. And, you know, I don't, I
7 don't really know. I don't know.
8 Q. Okay. Do you, do you know if there was a period of time
9 between 2017 and September of 2019 that Bangkok Tokyo, Ra
10 Cha, Inc. or Allison did not have a license?
11 A. No, sir. They always have a license.
12 Q. Okay. And is the license at, uh, at Bangkok Tokyo, is it
13 for the service of both beer and wine and alcoholic
14 drinks?
15 A. Just beer and wine, sir. No hard liquor.
16 Q. To your knowledge, has it always been that way, just beer
17 and wine?
18 A. Yes, sir.
19 Q. Okay. So, is that right that y'all don't serve -- you
20 wouldn't serve a drink with vodka or whiskey or ---
21 A. No, sir.
22 Q. --- anything like that? Is that right?
23 A. No, sir.
24 Q. Okay. All right. Now, let me ask you this: Are you, are
25 you an employee of Bangkok Tokyo?

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1 A. Yes, sir, at the bar.
2 Q. Okay. Does it have Allison's name on it?
3 A. I don't know. I didn't look. I just see the license and
4 then, the, um, occupant's license, two of the license
5 posted on the bar. That's it.
6 Q. Do you know if that license, if -- let me, let me ask it
7 this way: In September of 2019, do you know if Allison or
8 Bangkok Tokyo or Ra Cha, Incorporated had a alcohol or
9 beer license?
10 A. Yes, I think so.
11 Q. Do you know if that alcohol and beer license has ever
12 lapsed?
13 BY MS. McMILLAN: Objection to the form.
14 BY MR. DRAISEN: I'm sorry. I couldn't hear that
15 and somebody went silent and now there's ---
16 BY MS. McMILLAN: This is, this is Beth. Objection
17 to the form.
18 BY MR. DRAISEN: Okay.
19 BY MS. SHYDER: I think she wants you to re-ask that
20 and explain the word "lapsed." Maybe use a different
21 word.
22 BY MR. DRAISEN: Okay. That's fine.
23 Q. Do, do you know -- okay. So, it's my understanding that
24 when someone applies for an alcohol and beer license that
25 it's good for a certain period of time and that after that

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1 A. Yes, sir.
2 Q. And how do you get paid, as an employee?
3 A. I get paid by monthly and it's depend on how the
4 restaurant make money, or some months I don't get paid.
5 Q. So, do you have an hourly rate of pay that you get paid?
6 A. Monthly, sir.
7 Q. Monthly.
8 A. Yes, sir.
9 Q. And is it a set amount per month?
10 A. It's a set amount that, um, they agree to pay if I work
11 there every day, six (6) days a week. Um, at first, we do
12 three thousand (\$3,000.00) and then dropped down and down
13 and down. And some month I don't even get paid.
14 Q. Okay. Let me back up and make sure I understood that.
15 So, initially, you were being paid three thousand dollars
16 (\$3,000.00) a month as a salary?
17 A. Yes.
18 Q. And over time, they've had -- your salary has been
19 reduced?
20 A. Yes.
21 Q. Okay. And -- All right. What do you currently make
22 there?
23 A. Currently, I don't, I don't have, like, a set amount that
24 I pay. We get paid by, you know, how the restaurant make
25 money. But from what I told you, the first, you know, we

8 (Pages 29 to 32)

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1 set as three thousand (\$3,000.00).
2 Q. Is that still the official amount you're supposed to be
3 paid each month?
4 A. You mean it's three thousand (\$3,000.00)?
5 Q. Are you still supposed to be paid that, even if the
6 restaurant doesn't have the money?
7 A. No, I don't get paid that much.
8 Q. No. The question is, are you supposed to get paid that?
9 A. I supposed to if the restaurant make money.
10 Q. Let me ask you this: Does, does Chai get the same amount
11 of money that you get each month?
12 A. No, sir.
13 Q. So, what -- how the restaurant does, that's how
14 Allison gets paid and that's how you get paid?
15 A. Yes, sir.
16 Q. And Chai doesn't get paid anything out of that?
17 A. He didn't get paid.
18 Q. Okay. Now, can you give me an example of, at the end of
19 the month, how you and Allison would settle up?
20 A. I don't understand that.
21 Q. Well, if you said that depending on how the restaurant
22 does each month, depends on how you get paid. Is that
23 right?
24 A. Yes.
25 Q. So, could you give me, like, an example for maybe last

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1 month or the last time you got paid?
2 A. I -- fifteen. One thousand, five hundred (\$1,500.00).
3 Q. And did, did Allison decide how much you got paid?
4 A. We both decide. We both talk. 'Cause, um, you know, she
5 know, um, how much the restaurant made money, too, and it
6 -- we agree on that.
7 Q. Did she get paid the same amount you did?
8 A. If, if I got paid, uh, one thousand, five hundred
9 (\$1,500.00), Allison will get one thousand, five hundred
10 (\$1,500.00). If I got paid one thousand (\$1,000.00), she
11 got one thousand (\$1,000.00).
12 Q. So, y'all are splitting, y'all are splitting the net --
13 or, or the amount that you agree on, you're splitting that
14 50/50?
15 A. Yes, sir.
16 Q. (Pause) Do you get a, a W-2 form for taxes ---
17 A. Yes, sir.
18 Q. --- from Bangkok, Tokyo?
19 A. Yes, sir.
20 Q. And you've gotten one of those for each year, 2017 through
21 now?
22 A. You talking about ---
23 Q. A W-2 form.
24 A. You say, um, did I get the W-2 form 2017?
25 Q. Yeah. 2017, 2018, 2019, 2020?

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1 A. Yes, sir.
2 Q. Okay. What's the average number of other staff members
3 that you have that work at the restaurant?
4 A. We have, lunchtime, at least, like, two (2). Before, it's
5 more than two (2). Since the Covid, only two (2) or one
6 (1), 'cause the business not that busy. And sometime, me
7 and Allison have to help the front, too. So, maybe four
8 (4) or five (5). But I don't know right now. I don't
9 work there anymore.
10 Q. You don't work there anymore?
11 A. No, sir.
12 BY MS. SHYDER: (Succross)
13 BY MR. DRAISEN: Bless you.
14 Q. When did you last work there?
15 A. Sometime last year.
16 Q. Can you give me an approximate month?
17 A. No, don't remember, sir. 'Cause since the Covid, the
18 restaurant's not that busy and, you know, off and on I go
19 in to help. So, we don't have much employee. They don't
20 have much customers. So, just a day if they need me. If
21 they don't need me, I just stay home.
22 Q. When's the last time you worked there full time?
23 A. The year before last year, I remember, but last year, I
24 don't, I don't think I was full time; no.
25 Q. Did you -- are you working somewhere else?

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1 A. I try to go help at the other Thai restaurant, uh, on July
2 in Simpsonville. It's called Thai Cuisine. I worked there
3 a couple of month. And when I had to, um, to go to the
4 course and the probation and about the driver license,
5 it's kind of a little bit too far from the house and I
6 don't have a friend or a co-worker that live close to me.
7 So, it's kind of, like, far for me to travel to get a Uber
8 and cost more money. I just calculate it. I just tell
9 Chai, "Nah, it's not worth it."
10 Q. Okay. And how long did you try to work there?
11 A. For a couple of months, sir.
12 Q. All right. So, let's move on a little bit to September
13 the 27th, 2019. I assume you're familiar with that date?
14 A. Yes, sir.
15 Q. Okay.
16 BY MS. SHYDER: Dan, since you're moving onto a new
17 part. Would it be okay if we took a little break?
18 BY MR. DRAISEN: Absolutely.
19 BY MS. SHYDER: Okay.
20 BY MR. DRAISEN: Absolutely. Any time you need it.
21 BY MS. SHYDER: Okay. I just to run to restroom.
22 (REPAK @ 10:53 A.M. - 10:58 A.M.)
23 DIRECT EXAMINATION BY MR. DRAISEN (RESUMES):
24 Q. All right. Ms. Vansy, uh, you're still under oath. Are
25 you ready to go forward?

9 (Pages 33 to 36)

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1 A. Yes, sir.
 2 Q. Okay. All right. So, I want to, I want to step ahead a
 3 little bit and I want to go ahead and talk about September
 4 the 27th, 2019, okay? And what I want to do is, kind of,
 5 walk you through your day and then we'll get specifically
 6 to the accident, some details about that, okay? Um, did
 7 -- tell me about, uh, September 27, 2019, to your
 8 recollection. Do you know, uh, what time you got up that
 9 morning?
 10 A. You mean the day that it happened, accident?
 11 Q. Yes. Well, it would be the -- it would be the -- it would
 12 be the day before because the accident was after midnight,
 13 so probably would have been September the 26th, 2019
 14 because the accident was after midnight on the 27th. So,
 15 it'd probably be more accurate for me to ask you about
 16 September 26, 2019.
 17 A. So, you mean, like, if I woke up in the morning, what I'm
 18 doing? What time?
 19 Q. Yeah, do you recall at all what you did that morning?
 20 A. It's my routine. I wake up at 6:30 in the morning.
 21 Q. Okay. What do you do?
 22 A. Drink coffee, read email, check what I have to go get at
 23 the store before I head to the restaurant. After that,
 24 jump in the shower, get ready.
 25 Q. Okay. So you, um, -- back in -- on September 26th, 2019,

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1 Q. Okay. All right. So, what do you do when you get to the
 2 restaurant?
 3 A. Get stuff ready, um, prep water, turn on the wok, make the
 4 soup.
 5 Q. So, is that, basically, kitchen prep?
 6 A. Yes, sir.
 7 Q. So you, you said you turn on the wok?
 8 A. Turn on the wok, make a stock, make the curry if I don't
 9 have curry. You know, pretty much everything related to
 10 the kitchen work.
 11 Q. Now, is that just you or is that you and Allison doing
 12 that?
 13 A. Me and Allison.
 14 Q. Anybody else? Just the two (2) of y'all in the kitchen?
 15 A. Um, I have another helper. He Chinese. Off and on, he
 16 come help.
 17 Q. And what's -- can you tell me what his name is?
 18 A. He call him by "Ricky."
 19 Q. Do you know what his real name is?
 20 A. Since I worked there, everybody call him "Ricky," so he
 21 just go by "Ricky."
 22 Q. Okay. Does he work in the kitchen?
 23 A. He help in the kitchen and the front if, um, the staff is
 24 short in the front. So, he help at the front, too.
 25 Q. Okay. Do you know if Ricky was working on September 26th,

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1 were you taking any medications on a regular basis?
 2 A. No, sir. I don't remember.
 3 Q. You don't remember or you, you did -- you don't recall
 4 taking anything?
 5 A. No. I'm, I'm not on a medication, so --
 6 Q. Okay. All right. So, after you did that, had your
 7 coffee, made your list, um, what time would you -- would
 8 you have gone to the store to get supplies?
 9 A. Don't remember, but, um, I have to get to the restaurant
 10 around -- before 11:00 'cause the restaurant open at
 11 11:00. So, should probably be there at 10:00. That's my
 12 normal regular -- like 10:00, 10:30. Had to get there
 13 before restaurant open -- um, open.
 14 Q. Okay. So, you would have gotten to work on September 26th
 15 2019 around 10:00 or 10:30 in the morning?
 16 A. I believe, yeah, that's, you know, like, um, -- but it's
 17 -- every day is not the same schedule.
 18 Q. Okay. Well, I understand.
 19 A. Okay.
 20 Q. Do you, you specifically recall September 26th, 2019, what
 21 time you got to work?
 22 A. I don't know, 'cause I don't, I don't go in the same time,
 23 so I don't remember, sir.
 24 Q. Would it have been before 11:00?
 25 A. Yes, but it's before 11:00.

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1 that specific day?
 2 A. I don't remember, sir.
 3 Q. Okay. But in terms of the food prep, um, it's usually
 4 you, um, and ---
 5 A. And Allison.
 6 Q. And Allison. And then, sometimes, Ricky?
 7 A. Ricky come helps.
 8 Q. Okay. All right. So, you do the prep, um, you start
 9 having customers come in around 11:00?
 10 A. Yes, sir.
 11 Q. Most days? I mean, you're open at 11:00?
 12 A. Yes, sir.
 13 Q. Okay. So, after 11:00, are you -- what do you do? Are
 14 you cooking?
 15 A. Cooking.
 16 Q. What else do you do?
 17 A. Um, I help the front sometimes, like, bring the food out.
 18 Q. Okay. All right. And is that -- that -- that's your
 19 lunch service ---
 20 A. Yes, sir.
 21 Q. --- we're talking about?
 22 A. Yes, sir.
 23 Q. So, how long, typically, is lunch service? From 11:00 to
 24 what hour?
 25 A. 2:30 and close, um, between 3:00 to 5:00.

10 (Pages 37 to 40)

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1 Q. Okay. And so, tell me what, what happens between 3:00 and
2 5:00.
3 A. Sometime, I take a nap there 'cause, um, my house is, um,
4 in, uh, -- close to Duncan. Or I run the errands, like,
5 go pick up stuff like vegetable, meat or things.
6 Q. Okay. Is there any more kitchen prep that's done between
7 3:00 and 5:00?
8 A. No, sir, unless we have, like, uh, like, a party order.
9 But it's not happened often.
10 Q. Okay. So, is 3:00 to 5:00, then, just generally some
11 downtime?
12 A. Yeah, brooktime.
13 Q. Okay.
14 A. And open back at 5:00 again.
15 Q. Okay. Do you remember, on September 26th, 2019, what you
16 did from 3:00 to 5:00 that specific day?
17 A. No, sir.
18 Q. You don't remember if you took a nap that day or if you
19 ran errands?
20 A. I don't know, sir. I don't remember.
21 Q. Okay. Did you go back to work around 5:00?
22 A. Yes, sir.
23 Q. Okay. And at 5:00, um, who was working with you at 5:00?
24 A. He and Allison, but I don't know who worked the front that
25 day because we have different waitresses in and out all the

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1 their cleanup and stuff, even though we close at 9:00.
2 But they leave before us because I have to do things in
3 there. But I don't know the exactly time.
4 Q. So, after you close sometime after 9:30, uh, do you have
5 an, an average time -- when do you normally get to leave
6 the restaurant?
7 A. Normally -- I don't have normally schedule to leave. I'm
8 -- be the one that leave last, pretty much, 'cause I have
9 to close, too.
10 Q. Do you know how many hours after 9:00 it takes you,
11 normally, to close?
12 A. Uh, just depends what I have to do.
13 Q. What's the shortest period of time you can get out of
14 there? How quickly can you get out of there if you needed
15 to get out right away?
16 A. I never have the time to be quick right away. Uh, don't
17 know. An hour or two (2)? I don't know, sir.
18 Q. Well, do you ever get out of there at 10:00?
19 A. Sometime after.
20 Q. It's usually later than 10:00?
21 A. Sometime.
22 Q. Okay. You ever -- are you there later than 11:00 any
23 times?
24 A. If I have to, you know, get the work done, like prep work
25 in the kitchen, but it's not often 10:00.

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1 time.
2 Q. Okay. Do you remember if September 26th, 2019 was busy or
3 slow?
4 A. I don't remember, sir.
5 Q. Do you know how late you would have been open on September
6 26th, 2019?
7 A. I don't, I don't know, but it's -- the, uh, schedule is at
8 9:00. We close every -- you know, like restaurant operate
9 day, so 11:00, close at 3:00, 5:00 to 9:00.
10 Q. So, you typically close around 9:00?
11 A. Uh-huh. (Affirmative) Yes, sir.
12 Q. I assume if you have customers still in the restaurant,
13 you may not close exactly at 9:00; is that right?
14 A. That's correct. Sometimes they leave late if they have,
15 like, a big group or they have something to say, I just
16 stay there and -- until they leave.
17 Q. Okay. On September 26th, 2019, do you know whether or not
18 y'all had a big group that night?
19 A. I don't remember, sir.
20 Q. Do you know how long you stayed at the restaurant on
21 September 26th, 2019?
22 A. I don't know how long, but, um, my basic, um, routine and
23 schedule, um, after close, I have to get something done,
24 like do the closing, you know, like, do the paperwork,
25 count the money and wait for the, um, staff to finish

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1 Q. So, not often is it after 11:00; is that fair?
2 A. Not often after 11:30.
3 Q. Okay. On September 26th, 2019, after you closed, after
4 9:00, do you recall what you did that evening?
5 A. Probably the same routine, like, uh, do the paperwork,
6 staying there.
7 Q. Okay. Do, do you recall who was there with you after
8 9:00?
9 BY MS. SHYDER: That night?
10 Q. Yeah, September 26th, 2019.
11 A. I don't remember who, exactly, there after the door
12 closed, the front door closed. But some of the staff have
13 to stay if they not finish mop the floor. I don't know
14 who.
15 Q. Okay. Well, are the events of September the 26th, 2019
16 clear in your mind?
17 A. What do you mean by "event"?
18 Q. Do you know what happened that evening before the wreck?
19 A. No, sir, 'cause I, I do the same thing all the time, like,
20 do the paperwork, get home. That's all I remember.
21 Q. Well, well, I mean -- let me ask you this: Do you drink
22 alcohol every night before you go home?
23 A. Not every day. I drink a glass of wine or two (2), like I
24 ---
25 Q. A glass of wine or two (2)?

11 (Pages 41 to 44)

VANSY SAESANE

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1 A. Yes. But I don't know that day. I don't remember.
2 That's not my everyday thing.
3 Q. So, you -- okay. On September 26th, 2019, did you drink
4 alcohol that evening after close?
5 A. I do, sir. I drink alcohol that day.
6 Q. Okay. And what did you drink?
7 A. I drink some wine.
8 Q. Do you drink red or white or blush?
9 A. A red wine.
10 Q. Red?
11 A. Yes, sir.
12 Q. And do you have a particular brand that you like or a
13 particular bottle that you like to drink?
14 A. No. I just drink whatever we have in there that open.
15 Q. And do you know how many glasses of wine you drank on
16 September 26th, 2019?
17 A. That day, I don't remember, but, you know, if I drink, I
18 don't do past one (1) or two (2). But I don't drink
19 often, like I told you. But I don't remember that day. I
20 don't know.
21 Q. Okay. Was the, uh, wine that you drank, uh, wine that was
22 kept at the bar in the restaurant?
23 A. It's not kept at the bar 'cause we have two (2) section.
24 It's, uh, where we put the soda in the drink container.
25 Q. Let me rephrase the question.

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1 A. Sure.
2 Q. Was the wine that you drank at the restaurant, was it part
3 of your stock?
4 A. Yes, sir.
5 Q. Let me ask you this: Is that the same red wine that you
6 would serve to customers?
7 A. Yes, sir. It's the same red wine.
8 Q. Do -- in, in September of 2019, um, do you know if there
9 was a specific, uh, brand or bottles of wine that you were
10 stocking at the restaurant?
11 A. No, sir.
12 Q. Who, who would have -- who would you have bought your, um,
13 wine supply from? Did you use a particular company?
14 A. Uh, Southern something. I cannot pronounce it.
15 Q. Can you spell it?
16 A. I can't spell it, sir. I can spell "South."
17 Q. Did you say "South?"
18 A. South something.
19 Q. Did they, did they just provide you with your beer and
20 wine or did they provide other food, too?
21 A. No, just beer and wine. That's before. But lately, we
22 pick it up at the, um, local wine store 'cause we don't
23 sell that much since, you know, business going down.
24 Q. But back in September, 2019, there was a supply company
25 that you were using to stock your beer and wine?

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1 A. I don't remember. I think so, 'cause ---
2 Q. Do you know ---
3 A. I don't handle the, the beer and wine, the order, the
4 inventory, sir.
5 Q. That's what I was getting ready to ask you. Who, who, at
6 the restaurant, orders the beer and wine?
7 A. From -- I -- here, from Allison or either the girl that
8 work at the front. They would make a list.
9 Q. Yeah, who would actually ---
10 A. They would ---
11 Q. I guess my question is, who was dealing with the vendor
12 that provided you your beer and wine?
13 A. Okay. Like I told you, sometimes Allison, sometime it's
14 the girl at the front. But I don't know which one.
15 BY MR. KRAUSE: Southern Distributors.
16 Q. Would it be Southern Distributors who provided you your
17 beer and wine?
18 A. Something with "South." I don't know the rest, sir.
19 Q. Okay.
20 A. Southern something. I don't know.
21 BY MR. KRAUSE: Spartanburg.
22 Q. Okay. On September the 26th, 2019, that evening after
23 close, was anybody there drinking wine with you?
24 A. No, sir.
25 Q. You'd been drinking by yourself?

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1 A. I just drink by myself and do the paperwork. That's -- I
2 remember.
3 Q. On the evening of September the 26th, 2019, did Allison
4 work the dinner kitchen shift with you?
5 A. She worked dinner shift with me, but most of the time, I
6 remember, she leave before me, 'cause she, she don't do
7 the paperwork.
8 Q. Did, um, did Allison ever, uh, stay with you and drink
9 wine at the restaurant?
10 A. No, sir.
11 Q. Did you ever see Allison drink any beer or wine at the
12 restaurant?
13 A. H- -- sometime when, you know, she have a company, but
14 she, she don't drink. Allison don't drink, sir.
15 Q. Has Allison been there, uh, at the restaurant on occasions
16 when you've had wine to drink?
17 A. I don't understand.
18 Q. What I'm asking you is, from 2017 through September 26th,
19 2019 at closing, has Allison been there at times when
20 you've had a glass of wine and you were doing the
21 paperwork?
22 A. Sometimes she saw and then she left, say, "Good-bye. I've
23 gotta go," okay? 'Cause she have kid. So, she leave
24 before me. But, you know, but most of the time, she not
25 with me.

12 (Pages 45 to 48)

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1 Q. Yeah. So, the question I'm asking you is, is Allison has
2 seen that you drink wine sometimes in the evenings while
3 you're doing paperwork, right?

4 A. Yes, sir, sometime.

5 Q. Okay. And is -- does somebody keep track of the, the beer
6 and wine inventory? So, when you get a glass of wine from
7 a bottle there at the restaurant, do you have to put that
8 into the point-of-sale system and say that you took a
9 glass of wine?

10 A. No, sir. The only time I pay for, when, like, uh, I have
11 people that I know come visit. So, if they open a bottle
12 of wine, I pay, but employee price, like ten perc- ---

13 Q. Okay.

14 A. --- thirty percent (30%).

15 Q. So, when you're -- well, when you're drinking -- if you're
16 drinking, uh, some wine after close when you're doing
17 paperwork, you're not calling yourself a glass of wine and
18 putting it in the point-of-sale system and paying for it,
19 right?

20 A. No, sir.

21 Q. Okay. Is there -- then your, your bar would be short, um,
22 a number of pours for wine, is that right? Because you're
23 -- if you're drinking some and it's not being accounted
24 for on your point-of-sale system, you would come up short;
25 is that right?

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1 A. It will be short, but it's not everyday thing. So, you
2 know? That don't -- it don't count that much.

3 Q. Well, do you allow other employees to, to pour ---

4 A. No, the employees cannot drink while they're working, sir.

5 Q. Okay. Do, um, -- if, if you're -- during your closing
6 procedures when the staff is cleaning up and the
7 restaurant is closed, do the employees ever have a drink,
8 sit down and have a drink while they're doing their
9 closing?

10 A. No, sir.

11 Q. Do you ever allow them to have a beer or anything like
12 that before they leave?

13 A. No. I tell them already, you know. Like, um, Allison
14 very strict on that, too. Like, if the employee work,
15 they cannot drink while they're working, even though they
16 clock out of the clock. But they do sometimes, like if
17 their birthday, you know? Like, uh, one glass of a beer
18 bottle, like, uh, the little bottle. That's it. But not
19 everyday thing. Not, like, uh, you clock out, you can
20 drink, you know?

21 Q. Yeah. I understand. So, if you have a birthday and you
22 give them a beer you, you don't ring that up to through
23 the point-of-sale, you just give it to them for no charge?

24 A. Just a -- yeah, just like, you know, as a gift, like a --
25 but most of them don't really drink that. They just,

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1 like, head out, you know, to be with friend and family,
2 boyfriend, girlfriend. They, they don't -- you know, they
3 just go.

4 Q. Okay. All right. So, on September the 26th, 2019, do you
5 know where you went when you left the restaurant?

6 A. No, sir; I don't remember. I just know, like, I grabbed
7 the -- my purse, head to the car, just like every day that
8 I do.

9 Q. Okay. Um, according to the accident report, it looks like
10 around 12:56 a.m. was the time of the wreck. Does that
11 sound about right to you?

12 A. I don't know. It might be, sir.

13 Q. Okay. So, I -- I'm trying to figure out the timeline and
14 this is a little important to me, okay? So, the
15 restaurant closes at 9:00 and then you have a period of
16 time in which you're doing the closing procedures,
17 paperwork, uh, that kind of thing, and the staff is
18 cleaning up, right? You said that takes around an hour or
19 so, usually. Is that correct?

20 A. Yes, sir.

21 Q. So, that takes me to about 10:00 or 10:30. Does that
22 sound right?

23 A. I think so, yes.

24 Q. Okay. So, what I want to know is, is I want to know from
25 10:30-ish to 12:56 a.m., what you did.

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1 A. I don't know. I don't remember, sir. I just know I got
2 in the car and drive. That's it.

3 Q. Okay. So, when you left the restaurant that night, did
4 you go somewhere else?

5 A. I don't remember, sir. I don't know.

6 Q. And I'm gonna ask you a question, not to be rude, but I
7 have to ask this question. Did you hit your head in the
8 wreck?

9 A. I don't know.

10 Q. Did you have a head injury of any kind?

11 A. I don't remember. I just don't remember. All I know is
12 just I hit something. I just hit -- I don't know what.
13 After that, I just blank.

14 Q. Did, did you have any kind of bleeding on the brain?

15 A. I don't know, sir.

16 Q. I mean, at the hospital, did the doctors tell you that you
17 had any kind of a head injury?

18 A. I don't know. He might have or he have. I don't ---

19 Q. Did you have to have any treatment for any kind of a head
20 injury after you left the hospital?

21 A. Soon as I left the hospital, I, I got hurt, but I don't go
22 back to follow up or anything. I just stay home.

23 Q. So, did you ever see anybody about your brain or any
24 problems with your head?

25 A. No, sir. I just stay at home, here by myself at home.

13 (Pages 49 to 52)

VANSY SAESANE

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1 Q. Have you been having any memory problems since the wreck?
2 A. Yes.
3 Q. Tell me about that.
4 A. I don't remember a lot of stuff. Like you told me -- if
5 you don't tell me the day that the accident -- I don't
6 recall. I don't know.
7 Q. Are you having issues remembering things, even now? Not
8 just about the wreck, but in general, are you having
9 issues with memory?
10 A. Yes.
11 Q. So do, do you forget things regularly now?
12 A. Yes.
13 Q. Give me an example of what -- what's happening with you.
14 A. See, like, if I, um, -- like, dinnertime, I cook. Chai
15 went upstairs. I thought I turn off the stove. I know
16 that I turn it off, but I still walk downstairs 'cause I
17 think I didn't turn it off. A lot of stuff, I don't
18 remember.
19 Q. And you haven't gone to see a doctor about it to see if
20 you have an actual brain injury?
21 A. No, sir. I talked to Chai. Chai say it's -- that
22 everybody forget things, not everybody remember things.
23 So ---
24 Q. Let me ask, let me ask you this: Have you had any trouble
25 with getting angry very easily?

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1 A. No, I don't get angry, sir.
2 Q. Okay. Do you forget your keys?
3 A. I forget my key.
4 Q. Have you ever left a door unlocked since, since the wreck?
5 A. I locked myself once.
6 Q. You lost your cellphone?
7 A. I locked myself.
8 Q. Oh, you locked yourself -- out?
9 A. In the, um, the door before I go to the garage. And I
10 forgot the key to the car and then, um, I already locked
11 the door, so I can't get out.
12 Q. Okay. All right. So, is it correct that your testimony
13 today, under oath, is, is that you can't tell me, at all,
14 what you did from around 10:30 p.m. on September 26th,
15 2019 until the wreck at 12:56 a.m. on the 27th; is that
16 right?
17 A. Yes, sir.
18 Q. So, we just have about, uh, three (3) hours of unaccounted
19 time? You have three (3) hours that you can't tell me
20 anything about what happened?
21 A. I don't remember, sir.
22 Q. I, I -- I'm, I'm making sure I understand your testimony
23 that you, you have no recollection of that three-hour
24 period of time between, say, 10:30 p.m. and 12:56 a.m.; is
25 that right?

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1 A. Yes. I don't remember.
2 Q. Okay. Is it possible that you went to a bar?
3 A. I don't know, sir. I don't go out -- far as I
4 remember. I don't really go places that much. I just
5 work, come home. That's it. That's all I remember.
6 Q. Okay. All right. So, at 12:56 a.m., what I do know is
7 that you were on North Pleasantburg; is that right?
8 A. I might have 'cause the -- after, Chai go got me from, you
9 know, bail me out. He drive me back there. He said -- he
10 asked me, "Do you remember that you have an accident right
11 here?" Because we go get the police report on the
12 accident. I say, "I don't know." If he don't tell me, if
13 he don't bring me there, I don't even know where I'm at
14 that night.
15 Q. All right. Here's what I want to do -- can you tell me --
16 so, so Chai took you back around where the scene of the
17 accident was; is that right?
18 A. Yes.
19 Q. Okay. Can you tell me -- and, and this is what I'm gonna
20 ask you -- so, you know where the restaurant is on Haywood
21 Road, right?
22 A. Yes.
23 Q. And you know where that spot was on North Pleasantburg
24 where Chai showed you the accident was?
25 A. No, I don't remember, sir.

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1 Q. I'm trying to figure out why would you have gone from the
2 restaurant to North Pleasantburg.
3 A. I don't know, sir.
4 Q. Is North Pleasantburg Drive on the way to your home?
5 A. No, sir.
6 Q. That's not the way you would drive home from the
7 restaurant; is that right?
8 A. No, sir.
9 Q. Okay. How would you normally have, have gone from the
10 restaurant to your home? Tell me how you drive home.
11 What roads?
12 A. Um, off of 85 -- Haywood and go 85.
13 Q. 85 ---
14 A. And sometimes ---
15 Q. --- to Mondruff?
16 A. And sometimes after work, I don't go straight home. I
17 just driving around, you know, just clear my mind, 'cause,
18 like, Chai sleep early. We don't talk, so I just drive
19 around and, you know, think of things, listen to the music
20 before I head home.
21 Q. Okay. But, but, clearly, North Pleasantburg would not be
22 the normal way that you would drive to go home is that
23 right?
24 A. No, sir, not normal way. But I just drive everywhere.
25 But if you're gonna ask me where, I don't know.

14 (Pages 53 to 56)

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1 Q. Well, I'm trying to, I'm trying to figure out that threw
2 (1) hours of time, is what I'm trying to figure out, is
3 what -- you know, what you would have, have done and
4 whether or not you would have stopped anywhere else.
5 Would you have visited a friend?
6 A. No. I don't have friends, sir.
7 Q. You have no friends?
8 A. No. I just work. Just work and home.
9 Q. Are you, are you not friendly with the people that work at
10 your restaurant, your staff?
11 A. We're friendly, but we don't hang out.
12 Q. Okay. So, you don't have any friends that live off of
13 North Pleasantburg Road in Greenville?
14 A. No, sir.
15 Q. Do you have any other boyfriends beside Chai?
16 A. No, sir. What kind of question is that?
17 Q. Okay. Is it possible that you stayed late at the
18 restaurant?
19 A. I don't remember if I stayed late and that. I remember I
20 grabbed the key and some of the paperwork and my purse and
21 I just got in the car.
22 Q. Okay. All right. Do you remember the collision at all?
23 A. No.
24 Q. The wreck.
25 A. No, sir.

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1 Q. After -- what's the first thing that you remember after
2 the wreck happened?
3 A. I, I wake up in the hospital.
4 Q. Okay. W- -- did you lose consciousness at the wreck?
5 A. I don't understand that.
6 Q. Did you get knocked out?
7 A. I get -- I, I think so, yeah. I blanked. I don't know
8 nothing after that.
9 Q. So, the first thing --
10 A. I don't think I --
11 Q. -- you remember -- sorry. First thing you remember,
12 then, is waking up at the hospital?
13 A. Yeah, kind of blur a little bit and I don't know where I'm
14 at and I just, you know, kind of open my eyes and look.
15 Q. Do you know what hospital you were at?
16 A. I don't know. I -- it's in Greenville. I just don't know
17 the name.
18 Q. Do you know if it was Greenville Mem -- Hospital, Prison
19 or if it was St. Francis?
20 A. It starts with "P."
21 Q. "P" like Prison?
22 A. I, I don't know. I think so, yeah. With a "P" with the
23 colorful?
24 Q. Yeah. Colorful --
25 A. Well, I -- yeah. The letter is -- I don't know how to

Page 59

1 pronounce it.
2 Q. Okay. All right. When you woke up in the hospital, do
3 you know how long you stayed in the hospital before they
4 let you go?
5 A. I don't know how long, sir. I don't think that long.
6 'Cause, like, um, the police came see me and then take me
7 to the, um, prison after that. But I don't know the time
8 'cause I was kind of like in pain and stuff, too, you
9 know? Kind of like dizzy, too, from the accident.
10 Q. Okay. Let me back up a second and make sure I understand.
11 So, you went to the hospital? --
12 A. Uh-huh. (Affirmative)
13 Q. -- and you woke up at the hospital --
14 A. After I --
15 A. -- and the police came to see you at the hospital?
16 A. Yeah, he's there when I woke up. I see him, like, at the
17 front. He sit out there.
18 Q. Did you stay in the hospital overnight?
19 A. No, sir. Soon I woke up, you know, and they talked to me,
20 you know, like, asked me, like, um, did I know where I'm
21 at. I say, "At the hospital." And then they -- I don't
22 know after that. And then I just remember police came get
23 me and we go to the jail.
24 Q. So, then would you say you went to the jail that same
25 time, that, that evening? You didn't stay overnight at

Page 60

1 the hospital?
2 A. I stay in there, yes, sir. When I wake up.
3 Q. So, did Chai come get you at the jail?
4 A. Not that day, huh? I think, yes. Yeah, he did come bail
5 me out, but I stay in there overnight.
6 Q. Did anybody ever tell you what your blood alcohol level
7 was?
8 A. No, sir. I don't remember that anyone tell me. They
9 might have.
10 Q. Well, you, you received some, some charges for the wreck;
11 is that right?
12 A. I think so, sir. I understand that.
13 Q. Did you get charged with a crime?
14 A. Yes, sir.
15 Q. What did you get charged with?
16 A. I don't know that I understand right, but, um, something
17 like a felony?
18 Q. Okay. And at some point along the way, did, did your --
19 did anyone ever explain to you what the elements of the
20 charge are, what it, what it involves?
21 A. Yes. I understand, but, um, I don't fully understand, but
22 I kind of understand a little bit, that I, um, I caused a
23 wreck and I drink and drive. That's pretty much what I
24 understand.
25 Q. Okay. Did -- and do you know if anybody ever told you --

15 (Pages 57 to 60)

1 and did anybody test your blood or your breath or anything
2 like that? Do you remember then doing that?
3 A. I don't remember that, sir.
4 Q. Do you remember ever being told that you had a certain
5 blood alcohol level that was too high to drive?
6 A. They might have, but I don't remember.
7 Q. You don't have any idea what that number was?
8 A. I don't have the idea that number was.
9 Q. Now, I understand that either late last year or early this
10 year you went to the court and you pled guilty; is that
11 right?
12 A. Yes, sir.
13 Q. Okay. And that was -- you pled guilty to a charge of
14 Felony DUI with Great Bodily Injury.
15 A. Yes, that's far my understand.
16 Q. And what was the -- what, what sentence or punishment did
17 you get?
18 A. What do you mean?
19 Q. Well, what's -- what, what was your punishment?
20 A. I don't know how to answer you. That -- what the
21 punishment.
22 Q. Well, when you pled guilty in court, there was, there was
23 a consequence for that, right?
24 A. Yes. Um, okay. If I under- -- if I answer you right, um,
25 I am probation and I have to wear the ankle bracelet. I

1 can't go nowhere out from my house. If I go to work, I
2 have to let them know and I cannot work -- she told me, I
3 think, forty (40) hours a week or something. I don't
4 know. I have to go back and read it. And I cannot drive.
5 Q. And how long, how long are you gonna have to wear the
6 ankle bracelet and stay at home?
7 A. The ankle bracelet is, um, three (3) year. And after
8 that, um, two (2) year probation? So, total is five (5)
9 year.
10 Q. Did you have to pay a fine of any kind?
11 A. I just pay for the bracelet, the ankle bracelet, that I
12 wear.
13 Q. Did the, did the court -- does the court say you have to
14 pay any kind of a court fine?
15 A. I don't know. I don't think so. I don't know.
16 Q. Okay. All right. Give me just a minute, okay? I want to
17 confer with my client and I'll see how -- if I'm about
18 done, okay?
19 (OFF-THE-RECORD @ 11:42 A.M. - 11:48 A.M.)
20 DIRECT EXAMINATION BY MR. DRAISEN (RESUMES):
21 Q. Okay. So, I have just a few more follow-ups, uh, areas
22 that I want to cover with you. Um, I -- because I didn't
23 ask you this. Have you ever worked in the restaurant or
24 service industry before you worked at Bangkok Tokyo?
25 A. Long time ago in Louisiana with my family.

1 Q. And tell me about that.
2 A. I just worked and helped my family out. It's my father's
3 restaurant.
4 Q. So, your father ran a restaurant?
5 A. With my mother and I helped there.
6 Q. What kind of restaurant?
7 A. Thai and Chinese.
8 Q. And how long would you say that you helped out in the
9 restaurant? How many years?
10 A. How many years? Since the day that they open and we have
11 to close it down 'cause my mom got sick the year 2000, and
12 when she moved to, um, Charlotte.
13 Q. So, 1990 to 2000?
14 A. 1990? No, no, no, no. 1990, I still young. That's when
15 I got to America, in 1990. I -- yes. In, let's see, what
16 year was that Daddy have a restaurant? I don't remember
17 what year. I don't remember what year that restaurant
18 opened, sir. Um, I remember that they have the contract,
19 like, for five (5) year, but mom and dad didn't open for
20 five (5) years. She got sick first.
21 Q. So, if it closed in 2000, that'd be 1995 to 2000; does
22 that sound right?
23 A. I think so. Yeah, I don't -- yeah, I think so, 'cause the
24 contract's five (5) year. But we don't live up to five
25 (5) year, though.

1 Q. Did you help out the whole time the restaurant was open in
2 Louisiana?
3 A. Yes, sir. I helped out the whole time.
4 Q. What did you do?
5 A. Um, help out in the kitchen. That time, I don't know how
6 to cook that such and I helped around food, you know,
7 bring the food out to the buffet bar and answering the
8 phone and take the order.
9 Q. Okay. Did your ---
10 A. I don't know much that time, sir, 'cause I don't know how
11 to read good.
12 Q. Did your father's restaurant have a bar?
13 A. No, sir.
14 Q. All right.
15 A. We sell the canned drink.
16 Q. Okay. I couldn't understand that. Say it again.
17 A. We sell the canned drink, drink, like soda.
18 BY MS. SHYDER: Canned drinks. They sold canned
19 drinks.
20 BY MR. DRAISEN: Okay.
21 A. Okay.
22 Q. All right. Um, I asked you about, um, criminal charges
23 before. I didn't ask you about tickets. Have you ever
24 had any kind of, uh, moving violation, motor vehicle
25 tickets?

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1 A. Any time that, uh, -- any year? That's what you mean?
 2 The question?
 3 Q. Yeah, in the last ten (10) years, let's say. Have you
 4 gotten any speeding tickets or other tickets?
 5 A. I got -- yeah, I got -- I remember one. I got the
 6 speeding ticket, one in Greenville.
 7 Q. Okay. Any, any other ones you remember?
 8 A. What's that?
 9 Q. Any other tickets that you remember?
 10 A. No, sir.
 11 Q. Okay. And I'm gonna ask you a little bit about Bangkok
 12 Tokyo, the restaurant, as well. Um, to run the
 13 restaurant, um, and the kitchen and the bar, did any --
 14 did you or -- I keep forgetting her name.
 15 BY MR. KRAUSE: Allison.
 16 Q. Allison. Did you or Allison have any, any kind of
 17 training that you had to go through?
 18 A. Allison, she worked in the restaurant listed as a owner
 19 for a long time, longer than me. So, I kind of have, uh,
 20 help from her to instruct me, even to cook and how to set
 21 up the station. That's why it's so, um, -- people don't
 22 believe that only two (2) of us beside each other that
 23 work in the kitchen without manpower, but we did it.
 24 Q. Okay. And what I'm asking you is, is do you recall ever
 25 going to any classes or, uh, seminars or, uh, anything

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1 BY MS. SNYDER: Objection. You can go ahead and
 2 answer.
 3 BY MS. McMILLAN: Objection to the form.
 4 A. They might have, but we don't attend any class, 'cause,
 5 like, when the DHEC case, we pass the, uh, all the, uh,
 6 whatever they inspect. So, I don't, I don't think we take
 7 any class.
 8 Q. Okay. That's fine. So, so you -- from 2017 to now,
 9 though, you, you haven't attended or, or completed a Safe
 10 Serve certification training?
 11 BY MR. KRAUSE: ServSafe.
 12 Q. ServSafe. I'm sorry.
 13 A. You mean, like take class, any class?
 14 Q. Yes.
 15 A. No, sir.
 16 Q. Okay. And do you know if Allison has taken any kind of
 17 Safe Serve certification training?
 18 A. She might, but I don't know. I don't really ask that
 19 much. I just go there working, sir.
 20 Q. Okay. All right. And, uh, we were talking about the wine
 21 that you drank. This may seem silly, but what size glass
 22 do you normally use when you drink wine?
 23 A. I don't know what size. Just the glass that they serve it
 24 in there.
 25 Q. Can you describe the kind of glass that you use?

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1 that DHEC or any organizations would have provided, uh,
 2 that would have given you any training to run a
 3 restaurant?
 4 A. No, sir.
 5 BY MR. KRAUSE: ServSafe?
 6 BY MR. DRAISEN: Yeah, I'm gonna ask her.
 7 Q. Have you ever heard of, uh, ServSafe or Safe Serve?
 8 A. No, sir.
 9 Q. Do, do you know if anybody in your restaurant, you, uh, or
 10 Allison are trained or certified, uh, by ServSafe?
 11 A. No, I don't recall. I don't know, sir.
 12 Q. Do you have any other, um, certificates on the wall on
 13 your restaurant besides your beer and wine license and
 14 your business license?
 15 A. That's the only thing I see.
 16 Q. I'm just asking you. I mean, it's -- a lot of times
 17 people will put those certificates if they're trained,
 18 they'll put them in a frame, you know, for the employees
 19 that are trained.
 20 A. No, I don't think I see any of those.
 21 Q. Do you know that they offer, uh, and recommend training
 22 for both the kitchen side, which has to do with, uh,
 23 training for cleanliness, sanitation, things of that
 24 nature, that DHEC requires and they also train on the
 25 alcohol side? Are you aware of that?

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1 A. A wine glass.
 2 BY MR. KRAUSE: How many ounces?
 3 Q. Do you know how many ounces it is?
 4 A. Don't know, sir.
 5 Q. Does it have a long, skinny stem and a top?
 6 A. Yes.
 7 Q. So, it's not like, uh, just a glass, like a tea glass?
 8 A. No. They have the long stem, clear.
 9 BY MR. KRAUSE: How full is it?
 10 Q. Do you -- and do you know how much you usually put in the
 11 glass?
 12 A. Don't remember, sir.
 13 Q. Half, full, or a full glass?
 14 A. Half. No.
 15 Q. You don't remember?
 16 A. Half, but not full.
 17 Q. Okay. All right.
 18 BY MR. DRAISEN: I think that's all we have.
 19 BY MS. SNYDER: Okay. Beth, do you have any?
 20 BY MS. McMILLAN: Yes.
 21 EXAMINATION BY MS. McMILLAN:
 22 Q. Um, Ms. Vansy, my name is Beth McMillan and I represent
 23 Bangkok of Tokyo or Ra Cha, Inc. and I just have a few
 24 questions, um, with regard to the restaurant, itself. And
 25 you said there was a bar. It's a small bar area; is that

17 (Pages 65 to 68)

VANSY SAESANE

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1 right?
2 A. Yes, ma'am. It's not a big size. Um, it's not the large
3 size, but it's pretty comfortable size.
4 Q. Does it have about five (5) seats around it?
5 A. I believe so.
6 Q. Okay. Would, would it be unusual for you all to have a
7 lot of customers that just eat at the bar to drink?
8 A. No, ma'am. I don't know. Sometimes -- I don't know. I
9 don't come to the front that much.
10 Q. Okay. But are you aware -- would, would you -- well, let
11 me ask you this -- because I didn't quite understand your
12 answer to that question. Do you have any knowledge of
13 whether people hung out at the bar just to drink as
14 opposed to eating and having a beer or a glass of wine
15 with their meal?
16 A. No, ma'am. We don't have, um, people that hang out at the
17 bar just to drink. So, most of the customer that come in
18 there, they order food. You know, mostly like a family,
19 the old customers for Allison. So, that's what she told
20 me.
21 Q. Okay. So, usually, if there was someone ordering beer or
22 wine, that would have been with their meal?
23 A. Yes, uh, pretty much.
24 Q. Okay. On the night of the accident, you don't -- uh, on
25 the night of the accident, do you have any belief that you

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1 would have stayed past 10:00 or 10:30 on that night?
2 BY MR. DRAISEN: Object to the form of the question.
3 A. I don't remember.
4 Q. You can answer.
5 A. I might have.
6 Q. You what?
7 A. I said, "I might have." But I don't remember. The only
8 thing I remember, I just, like, um, grabbed the key,
9 grabbed my purse, got the paperwork and got in the car.
10 That's it. And after that, I just blank out and I don't
11 even know what happened.
12 Q. Do you have any reason to believe why you would have
13 stayed there past 10:00 or 10:30 on the night of the
14 accident?
15 BY MR. DRAISEN: Object to the form of the question.
16 BY MS. SUTHER: I'm gonna object to the form, also.
17 You can go ahead and answer.
18 A. I don't understand the question, ma'am.
19 Q. I'm trying to find out if you not -- you testified
20 earlier that you normally leave between 10:00 or 10:30 and
21 it would have been unusual for you to stay past 11:00.
22 So, I'm trying to understand was there any reason, that
23 you're aware of, that you would have stayed for any time
24 longer than you normally did on the night of the accident.
25 BY MR. DRAISEN: Object, object to the form of the

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1 question.
2 A. I don't remember that I stayed longer than that, but only
3 sometime that I have to stay there and prep for when we
4 have, like, uh, the big order the next day. Um, it's not
5 often. Did I answer your question?
6 Q. Okay. I, I guess you did to some extent. Um, so, there
7 would be no reason for you to stay and do food prep unless
8 there was a big party that was lined up for the next day;
9 is that right?
10 A. Yes, ma'am. And then, um, like, uh, the door closed at
11 9:00 for real, but I stay there, you know, to finish up
12 things and wait for the staff while they, you know, try to
13 finish, after all the cleanup and stuff, you know?
14 Q. Okay. Is it likely that you would have left that
15 restaurant before 11:00 on the day of that accident?
16 BY MR. DRAISEN: Object to the form of the question.
17 A. I don't know that, that day. I don't remember.
18 Q. Okay. Do you recall telling your, um, boyfriend or
19 fiancé, Chai, that you went to Chili's after you left the
20 restaurant that night?
21 BY MR. DRAISEN: Object to the form of the question.
22 A. No, no. Chai didn't work there. Chai's at home.
23 Q. I understand. But do you recall telling him that you went
24 to Chili's on the night of that, that -- after you left
25 the restaurant that night and before the accident?

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1 BY MR. DRAISEN: Object to the form of the question.
2 A. I don't, I don't remember, ma'am.
3 Q. Do you recall if you told Allison that you went to Chili's
4 after you ---
5 BY MR. DRAISEN: Object to the form of the question.
6 Q. --- left the restaurant? Excuse me. After you left the
7 restaurant and before the time of the accident.
8 A. I don't remember.
9 Q. Okay. Is it possible that you would have gone to Chili's
10 after you left the restaurant and before the accident?
11 BY MR. DRAISEN: Object to the form of the question.
12 A. I don't remember, ma'am. I don't know.
13 Q. You don't know if it's possible or not?
14 A. I don't remember.
15 Q. Well, is it possible ---
16 A. Chai told me that I call him. That's why. I don't even
17 know that I call him.
18 Q. But is it possible that you would have gone -- that you
19 could have gone to Chili's or somewhere else after you
20 left the restaurant that night and before the accident?
21 BY MR. DRAISEN: Object to the form of the question.
22 A. I ---
23 Q. What is your answer?
24 A. I said, "I don't know," ma'am.
25 Q. Do you have any, uh, knowledge of whether or not Allison

18 (Pages 69 to 72)

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Motion to Reconsider, Alter, or Amend Judgment with Exhibits

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
KEVIN DWAYNE CHAVIS, Plaintiff(s), - vs - VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	MOTION TO RECONSIDER, ALTER, OR AMEND JUDGMENT C/A No. 2021-CP-23-01487

TO: THE HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE, Thirteenth Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Ste. 315, Greenville, South Carolina 29601; and

TO: DEFENDANT RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT, and its attorney, **ZACHARY S. BROWN, ESQ.**

COMES NOW the Plaintiff, Kevin Dwayne Chavis, and, pursuant to the South Carolina Rules of Civil Procedure, Rules 59 and 60, makes his Motion to Reconsider, Alter or Amend Judgment as follows:

PROCEDURAL HISTORY

This matter came on for hearing before this honorable Court pursuant to a Motion for Summary Judgment filed by Defendant Ra Cha, Inc. on January 27, 2023. An Order was issued by the Court granting Defendant's Motion for Summary Judgment as to all of Plaintiff's causes of action against Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant on February 15, 2023. In the Order, the Court makes numerous findings of fact and conclusions of law. The Plaintiff hereby files his Motion to Reconsider within ten (10) days from the date of receipt of the Order in this matter.

QUESTIONS PRESENTED

- I. Did the Court err in dismissing Plaintiff's dram shop causes of action in the within matter?
- II. Did the Court err in dismissing Plaintiff's negligence and *negligence per se* causes of action in the within matter?
- III. Did the Court err in finding that Defendant Saensane was not hired or retained by Defendant Bangkok, and (when viewing the facts most favorably to the Plaintiff) that it had no reason to know that she created an undue risk of harm to the public?
- IV. Did the Court err in finding that Defendant Saensane was not an employee of Defendant Bangkok?
- V. Did the Court err in finding that Defendant Saensane was not acting within the scope of her employment at the time of the accident such that Defendant Bangkok cannot be vicariously liable for her acts?

LEGAL ARGUMENT

- I. Did the Court err in dismissing Plaintiff's dram shop cause of action in the within matter?
- II. Did the Court err in dismissing Plaintiff's negligence and *negligence per se* causes of action in the within matter?

Based upon the undisputed testimony of Defendant Saensane, on the evening of the wreck at issue in this matter Defendant Saensane, an admitted shareholder, owner, and employee¹ of Defendant Ra Cha, Inc., served herself and consumed alcohol from the bar inventory of the Defendant on Defendant's premises. After consuming the alcohol, Defendant Saensane was allowed to leave and did leave the Defendant's premises in her automobile and soon thereafter collided with the Plaintiff causing him severe, painful and permanent injuries. It is further undisputed based upon Defendant Saensane's

¹ The tax returns documents from Defendant Ra Cha, Inc. include a Form 1125-E. Shareholder compensation paid on a W-2 is reported here. The Form 1125-E indicates Defendant Saensane was an employee of Defendant Ra Cha, Inc., d/b/a Bangkok Tokyo Restaurant (copy of the Form 1125-E is attached hereto and incorporated by reference thereto).

testimony that Allison, the alcohol license permittee and majority shareholder, was aware that Defendant Saenesane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc., that Allison permitted Saensane to drink and to consume alcohol while doing the business paperwork, and that Allison had observed Saensane doing so on previous occasions.

Additionally, based upon the retrograde analysis performed by David Eagerton, Ph.D., F-ABFT, it is undisputed that Defendant Saensane had a whole blood alcohol concentration (BAC) level of 0.273 g/100 mL at the time of the collision. This level is more than 3x the legal limit of 0.08 g/100 mL and is evidence sufficient to prove that Defendant Saensane was intoxicated when she left the Defendant's premises and was grossly intoxicated at the time of the wreck. Dr. Eagerton's report and CV were attached to Plaintiffs Memorandum in Opposition.

In the *South Carolina Lawyer*, January 2006, Kevin R. Eberle published an article entitled Alcohol Liability in South Carolina: A Host of Legal Issues wherein he sets out the history and basic premise upon which alcohol liability in South Carolina is based. The article is brief and is worth setting forth herein. Mr. Eberle writes:

South Carolina was one of the early states to recognize the liability of one who provides alcohol in violation of state law to those injured by the unlawful conduct. The state first recognized such an action in a slave case decided in 1847. See *Harrison v. Berkley*, 32 S.C.L. (1 Strob.) 525 (1847). *Harrison* was an action against a saloon-keeper who illegally sold whiskey to the plaintiff's slave; an 1817 state law had made criminal the sale of alcohol to slaves. The plaintiff sought to recover for the death of the slave who had died from exposure after falling by the roadside while drunk. The court ruled for the plaintiff, holding that since the sale had been made by the defendant in violation of state law, the plaintiff was entitled to recover for the damages incurred by reason of the unlawful act. Even though the statute did not expressly provide for such relief, the court found that the plaintiff had been within the special ambit of the statute's protections and could therefore bring the action.

During the last century and a half, the support of the South Carolina courts for such actions has varied. In some cases, the courts have approved liability against those who violated state alcohol laws, while in others the plaintiffs have been denied recovery as a matter of law. In each case, the courts have recognized the viability of a negligence action in theory but have either permitted or denied relief based on the characterization of the plaintiffs (social or commercial hosts) and defendants (first-party or third-party victims). In a recent pair of cases

involving the liability of those who gratuitously provide alcohol to minors, the South Carolina Supreme Court has introduced a new and important distinction into the resulting matrix.

Negligence *per se*

South Carolina has never recognized a general common law duty to avoid the provision of intoxicating drinks to either incompetent adults or children. The justification has been given that it is the drinking of the alcohol and not its supply that is the intoxication. See *Tobias v. Sports Club, Inc.*, 323 S.C. 345, 348, 474 S.E.2d 450, 451 (Ct. App. 1996) (citing 45 Am. Jur. 2d *Intoxicating Liquors* § 553 (1969)) (subsequent history omitted). Nevertheless, there have been several cases imposing liability for just such conduct. The courts in those cases have relied upon the doctrine of negligence *per se*.

In a traditional negligence action, the plaintiff has the burden of proving the following: (1) a duty on the part of the defendant, (2) breach of that duty by an act or omission or commission and (3) that such breach of duty was the proximate cause of the plaintiff's injuries. *Sherrill v. Southern Bell Telephone & Telegraph Co.*, 260 S.C. 494, 197 S.E.2d 283 (1973). A negligence *per se* action is simply a subset of traditional negligence suits. The plaintiff still has the burden of proving the three essential elements, but the existence of a statute establishes a duty apart from any common law support for the duty. See *Freeman v. Colwell Mortgage Corp.*, 297 S.C. 335, 342, 377 S.E.2d 108, 110-11 (Ct. App. 1989).

The statutes that are most likely to be cited govern provision of alcohol either freely or as a sale. First, it is against the law to sell alcoholic beverages to persons "in an intoxicated condition." S.C. Code Ann. § 61-6-2220 (West Supp. 2004) ("No person or establishment licensed to sell alcoholic beverages . . . may sell these beverages to persons in an intoxicated condition . . ."); see also S.C. Code Ann. § 61-4-580(2) (West Supp. 2004). Second, despite the fact that the general age of majority is 18, it is unlawful in South Carolina to provide alcoholic beverages to those persons under the age of 21. S.C. Code Ann. § 61-4-90 (West Supp. 2004) ("It is unlawful for a person to transfer or give to a person under the age of twenty-one years for the purpose of consumption beer or wine at any place in the State."); S.C. Code Ann. § 61-6-4070 (West Supp. 2004) (same prohibition as to "alcoholic liquors"). These related statutes cover slightly different scenarios. the former are generally cited in those cases involving commercial establishments that sell alcohol to minors whether or not the minors are intoxicated at the time of sale, and the latter are generally relied upon in those cases involving social hosts who gratuitously provide alcohol to minors.

Of course, simply identifying a relevant statute does not create liability. There remain other issues including, for example, proving that the individual served alcohol in violation of § 61-6-2220 was truly intoxicated at the time of service. See *Steele v. Rogers*, 306 S.C., 546, 413 S.E.2d 329 (Ct. App. 1992) (explaining that one is under the influence of alcohol when its ingestion results in the impairment of the person's faculties and that proof of intoxication may be by either eyewitness testimony as to a person's appearance or admission of the person ingesting the alcohol that he felt its effects).

Similarly, in every negligence case, proximate causation remains a critical element of the case. The violation can result in civil liability only if "the injury is the natural and probable consequence of the unlawful sale." *Christiansen v. Campbell*, 285 S.C. 164, 170, 328 S.E.2d 351, 355 (Ct. App. 1985) (citation omitted), *overruled on other grounds by Tobias v. Sports*

Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998). This is a question for the jury unless the evidence shows that reasonable persons could not disagree. *Id.* at 170, 328 S.E.2d at 355 (citation omitted).

The question of duty: commercial providers

Although *Harrison* was brought as a negligence suit for injury to a third-party slave owner, in the modern era the notion that third-parties can recover for injuries caused by the violation of alcohol laws has been recognized. In *Daley v. Ward*, 303 S.C. 81, 399 S.E.2d 13 (Ct. App. 1990), the S.C. Court of Appeals discussed whether a civil action could be maintained by a third party who was injured by the one served alcohol by a defendant. In that case, an intoxicated patron was served alcohol by the defendants at their bar. After having left the bar, the patron rear-ended the plaintiff.

The plaintiff's ensuing action was based on the defendants' having violated the state statute which prohibited the sale of beer or wine to intoxicated persons. The defendant asserted that there could be no liability to a third person injured by such a patron. The court, however, disagreed and wrote, "[w]e find no reason for which the class of persons protected by the statute should not include third parties injured by the actions of an intoxicated person served in violation of the statutes." *Daley*, 303 S.C. at 84, 399 S.E.2d at 14.

The exposure of commercial suppliers is not without limits, though. For more than 10 years, South Carolina permitted drunk patrons to recover for their own injuries from the taverns that served them. For example, in *Christiansen v. Campbell*, 285 S.C. 164, 328 S.E.2d 351 (Ct. App. 1985), a patron of a North Charleston bar was served alcohol for approximately two hours, even past the point of visible intoxication. When the patron left the bar, he walked into the road and was hit by a car. His lawsuit against the bar claimed that the bar had violated the state law against selling alcohol to an intoxicated person and that he fell within the class of persons to be protected by the statute. The court agreed that the patron was protected by the statute. The court relied on out-of-state authority for its conclusion that "[S]ection 61-9-410 clearly promotes public safety. One reason the statute exists is to protect intoxicated persons from their own incompetence and helplessness. The statute represents the legislature's judgment that an intoxicated person is a menace to himself. Indeed, a purpose in prohibiting a vendor from selling beer to one who is already intoxicated is to prevent the person from becoming even more intoxicated so that he is not a greater risk when he leaves the bar." *Id.* at 168, 328 S.E.2d at 354 (citations omitted); see also *Tobias v. Sports Club, Inc.*, 323 S.C. 345, 474 S.E.2d 450 (Ct. App. 1996).

In 1997, however, the S.C. Supreme Court agreed to hear a case involving a first-party suit by one who had been served alcohol past the point of intoxication. The Court of Appeals had, in the view of the S.C. Supreme Court, properly recognized that the statutes against such conduct were meant to protect the public in general. The Court of Appeals, though, had gone further and held that another purpose was to protect the intoxicated person from his own incompetence and helplessness. The Supreme Court disagreed and held "that public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998). The Court expressly reversed the decision of the Court of Appeals in that case and in *Christensen* as to first-party suits and limited the exposure of bars for negligence *per se*.

The Question of Duty: Gratuitous Providers

Social host liability is a different matter. In social host liability, the supplier of the alcohol is not a bar or other such establishment but is instead a private person who offers alcohol to his or her guests other than in expectation of payment, often at parties.

The S.C. Court of Appeals has ruled that a social host has no statutory liability to third parties injured as a result of an adult guest's intoxication. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986). Under South Carolina common law, the driver had no cause of action in negligence against a social host who served alcohol to an intoxicated adult guest who subsequently caused an automobile collision, injuring the driver, even if host knew or ought to have known the guest intended to drive motor vehicle. In that case, the employer, Cummings & McCrady, had hosted a party where it served alcohol to a guest after he was intoxicated. The guest then collided with the plaintiff's automobile and injured the plaintiff.

Judge Bell wrote that South Carolina would adhere to the common law view of non-liability of social hosts when third parties are injured when a social host serves alcohol to an adult guest. The proper remedy for the injured third party is to sue the guest who injured him. Judge Bell specifically recognized that there was precedent in South Carolina for imposing liability on one who serves liquor to another who is already drunk. However, the state had imposed that liability only when the service of the alcohol was in violation of a state statute. Although it is unlawful to sell alcohol to an intoxicated person, it is not illegal to gratuitously serve the same individual. The judge's analysis presents the perfect distinction between social host liability and commercial provider liability. *But see Cravens v. Inman*, 586 N.E.2d 367 (Ill. App. Ct. 1991) (rejecting the rule of *Garren* and stating "social host is liable in negligence for automobile accident caused by intoxicated minor driver where social host has knowingly served liquor and permits liquor to be served to youths under 18 at social host's residence, social host permits minor's consumption to continue to point of intoxication, and social host allowed inebriated minors to depart from his residence in a motor vehicle").

There is some superficially inconsistent authority in South Carolina. One South Carolina case held a social host liable for injuries to a first-party adult plaintiff, but the social host was a fraternity and the guest was pledging the fraternity. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (Ct. App. 1986). The decedent had been pledging Sigma Nu fraternity, and the pledging had culminated in one night of excessive drinking deemed "Hell Night." During Hell Night, the decedent had been given massive quantities of alcohol and forced to drink it or be ridiculed by members of the fraternity. At several times during the evening, the decedent had thrown up because he had consumed so much. Finally, the decedent passed out on a couch in the fraternity lounge. Some brothers checked on him and were concerned about his pale color and lack of responsiveness, but they did nothing to help him. The following morning the decedent was found dead. He had drowned in his own vomit. Testimony showed that, had the brothers taken him to the infirmary that night when they found him, he would have survived.

Sigma Nu owed its guest a duty but only because the Supreme Court of South Carolina had determined that a fraternal organization owes a common law and not statutory duty of care to its initiates not to cause them injury. *See Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 329 S.E.2d 753 (1985). The case, technically, was not a case of liquor liability. Rather, the duty

involved was the duty not to endanger pledges during an initiation ceremony. In other words, had the pledge injured himself doing stunts not involving alcohol, the case for liability would have been the same. In a later case, discussed below, the S.C. Supreme Court also noted this apparently inconsistent case but distinguished it not with any reference to the underlying legal theory but instead on the less satisfying factual basis that the case had involved one who had been "pressured to consume an excessive amount of alcohol" and later abandoned. *Marcum v. Bowden*, 372 S.C. 452, n.4, 643 S.E.2d 85, n.4 (2005).

In dicta, the Supreme Court of South Carolina seems to have closed the door on third-party claims brought by adult victims based on the provision of alcohol to other adult consumers in a social setting. In *Carson v. Adgar*, 326 S.C. 212, 214, 486 S.E.2d 3, 6 (1997), the respondent and friend worked together in a landscaping business. The friend was 33 years old, and his father had asked the respondent to serve alcohol to the friend. The co-workers drank many beers while they went fishing and then later in a pool hall. The respondent brought his friend more beers even after he realized his friend was "drinking pretty good." The friend grew angry when told him he did not need to drink anymore and demanded to be let out of the respondent's car. The respondent told police he had put the guest out of his vehicle knowing he was "over his limit" in alcohol consumption. The friend was then struck by an oncoming car as he attempted to cross the street.

The respondent could not be held liable for injuries sustained by his friend, even though he kept supplying him with beer after he was intoxicated, because he owed no duty of care to his friend. The respondent had not bought all the beer and had not forced his guest to drink. It was argued that the respondent had assumed the care of his friend at various stages of the evening, but the Court disagreed and ruled that the respondent had not undertaken to care for his friend at any time. In a footnote, the Court added that there could otherwise not be liability since the state does not recognize social host liability. *Carson*, 326 S.C. at 219 n.4, 486 S.E.2d at 10 n.4 ("[A] social host incurs no common law liability to third parties when he serves alcohol to his adult guests.") (citing *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 384, 345 S.E.2d 508 (Ct. App. 1986)).

Social hosts and minors: a new wrinkle

Until a pair of recent cases were heard by the S.C. Supreme Court, the only reported authority in South Carolina on a social host's liability involved guests over the legal age of 21. In those cases, the rule was that no liability existed against the social host for his or her guest's later conduct. However, on August 29, 2005, the S.C. Supreme Court issued a pair of opinions that have added a new layer to the field of alcohol liability.

In *Marcum v. Bowden*, 372 S.C. 452, n.4, 643 S.E.2d 85, n.4 (2005), Justin Parks was 19 years old when he attended a cookout at the home of Donald and Gloria Bowden. Parks told another guest that he was purposefully "just trying to get a buzz" at the event. Even after leaving the party, he continued to drink alcohol from minibottles he had stashed in his pockets. Still later, he drove himself away and was fatally injured in a one-car accident. His personal representative sued the hosts of the cookout for wrongful death, but the trial court granted summary judgment to the defendants. On appeal to the S.C. Supreme Court, the Court reversed.

The Court surveyed the laws in other jurisdictions on social host liability but was unable to discern a majority rule. Instead, the Court relied on public policy rationales. First, the Court recognized a public interest in deterring the consumption of alcohol by underage persons. The imposition of liability could be expected to prompt social hosts to be "more vigilant about who is consuming alcohol at their social gatherings. A vigilant host would greatly decrease the ability of an underage person to consume alcohol at a social party." *Id.* In addition, because minors are legally incompetent to care for themselves, the imposition of liability would properly shift responsibility for their actions to others. The Court also found support for its ruling in simple negligence *per se* law. The Court noted that the essential purpose of the statute against the sale of alcohol to minors (*viz.*, S.C. Code § 61-4-90 and § 61-6-4070), is "to protect the underage person from harm, including injuries sustained or death, after imbibing alcohol provided by such person." *Id.*

The ruling in *Marcum* left the open the door for further disputes in the area. Unanswered, for instance, was the significance of the age of the *plaintiff*. What would be the outcome if, for instance, an inebriated minor killed an adult pedestrian? In the first party suit involving a minor who injured himself, the Court had justified the imposition of liability based in large part on negligence *per se*, explaining that the state laws against providing alcohol to minors were meant to protect minors from injuries to *themselves*. A savvy lawyer for the plaintiff could have argued that the Court was simply addressing the facts at hand and did not intend to eliminate all other "essential purposes" of the law, while the defense might have equally argued that there can only be one "essential purpose" and it is not to prevent injury to unknown third parties.

In a companion opinion to *Marcum*, the S.C. Supreme Court resolved that issue. In *Barnes v. Cohen Dry Wall Inc.*, Opinion No. 26036, ___ S.C. ___, ___ S.E.2d ___ (2005)². Orin Feagin was 19 years old when he attended his employer's Christmas party where he became drunk. Later that night he was driving away from his girlfriend's place of employment when he was involved in a two-car accident that killed him and the passenger in the other car. The estate of the minor sued the employer, and the third-party's estate sued both the employer and the minor. The jury returned a verdict in favor of the company on the claims brought by the minor and in favor of the third-party victim against both the company and the minor. On appeal, the question was raised about the scope of possible plaintiffs in a suit involving the illegal provision of alcohol to minors. The S.C. Supreme Court recognized its ruling in *Marcum v. Bowden* as authority for social host liability to minor guests who suffer alcohol-related injuries after consuming alcohol knowingly and intentionally provided by the host based on public policy as well as negligence *per se*. In *Marcum*, the Court had specifically held that the statutes prohibiting the transfer or giving of alcoholic beverages to minors were enacted for the benefit of *those minors*, but the Court has also ruled in *Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991), that the purpose of laws prohibiting the sale of alcohol to minors (*i.e.*, the laws relied upon in commercial provider litigation) was to protect the minors themselves *and* the public at large. The Court squared the two purposes of the different alcohol-related laws by announcing an even broader purpose of laws against providing alcohol to minors. The Court wrote that the purpose of such laws was also "the protection of members of the public from

² Affirming the Court of Appeals in *Barnes v. Cohen Dry Wall, Inc.*, 357 S.C. 280, 592 S.E.2d 311 (S.C. App. 2003)

harm done by persons under twenty-one who have consumed alcohol in violation of the statutes." *Barnes* at ___, ___ S.E.2d at ___. Given that broader purpose, the Court then easily ruled that a third-party adult could sue the social host of an underaged drinker.

Conclusion

Until the release of two opinions involving negligence *per se*, social hosts in South Carolina were able to serve alcohol with little reason to be concerned about the possibility of even very serious injuries caused by their underage guests. The S.C. Supreme Court, though, recently recognized "a natural progression of our case law" despite the conflicting outcomes in other situations based on specific facts. Whether the track record for such suits constitutes a "natural progression" or a "slippery slope," the law is now settled that social hosts face new liability for permitting underage drinking.

Alcohol Liability in South Carolina: A Host of Legal Issues, Kevin R. Eberle, *South Carolina Lawyer*, January 2006.

As pointed out in the Eberle article, the S.C. Supreme Court has recognized that the outcome of these cases should be based on the specific facts and circumstances. There are a number of SC Code sections that have been enacted by the South Carolina Legislature related to the sale, distribution, and consumption of alcohol that are penal in nature, but which have been interpreted to impose civil liability upon those that violate these statutes.

In Tobias v. Sports Club, Inc., 474 S.E.2d 450, 323 S.C. 345 (S.C. App. 1996) the Court of Appeals held:

At common law, a tavern owner had no liability for serving alcohol to an intoxicated person who later injured himself or others. See 45 Am.Jur.2d Intoxicating Liquors § 553 (1969). The rationale for this rule was that consuming, not supplying, the alcohol was the proximate cause of intoxication. *Id.* Many jurisdictions, however, have departed from this common law view. In an effort to deter drunk driving and to compensate innocent victims injured by drunk drivers, many state legislatures have enacted "dram shop acts." These statutes impose civil liability on tavern owners under various circumstances, such as supplying alcoholic beverages to minors or to obviously intoxicated persons. In states where dram shop legislation has not been enacted, some courts have imposed liability on vendors of alcoholic beverages using principles of negligence, often basing a private cause of action on the violation of beverage control statutes. At least three jurisdictions have refused to interpret their penal statutes to create a civil cause of action, while others believe that such public policy decisions should be made by the legislature. Still other jurisdictions, embracing the common law view, have enacted legislation which renders servers of alcohol immune from liability.

South Carolina is among those jurisdictions that have recognized a civil cause of action based upon the violation of a penal statute. Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct.App.1985), cert. denied, S.C. Sup. Ct. order dated June 27, 1985. In Christiansen, as here, the plaintiff, who was also the intoxicated person, brought a private cause of action relying on S.C. Code Ann. § 61-9-410 (1976) which provides, in part:

"[n]o holder of a permit authorizing the sale of beer or wine or any servant, agent, or employee of the permittee shall knowingly do any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to any person while the person is in an intoxicated condition;"....

Appellants also base their action on S.C. Code Ann. § 61-5-30 (1990) which reads:

It shall be unlawful for any person to possess or consume any alcoholic liquors upon any premises where such person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

No person or establishment licensed to sell alcoholic beverages pursuant to this article shall sell such beverages to persons in an intoxicated condition and such sales shall be deemed violations of the provisions thereof and subject to the penalties contained herein.

No person, corporation or organization for whose premises a license is required shall knowingly allow the possession or consumption of any alcoholic liquors upon such premises unless a valid license issued pursuant to subsection (3) or (4) of § 61-5-20 has been obtained and is properly displayed.

Since this cause of action was judicially created in South Carolina, we have no statutory guidance on the class of persons who may recover or on the availability of defenses. In many states where such a cause of action is statutorily authorized, the dram shop act or cases interpreting it have specifically precluded the intoxicated person from that class of plaintiffs who may bring suit. In addition, many courts in jurisdictions with penal statutes, including most of those relied upon by the Court in Christiansen, have precluded first party recovery. Christiansen, however, clearly extended the cause of action to the intoxicated person himself. Therefore, our only inquiry today is whether defenses may be asserted against the intoxicated person by the tavern owner.

Appellants argue that to permit a tavern owner to raise traditional tort defenses in a suit against it would undermine the cause of action recognized in Christiansen, asserting this cause of action is more in the nature of one grounded in strict liability. We cannot accept this characterization. The cause of action recognized in Christiansen sounds in negligence. Under Christiansen, the jury must determine if the statutory violation is a proximate cause of the alleged injury. Subsequent decisions of the Supreme Court and the Court of Appeals have held the South Carolina liquor control statutes also create a private cause of action in favor of injured minors who were unlawfully served alcohol as well as innocent third parties injured by the inebriant. See Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991) (sections 61-9-40 and 61-9-410 give rise to civil liability if third party plaintiff can establish negligence

per se. After establishing negligence per se, plaintiff must prove the violation of the statute was causally linked, both in fact and proximately, to the injury); *Jamison v. The Pantry, Inc.*, 301 S.C. 443, 392 S.E.2d 474 (Ct.App.1990) (third party plaintiff has cause of action under sections 61-9-40 and 61-9-410); *Daley v. Ward*, 303 S.C. 81, 399 S.E.2d 13 (Ct.App.1990) (third party and intoxicated minor have cause of action under section 61-9-410); cf. *Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct.App.1986) (social host incurs no common law liability to third party plaintiffs when he serves alcohol to his adult guests). Thus, Christiansen and the decisions which followed it clearly indicate liability should be predicated upon a negligence standard, i.e., "whether the bartenders negligently served alcoholic beverages to a person who, by his appearance or otherwise, would lead a prudent man to believe that person was intoxicated." *Daley*, 303 S.C. at 87, 399 S.E.2d at 16.

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 313 S.C. 508 (S.C. App. 1994)

Likewise, S.C. Code §61-4-580 (2) states:

No holder of a permit authorizing the sale of beer or wine or a servant, agent or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(2) sell beer or wine to an intoxicated person;

In the instant case, Plaintiff asserts that (1) the penal statutes which govern the sale, distribution, and consumption of alcohol were enacted essentially for the purpose of protecting the citizens of South Carolina from the exact kind of harm the Plaintiff has suffered (i.e., the incurring of significant medical expense, suffering severe, painful and debilitating physical injuries, and lost income); and (2) that the Plaintiff is a member of the class of persons the statutes are intended to protect (i.e., innocent third parties driving on the roadways of South Carolina). Undoubtedly, penal statutes that prohibit the permittee, owners, servants and employees from "selling" alcohol to a person that known to be intoxicated (to protect the general public from the consequences of same) should likewise prohibit the

permittee, owner, servants and employees from a) "giving" alcohol at no charge to a person (i.e., free shots, drinks on the house, etc.) b) allowing an employee to consume alcohol on the premises to the point of intoxication while working, and c) allowing a person to acquire alcohol from the licensed premises when such person is intoxicated.

In Richland County Sch. Dist. Two v. S.C. Dep't of Educ., 335 S.C. 491, 517 S.E.2d 444

(Ct.App.1999), the Court of Appeals held:

The primary rule of statutory construction requires that legislative intent prevail if it can reasonably be discovered in language used construed in light of intended purpose. The legislature's intent should be ascertained primarily from the plain language of the statute. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation, and the court has no right to look for or impose another meaning.

Furthermore, even though penal statutes are to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context." *State v. Standard Oil Co. of N.J.*, 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940). We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. See *S.C. Coastal Council v. S.C. State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

The applicable South Carolina Code sections govern the sale, service, and consumption of alcohol on the licensed premises by the permittee, the owner, operator, or person in charge of the premises, by their servants or employees, and by consumers of the alcohol. Based upon the undisputed testimony of Defendant Saensane and a lack of any evidence to the contrary, there is nothing to suggest that Defendant Saensane was sold, served, or that she consumed alcohol at any location other than upon the licensed premises of Defendant Ra Cha, Inc., that she was sold, served, or consumed any alcohol after she left the Defendant's premises, or that she did not consume sufficient amounts of alcohol to achieve the level of her intoxication while upon the Defendant's licensed premises.

The Plaintiff asserts that he has pled specific facts sufficient to support the application (and/or extension) of the penal statutes which govern the sale, distribution, and consumption of alcohol to the facts and circumstances of his case. The Plaintiff further asserts that these statutes were enacted for the purpose of protecting the citizens of South Carolina from the kind of harm the Plaintiff suffered, and that the Plaintiff is a member of the class of persons the statutes are intended to protect. Plaintiff believes that he has made a good faith argument for the application of law as it exists to the facts and circumstances of his case, and, alternatively, for the modification and/or expansion of the existing law to the facts and circumstances of his case. As such, summary judgment as to Plaintiff's cause of action for dram shop liability should, respectfully, be denied.

- III. Did the Court err in finding that Defendant Saensane was not hired or retained by Defendant Bangkok, and (when viewing the facts most favorably to the Plaintiff) that it had no reason to know that she created an undue risk of harm to the public?
- IV. Did the Court err in finding that Defendant Saensane was not an employee of Defendant Bangkok?

By her own undisputed testimony, Defendant Saensane admitted that she was not only a shareholder, but also an employee of Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant. The tax forms submitted by Defendant Ra Cha, Inc. (Form 1125-E) indicate that Defendant Saensane was an employee and was paid W-2 Wages. It is further undisputed based upon Defendant Saensane's deposition testimony that Allison, the alcohol license permittee and majority shareholder, was aware that Defendant Saensane was serving herself and consuming alcohol on the premises of Defendant Ra Cha, Inc., that Allison permitted Saensane to drink and to consume alcohol while doing the business paperwork, and that Allison had observed Saensane doing so on previous occasions.

Allison, by knowingly allowing her co-shareholder and employee to consume alcohol while working and doing the business of the corporation, and Defendant Saensane, by consuming alcohol on

the premises while doing the business of the corporation, such knowledge being imputed to Defendant Ra Cha, Inc., knew or should have known that by doing so it was creating an undue risk of harm to the public. To find otherwise, and by granting summary judgment to Defendant Ra Cha, Inc. and dismissing Plaintiff's dram shop claims and *Negligence per se* claims, the Court has to entirely disregard the corporate entity (a corporation being a legal entity that is separate and distinct from its owners), pierce the corporate veil, and declare the acts of the individual shareholder(s) and the employee to be the individual acts of the shareholder(s) and/or the individual employee, absent any factual or legal basis for doing so. There have been no facts alleged, pled, or proven in the instant case which would give rise to piercing of the corporate veil. No assertions have been made that the owners/shareholders of Defendant Ra Cha, Inc. grossly undercapitalized it when they formed it, that they failed to obtain the necessary business license or alcohol licenses, that they failed to maintain adequate and appropriate corporate records, or that they siphoned funds primarily for their personal benefit so as to make Ra Cha, Inc. the mere alter-ego of Defendant Saensane, or that there would be an element of injustice or fundamental unfairness if the acts of the corporation were not regarded as the acts of the individual. In fact, Plaintiff has asserted the contrary.

In the instant case, Defendant Saensane was consuming alcohol from the bar inventory of Defendant Ra Cha, Inc. while she was on the premises of Defendant Ra Cha, Inc., and doing its paperwork. Because the permittee and majority shareholder was aware that Defendant Saensane consumed alcohol while she did the paperwork for the business, such acts were sanctioned by the corporate defendant. By her testimony, Defendant Saensane testified that other employees of Defendant Ra Cha, Inc. were not allowed to drink or to consume alcohol while working. This is because harm to the public arising from this practice was foreseeable (and preventable). Despite this, Defendant Ra Cha, Inc. allowed Defendant Saensane to consume alcohol while working and doing its paperwork on the

Defendant's premises.

Lastly, based upon the testimony of Defendant Saensane that she was an employee of Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant, and the tax forms filed (Form 1125-E), the Court has erred in finding that Defendant Saensane was not an employee of Defendant Ra Cha, Inc. When the facts are viewed in a light most favorable to the Plaintiff, the Court should have (with due respect) concluded that she is, and was at all times relevant hereto, an employee of Defendant Ra Cha, Inc.

For the foregoing reasons, the Court should, respectfully, alter or amend its Order to reflect that Defendant Saensane was, in fact, an employee of Defendant Ra Cha, Inc., and that she was retained as an employee despite Allison knowing and being aware that Defendant Sansane did, from time to time, consume alcohol while working and doing the paperwork for Defendant Ra Cha, Inc., same creating a foreseeable and unreasonable risk of harm to the public. As such, summary judgment as to Plaintiff's claims for negligence and *negligence per se* should be denied.

V. Did the Court err in finding that Defendant Saensane was not acting within the scope of her employment at the time of the accident such that Defendant Bangkok cannot be vicariously liable for her acts?

Despite the Court's holding otherwise, Defendant Saensane was a shareholder (co-owner) and an employee of Defendant Ra Cha, Inc. Defendant Saensane was, in fact, acting within the scope of her employment at the time she consumed the alcohol as she was at the restaurant doing its paperwork. These facts are undisputed. Further, based upon the retrograde analysis performed by Dr. Eagerton, Defendant Saensane consumed sufficient alcohol while in the course and scope of her employment so as to be intoxicated before leaving the premises, and so as to be grossly intoxicated at the time of the collision.

While the Plaintiff concedes that Defendant Saensane was not working at the time of the collision, Plaintiff does assert that but for the Defendant employer allowing her to consume alcohol to

the point of intoxication while upon its premises, Defendant Saensane would not have been grossly intoxicated and collided with the Plaintiff several hours later. That is, she consumed the alcohol to the point of intoxication while performing her job, and she was allowed to do so by the other owners of the business. Defendant Saensane was also allowed to leave the business after consuming the alcohol to the point of intoxication. All of these acts occurred during the course and scope of her employment with Defendant Ra Cha, Inc. The collision was merely the natural consequence of the negligent, grossly negligent, careless and reckless conduct of the corporate defendant in allowing its employee (Saensane) to consume an amount of alcohol, from the Defendant's bar inventory, so as to become intoxicated while working, and by allowing her to leave the premises in an intoxicated state.

Accordingly, even if Defendant Ra Cha, Inc. is not liable to the Plaintiff by virtue of vicarious liability, which is denied, then it should be liable to the Plaintiff for its actual negligence, gross negligence, recklessness as alleged in Plaintiff's THIRD CAUSE OF ACTION by allowing its employee to consume alcohol while working to the point of intoxication, and by allowing the employee to leave the premises in such a state so as to cause injury to the Plaintiff. By dismissing all of Plaintiff's causes of action against the corporate Defendant, the Plaintiff has no remedy at law or in equity against such Defendant for its negligent acts or omissions. As such, summary judgment as to Plaintiff's cause of action should be denied.

CONCLUSION

Accordingly, based upon the above, the Plaintiff respectfully requests that the Court review and give careful reconsideration to its Order, and that the Court alter or amend its ruling on Plaintiff's causes of action against Defendant Ra Cha, Inc. For the foregoing reasons, the Plaintiff asserts that the Court should reinstate Plaintiff's causes of action for dram shop liability, for negligence, for negligence *per se*, for negligent, hiring, retention and supervision and for vicarious liability, and deny Defendant's Motion

for Summary Judgment as to those causes of action.

Respectfully submitted,

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ATTORNEYS FOR THE PLAINTIFF

February 20, 2023
Anderson, South Carolina

EXHIBIT TO MOTION TO RECONSIDER

Daniel Draisen

To: Brian Johnson
Subject: RE: Question about K1

From: Brian Johnson
Sent: Tuesday, February 07, 2023 5:42 PM
To: Daniel Draisen <daniel@Injuredsc.com>
Subject: RE: Question about K1

Hey Daniel,

Statement A is reporting the shareholder's allocable share of all wages paid by the company, so it would NOT indicate that she takes a salary. That statement is there because the QBI deduction is limited to 50% of wages paid by the company, so it informs the shareholder the amount of wages (times there ownership percentage) for purposes of being able to take the QBI deduction.

However, the 1125-E (page 2 of the pdf) reports compensation paid to her. This is generally where shareholder compensation paid on a W-2 is reported. So it does indicate that she is an employee.

Brian L. Johnson, CPA
SuggsJohnson, LLC
107 Edgebrook Drive (29621)
P.O. Box 102
Anderson, SC 29622

Direct (864) 965-9616 | Office (864) 226-0306 | Fax (864) 231-0789
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Form 1125-E

(Rev. October 2015)

Department of the Treasury
Internal Revenue Service

Compensation of Officers

➤ Attach to Form 1120, 1120-C, 1120-F, 1120-REIT, 1120-RIC, or 1120S.

Information about Form 1125-E and its separate instructions is at www.irs.gov/form1125o.

OMB No. 1545-0123

Manio

RA CHA INC

Employer Identification number

Note: Complete Form 1125-E only if total receipts are \$500,000 or more. See instructions for definition of total receipts.

[illegible]

For Paperwork Reduction Act Notice, see separate instructions.

Form 1125-E (Rev. 10-2016)

For Paperwork Reduction Act Notice, see 5010-108-0100.

CONFIDENTIAL

BANGKOK SUBP 0002

Bangkok's Response to Plaintiff's Motion to Reconsider

23 FEB 23 PM 4:54
Paul Wickensiner COC GVL SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

KEVIN DWAYNE CHAVIS,

Plaintiff,

v.

VANSY SAENSANE AND RA CHA,
INC. D/B/A BANGKOK TOKYO
RESTAURANT A/K/A BANGKOK THAI
RESTAURANT,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-23-01487

DEFENDANT RA CHA, INC. D/B/A
BANGKOK TOKYO RESTAURANT
A/K/A BANGKOK THAI
RESTAURANT'S RESPONSE TO
PLAINTIFF'S MOTION TO
RECONSIDER

Defendant Ra Cha, Inc. d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok Thai Restaurant (hereinafter "Defendant" or "Defendant Bangkok"), by and through its undersigned counsel, hereby responds to Plaintiff Keven Dwayne Chavis's ("Plaintiff's") Motion to Reconsider.

PROCEDURAL HISTORY

This matter was before the Court on a Motion for Summary Judgment by Defendant Bangkok. The Court granted Defendant Bangkok's Motion for Summary Judgment as to all of Plaintiff's causes of action against it on February 15, 2023. Plaintiff subsequently filed a Motion to Reconsider on February 20, 2023. Defendant Bangkok hereby responds to that motion.

LEGAL ARGUMENT

- I. The Court correctly ruled that Plaintiff's Cause of Action for Dram Shop was not proper because Defendant Bangkok did not sell alcohol to Defendant Saensane**

In his Motion to Reconsider, Plaintiff repeats his arguments that Defendant Vansy Saensane "served herself" alcohol. As the Court correctly ruled in its February 15 Order, South Carolina's dram shop framework does not operate in such a fashion. Dram shop liability in this

state is wholly predicated on South Carolina's penal codes. Plaintiff has not and cannot point to a single South Carolina statute Defendant Bangkok violated. Instead, for the first time in his Motion to Reconsider, Plaintiff presents additional arguments in an attempt to confuse the issue.

First, Plaintiff argues that his expert testified at his deposition that Defendant Saensane was intoxicated when she left the Defendant's premises. Putting aside the fact that Defendant Bangkok disputes this contention, it is not a material fact that is relevant to South Carolina's dram shop analysis or to the Court's previous ruling. South Carolina's dram shop statute states that a permittee may not "sell beer or wine to an intoxicated person." S.C. Code 61-4-580 (2) (emphasis added). Plaintiff has not alleged that any agent or employee of Defendant Bangkok sold any alcohol to Defendant Saensane. Therefore, the Court correctly ruled that this was not a proper dram shop action.

Next, Plaintiff includes a lengthy quote from a law review article about causes of action involving alcohol. Defendant Bangkok is not clear on the Plaintiff's point in including this article. The article, which obviously is not binding on the Court, actually appears to support the Court's ruling granting Defendant's Summary Judgment Motion. Specifically, the article correctly points out that "In some cases, the courts have approved liability against those who violated state alcohol laws, while in others the plaintiffs have been denied recovery as a matter of law." Plaintiff's Motion to Reconsider p. 3 (quoting Alcohol Liability in South Carolina: A Host of Legal Issues, Kevin R. Eberle, *South Carolina Lawyer*, January 2006). Plaintiff also includes similar quotes from the South Carolina Court of Appeals which similarly support the Court's previous order and includes language regarding dram shop liability being based on S.C. penal statutes.

Despite including this language, Plaintiff's next argument is that the Court should have

denied Defendant Bangkok's motion because our state's penal statutes which prohibit the permittee from "selling" alcohol to a person "should" likewise prohibit the permittee" from allowing an employee to consume alcohol on the premises Plaintiff's Motion to Reconsider p. 11 (emphasis added). As the Court correctly ruled in its order, "Words used in a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the operation of the statute." Order Granting Bangkok's Motion for Summary Judgment, p. 5 (quoting *Richland County Sch. Dist. Two v. South Carolina Dep't of Educ.*, 355 S.C. 491, 496, 517 S.E.2d 444, 447 (Ct. App. 1999)). The Court does not have the power to rewrite penal statutes based on what the Court or Plaintiff feels the statutes should say. If the legislature intended for the penal statutes to apply to bars giving alcohol away, they easily could have written a law to that effect. Instead, the legislature intentionally used the word "sell" to apply to South Carolina Code Ann. § 61-4-580 (2). Defendant Bangkok has already pointed to several reasons the legislature may have wanted to limit the penal codes related to bars and will not rehash those arguments here.

In any event, this argument is without merit because Plaintiff has also not presented any evidence that any employee or agent of Defendant Bangkok gave Defendant Saensane alcohol. Instead, he appears to concede that Defendant Saensane took the alcohol herself, but argues that this is similar enough to being given the alcohol. In other words, Plaintiff's argument is so far removed from the plain language of the statute that even the ideal statute he proposes still does not apply to this case. Surprisingly, Plaintiff appears to somewhat recognize this by including in his Motion to Reconsider a request "for the modification and/or expansion of the existing law to the facts and circumstances of this case." Plaintiff's Motion to Reconsider p. 13. Obviously it is improper for Plaintiff to ask the Court to rewrite the laws of South Carolina to specifically fit the

facts of this case.

The Court also correctly found that Plaintiff's cause of action for *negligence per se* was functionally the same as his dram shop action. Since there is no evidence that Defendant Bangkok violated any South Carolina penal statute, Plaintiff's *negligence per se* cause of action must also be dismissed. Therefore, the Court correctly dismissed Plaintiff's causes of action for dram shop liability and *negligence per se*.

II. The Court correctly found that Defendant Saensane was not an employee and that Defendant Bangkok had no reason to know she presented an undue risk to the public.

Plaintiff also argues that the Court erred in its finding that Plaintiff was not an employee of Defendant Bangkok. It appears that Plaintiff's entire argument on this point hinges on the fact that Defendant Saensane identified herself as an employee in her depositions and was allegedly identified as such in IRS Form 1125E. As to the first point, the parties are arguing over the legal definition of "employee" for the applicability of Plaintiff's employee related causes of action. Defendant Saensane is not aware of the legal definition of employee. Defendant Saensane testified that she bought a stake in the restaurant in 2017 and began doing work at the restaurant because her personal income was determined by how well the restaurant performed. Defendant Saensane had no boss, could not be fired, and, most importantly, was not hired by anyone. Plaintiff omits this testimony from his argument in support of Defendant Saensane's employee status as it directly contradicts his argument.

As to the latter point, Plaintiff's own exhibit contradicts his argument. Plaintiff attaches to this motion an email from Brian Johnson, a CPA, who emailed Plaintiff's counsel a copy of IRS Form 1125E and stated that it indicated that Defendant Saensane was an employee. Exhibit A, Plaintiff's Motion to Reconsider. Mr. Johnson's assertion as to Defendant Saensane's status

as an employee is incorrect. The attached form 1125E actually supports Defendant Bangkok's position that Defendant Saensane was a co-owner and not an employee. The title of this page of Form 1125-E is "Compensation of Officers", and it lists Defendant Saensane's name under the heading "Name of Officer" before going on to list her amount of compensation. The other co-owner is also listed. The word "employee" appears nowhere on this form. In fact, The Internal Revenue Service's published instructions for Form 1125-E states that the purpose of the form is, "Certain entities with total receipts of \$500,000 or more use Form 1125-E to provide a detailed report of the deduction *for compensation of officers.*" (emphasis added) Instructions for Form 1125-E (10/2018), Internal Revenue Service (government website), <https://www.irs.gov/instructions/i1125e#idm140008514375408>.

The undisputed testimony and evidence in this case is that Defendant Saensane was a co-owner of the restaurant. Plaintiff's apparent argument is that a person can be both a co-owner and an employee. Plaintiff has not cited a single South Carolina case to back up this contention and it is not consistent with the respondeat superior doctrine consistently used in this state. "The doctrine of respondeat superior rests upon the relation of master and servant. A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then going about his master's business and acting within the scope of his/her employment." *Lane v. Modern Music, Inc.*, 244 S.C. 299, 304-305, 136 S.E.2d 713, 716 (1964). Defendant Bangkok had three co-owners of the restaurant. These three individuals *were* the masters/employers under the doctrine of respondeat superior. Defendant Saensane had employees who she hired, she controlled her own work, and she was her own boss. She was the master/employer to the employees she hired because she was a co-owner of the restaurant. For all the reasons stated above, the Court correctly found Defendant Saensane was

not an employee of Defendant Bangkok.

As the Court properly found in its Order, even if Defendant Saensane was an employee of Defendant Bangkok, Plaintiff's cause of action for negligent hiring is still not proper. As the Court correctly noted, negligent hiring in this state requires that the Plaintiff "demonstrate some propensity, proclivity, or course of conduct sufficient to put the employer on notice to the possible danger to third parties." Order Granting Bangkok's Motion for Summary Judgment, p. 7 (quoting *Doe v. ATC, Inc.*, 367 S.C. 205, 624 S.E.2d 447, 451 (Ct. App. 2005)). As the Court noted, Defendant Saensane had no boss, could not be fired, and, most importantly, was not hired by anyone. Essentially, Plaintiff's negligent hiring claim is based on the theory that Defendant Saensane negligently hired and retained herself by buying an ownership stake in the company and taking on responsibilities in the restaurant. The Court properly found that this was not a proper negligent hiring and retention action and that even if she had been hired, there was no evidence of any prior incident or conduct which would put Defendant Bangkok on notice that she should not be retained or hired.

For the first time in this Motion to Reconsider, Plaintiff also argues that his negligent retention action is proper because another co-owner, Allison, was aware that Defendant Saensane consumed alcohol while she did paperwork for the business. This argument is erroneous for numerous reasons. First, Allison was never deposed in this case and has never testified that she was aware Defendant Saensane drank alcohol while doing paperwork at the restaurant. Second, Plaintiff has not provided any evidence that would put Defendant Bangkok on notice that Defendant Saensane would become intoxicated at work and therefore should not be retained. Lastly, and most importantly, Allison could not fire Defendant Saensane, who was a co-owner of the business. Defendant Saensane was not hired, and could not be fired, because of her status as a

co-owner. For these reasons, Plaintiff's negligent retention reasoning fails. The Court correctly dismissed Plaintiff's negligent hiring and retention cause of action.

Defendant Bangkok would also note that even if the Court erred in one of these points, it would be harmless error without having erred on both. In other words, The Court would have to find that it erred both in finding Defendant Saensane was not an employee; and in finding that Defendant Bangkok was not on notice of any reason Defendant Saensane should not be retained for Plaintiff's negligent hiring and retention cause of action to proceed. The Court properly ruled on both these points and therefore properly granted Defendant Bangkok's Motion for Summary Judgment on this issue.

III. The Court properly ruled that Defendant Saensane was not acting within the scope of her employment at the time of the accident

Finally, Plaintiff argues in his Motion to Reconsider that the Court erred in finding that Defendant Saensane was not acting within the scope of her employment at the time of the accident in dismissing his vicarious liability cause of action. As a preliminary note, Defendant Bangkok reiterates that the Court correctly found Saensane was not an employee and therefore any error on either one, but not both, of these points would be harmless error. Defendant Bangkok includes the following response to Plaintiff's argument in the event that the Court finds it erred in finding Defendant Saensane was not an employee:

Plaintiff concedes that Defendant Saensane was not acting within the scope of her employment at the time of the collision, but contends that Defendant Bangkok allowed her to consume the alcohol and therefore should be liable in negligence. Again, the undisputed testimony is that Defendant Saensane was alone in the restaurant. No representative from Defendant Bangkok "allowed" her to consume alcohol or leave the restaurant in an intoxicated state. Further, Plaintiff essentially ignores that the law in this state, quoted by both Defendant

Bangkok and the Court's Order, that vicarious liability must be based on the tort having been committed while the servant is acting within the scope of her employment. Even if Defendant Saensane did become intoxicated on the premises of Defendant Bangkok, Plaintiff's allegations are that Defendant Saensane caused his injuries by driving while intoxicated, and the record before the Court is clear that this act of driving was not committed in furtherance of any business purpose of Defendant Bangkok and was certainly well outside her scope of employment. The Court properly dismissed Plaintiff's cause of action for vicarious liability.

CONCLUSION

Plaintiff's Motion to Reconsider improperly contains numerous arguments that are before the Court for the first time. Plaintiff asks the Court to ignore the laws and legal precedents of the State of South Carolina and in fact asks the Court to create new law. This is improper. The Court properly dismissed Plaintiff's causes of action and Defendant Bangkok respectfully requests the Court deny Plaintiff's Motion to Reconsider.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR DEFENDANT RA CHA, INC.

February 28, 2023

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS

Thirteenth JUDICIAL CIRCUIT

**CERTIFICATE OF TECHNICAL FAILURE
OR TECHNICAL DIFFICULTIES**

23 FEB 28 PM 4:54
Paul Wickensimer COC 601 SC

Kevin Dwayne Chavis

)Plaintiff,)

vs.)

Vansy Saensane and Ra Cha, Inc

d/b/a Bangkok Tokyo Restaurant a/k/a Bangkok
Thai Restaurant

) Defendants.)

Case No.: 2021-CP-23-01487

Pursuant to the *South Carolina Electronic Filing Policies and Guidelines*,
Christopher Wray, Attorney for the Defendant Ra Cha, Inc., seeks to
file the attached Response to Plaintiff's Motion to Reconsider by a Traditional Filing Method/Alternative Method of Submission based on the inability to Electronically File the document. The inability to Electronically File the document was caused by:

- ☐ An announced Technical Failure of the Electronic Filing System;
- ☒ A technical difficulty that prevented the successful E-Filing of this document, which is described in detail below, including a statement certifying compliance with Section 9(d) of the Policies and Guidelines: I complied with Section 9(d)
- ☐ ;A Repeated Technical Difficulty, which is described in detail below, including a statement certifying compliance with Section 9(f) of the Policies and Guidelines:
- ☐ The document is excluded from the requirement that it be E-Filed in accordance with Section 2(d) of the Policies and Guidelines.

I have served or will serve this notice and the attached Response to Motion to Reconsider
 on all parties to this action by the following means: Email

I declare under penalty of perjury that the foregoing is true and correct.

S/Christopher Wray

Attorney for Defendant Ra Cha Inc.

Address: 55 East Camperdown Lane, Greenville, South Carolina

Phone: 864-239-4026

S.C. Bar No.: 105347

Email: chris.wray@mgclaw.com

SCCA/293 (8/2016)

Reply to Defendant's Response to Motion to Reconsider

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
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KEVIN DWAYNE CHAVIS, Plaintiff(s), - vs - VANSY SAENSANE and RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT a/k/a BANGKOK THAI RESTAURANT, Defendants.	REPLY TO DEFENDANT'S RESPONSE TO MOTION TO RECONSIDER C/A No. 2021-CP-23-01487
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TO: THE HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE, Thirteenth Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Ste. 315, Greenville, South Carolina 29601; and

TO: DEFENDANT RA CHA, INC. d/b/a BANGKOK TOKYO RESTAURANT, and its attorney, **ZACHARY S. BROWN, ESQ.**

COMES NOW the Plaintiff, Kevin Dwayne Chavis, and, pursuant to the South Carolina Rules of Civil Procedure, Rules 59 and 60, and files his Reply to Defendant's Response to the Motion to Reconsider as follows:

LEGAL ARGUMENT

- I. Defendant Bangkok's Response to Plaintiff's Motion to Reconsider highlights that there are questions of material fact to be resolved.**

It is clearly material to this matter to have a determination as to whether Saensane was an employee of Defendant Bangkok at the time she was consuming alcohol on its premises, and to determine under what circumstances she was allowed to consume the alcohol. While Saensane was a shareholder of Defendant Ra Cha, Inc., Plaintiff asserts that she was also an employee. By her own

testimony, Saensane admits that she was an employee. Defendant argues that Saensane “is not aware of the legal definition of employee.” Defendant seems to argue that a person cannot be both a shareholder/owner and an employee of the business. This is simply not true. In any event, Plaintiff asserts that Saensane was an employee of Defendant Bangkok, and Defendant denies that she was an employee. This is a question of material fact.

A second question of fact exists as to whether Allison, a co-owner, the majority shareholder, and the alcohol licensee/permittee, knew that Saensane consumed alcohol on the premises, allowed her to consume alcohol on the premises, and did so when she prohibited other employees from consuming alcohol on the premises. Saensane’s testimony is that Allison knew she drank wine sometimes when she did the paperwork, but that the employees were not allowed to consume alcohol on the premises. Again, these material facts appear to be in question by the Defendant.

Because there are questions of material fact that exist, Defendant’s Motion for Summary Judgment should, respectfully, be denied. The matter should be allowed to proceed to trial so that the facts can be established, and the law then applied to those facts.

II. Defendant wants to pigeonhole the Plaintiff into SC Code Section 61-4-580 (2) which prohibits a permittee from “sell(ing) beer or wine to an intoxicated person” when Plaintiff has asserted that there are other penal statutes applicable.

Without conceding his position that the term “sell” in the statute was intended by the legislature to include any “distribution” of alcohol by the permittee to an intoxicated person, which would include giving the alcohol at no cost, or allowing other persons to purchase the alcohol for an intoxicated person, Plaintiff asserts that a separate penal statute is also applicable to the within matter.

Plaintiff asserts that S.C. Code Ann. § 61-5-30 (1990) is applicable, which reads:

It shall be unlawful for any person to possess or consume any alcoholic liquors upon any premises where such person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

This is material to Plaintiff's claims. As set forth above with regard to the questions of material fact, Defendant Saensane testified:

3 Q. Well, do you allow other employees to, to pour ---
 4 A. No, the employees cannot drink while they're working, sir.
 5 Q. Okay. Do, um, -- if, if you're -- during your closing
 6 procedures when the staff is cleaning up and the
 7 restaurant is closed, do the employees ever have a drink,
 8 sit down and have a drink while they're doing their
 9 closing?
 10 A. No, sir.
 11 Q. Do you ever allow them to have a beer or anything like
 12 that before they leave?
 13 A. No, I, I tell them already, you know. Like, um, Allison
 14 very strict on that, too. Like, if the employee work,
 15 they cannot drink while they're working, even though they
 16 clock out of the clock. But they do sometimes, like if
 17 their birthday, you know? Like, uh, one glass of a beer
 18 bottle, like, uh, the little bottle. That's it. But not
 19 everyday thing. Not, like, uh, you clock out, you can
 20 drink, you know?

If Saensane is not just a shareholder but she is also an employee, and the employees are not allowed to consume alcohol while they are working by Allison, the permittee, as testified to by Saensane, then S.C. Code Ann. § 61-5-30 has likewise been violated, and liability against Defendant Bangkok can be established therefrom.

III. Defendant wants to ignore that, while statutes must be given their plain meaning as written, the law provides a method for determining negligence in these circumstances.

In Norton v. Opening Break of Aiken, Inc., 443 S.E.2d 406, 313 S.C. 508 (S.C. App. 1994), the court held:

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se.

It is not as simple as Defendant wants to make it. The Plaintiff asserts that he has pled specific facts sufficient to support the application (and/or extension) of the penal statutes which govern the sale, distribution, and consumption of alcohol to the facts and circumstances of his case. The Plaintiff further asserts that these statutes were enacted for the purpose of protecting the citizens of South Carolina from the kind of harm the Plaintiff suffered, and that the Plaintiff is a member of the class of persons the statutes are intended to protect. Plaintiff believes that he has made a good faith argument for the application of law as it exists to the facts and circumstances of his case, and, alternatively, for the modification and/or expansion of the existing law to the facts and circumstances of his case. As such, summary judgment as to Plaintiff's cause of action for dram shop liability should, respectfully, be denied.

For the foregoing reasons, the Plaintiff asserts that the Court should reinstate Plaintiff's causes of action for dram shop liability, for negligence, for negligence *per se*, for negligent hiring, retention and supervision and for vicarious liability, and deny Defendant's Motion for Summary Judgment as to those causes of action.

Respectfully submitted,

THE INJURY LAW FIRM, P.C.

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ATTORNEYS FOR THE PLAINTIFF

March 2, 2023
Anderson, South Carolina

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED
Dec 19 2023
SC Court of Appeals

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December 19, 2023
Anderson, South Carolina