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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2024-002074

Portundo M. Kimble, as Personal Representative
of the Estate of Devon Enrique Kimble, Deceased.....Appellant/Respondent,

v.

Jays Bar and Grill, LLC.....Respondent/Appellant

INITIAL BRIEF OF APPELLANT/RESPONDENT

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1. Did the lower court err in denying damages to the family of Devon Kimble at a default damages hearing on the grounds that the claim presented by the family was not recognized by South Carolina law when relief from default on the same grounds had been twice denied by Orders of a prior circuit court judge?

2. Did the lower court err in finding that he could not award damages to the family of Devon Kimble because South Carolina law does not recognize a first party cause of action for the patron of an establishment who is over-served alcoholic beverages under any theory? To put it otherwise, does South Carolina grant bar owners immunity from liability to patrons who have been overserved alcohol?

STATEMENT OF THE CASE

This is a wrongful death action brought by the Appellant/Respondent, Portundo Kimble, on behalf of his deceased son, Devon Enrique Kimble ("Devon"). On the night of March 5, 2023, after a hard-working day Devon looked forward to meeting friends at Jay's Bar and Grill. (Complaint, para. 6). While at Jay's Bar and Grill, Devon was served alcohol by the Respondent/Appellant to the point of becoming extremely and visibly intoxicated. (Complaint, para. 7). Devon left Respondent/Appellant's establishment at approximately 2:00 am after having been served alcohol by the employees of Respondent/Appellant to a point of gross intoxication. (Complaint, para. 8). As Devon attempted to drive home, his motor vehicle left the roadway and was involved in a serious single-car accident. (Complaint, para. 9). Devon was killed in the accident. (Complaint, para. 10). Devon's blood alcohol content at the time of the accident was approximately three times the legal limit. (Complaint, para. 11).

The Appellant/Respondent filed this action on June 12, 2023, alleging a cause of action for negligence per se as a result of the alleged violation of the South Carolina dram shop statutes, as well as common law causes of action for negligent hiring, training supervision and retention. (Complaint, para. 22). On June 13, 2023, Appellant/Respondent's process server attempted to serve Jay Kalin, Jr. ("Kalin"), Respondent/Appellant's registered

agent for service, at the address on file with the South Carolina Secretary of State's Office. When the process server knocked on the door of the address on file with the South Carolina Secretary of State's Office, he was greeted by an occupant who identified himself as a tenant and who informed the server that the whereabouts of Jay Kalin were unknown. (Affidavit of Non-Service #1). The process server thereafter attempted to serve Kalin on multiple occasions at the business address for Jay's Bar and Grill, including:

- On June 20, 2023, at 8:45 am, the server was told that Kalin was not there, but may be present later in the afternoon;
- On June 20, 2023, at 4:40 pm, the server was told that Kalin was not there and would not be coming in that day;
- On June 21, 2023, at 5:10 pm, the server was told Kalin was not present, and it was unknown whether he would be coming in that day;
- On June 22, 2023, at 5:00 pm, the server was told that Kalin was not present (the server noted that there is usually a black Porsche in the back parking lot which he believed to be Kalin's vehicle);
- On July 5, 2023, at 9:00 am, the server went to the business premises, the front door was open and after entering the business, he called several times for someone to come to the front bar area, but was unable to get anyone to do so;
- On July 6, 2023, at 8:10 pm, the server was told that Kalin was not present;
- On July 14, 2023, at 10:00 am, the server noted that the black Porsche was in the parking lot, but the server was told that Kalin was not there;
- On July 21, 2023, at 3:30 pm, the server arrived at the business location at

3:30 pm and waited until 5:10 pm before being told by an employee that Kalin would not be coming in that day. (Affidavit of Non-Service #2).

As a result of the foregoing, on July 31, 2023, the Appellant/Respondent filed a Petition for Service by Publication. (Petition for Service by Publication). An Order for Publication thereafter issued on August 1, 2023. (Order for Publication). On August 31, 2023, Appellant/Respondent filed an Affidavit of Publication. (Affidavit of Publication). Following service by publication, the Respondent/Appellant did not answer or otherwise appear in the litigation. As a result, on October 5, 2023, Appellant/Respondent filed an Affidavit of Default along with a Notice of Motion and Motion for Default. (Affidavit of Default, Notice of Motion and Motion for Default). On October 6, 2023, an Entry of Default by Clerk of Court was entered of record. (Entry of Default). On October 9, 2023, Appellant/Respondent filed a Notice of Motion and Motion for a Default Damages Hearing. (Notice of Motion and Motion for a Default Damages Hearing).

On March 7, 2024, nearly nine (9) months after the filing of the action and approximately five (5) months after the Entry of Default, attorney Ryan Holt noticed his appearance as counsel for the Respondent/Appellant. On March 22, 2024, the Respondent/Appellant filed a Motion to Set Aside Default citing that good cause existed for the relief because the Respondent/Appellant was not properly served. (Motion to Set Aside Default). Respondent/Appellant's Motion to Set Aside Default was heard by the Honorable Daniel Coble who issued an Order Denying Relief from Default on August 20, 2024, finding in pertinent part that "the [Respondent/Appellant] has not articulated any cause, much less good cause, for having failed to answer the Summons and Complaint in a timely manner." (Order Denying Relief from Entry of Default, para. 13). On August 29, 2023,

Respondent/Appellant filed a Motion to Alter or Amend a Judgment pursuant to Rule 59(e). (Motion to Alter or Amend Judgement). The Respondent/Appellant's Motion pursuant to Rule 59(e) was thereafter denied by Order Denying Defendant's Motion for Reconsideration Pursuant to Rule 59(e), SCRCP on September 3, 2024. (Order Denying Defendant's Motion for Reconsideration).

On September 17, 2024, a default damages evidentiary hearing was conducted before the Honorable Thomas W. McGee, III. On October 29, 2024, Judge McGee entered an Order Denying Plaintiff's Motion for Damages finding that damages were not permissible despite the default because the Appellant/Respondent's causes of action are not recognized by South Carolina law. (Order Denying Plaintiff's Motion for Damages). On October 30, 2024, the Appellant/Respondent filed a Motion to Reconsider Judge McGee's Order Denying Plaintiff's Motion for Damages. (Motion to Reconsider Order Denying Motion for Damages). The Motion to Reconsider was denied by Order of Judge McGee dated December 6, 2024. (Order Denying Motion to Reconsider). This appeal followed.

STANDARD OF REVIEW

Respectfully, the Appellant/Respondent finds the standard of review in this matter to be less than clear. Appellant/Respondent contends in part that the argument against any award of damages made by Respondent/Appellant to Judge McGee at the default damages hearing was an improper collateral attack on Judge Coble's Order Denying Relief from Default and his Order Denying [Respondent/Appellant's] Motion for Reconsideration. As it relates to Judge Coble's Order Denying Relief from Default and Order Denying Motion for Reconsideration, the standard of review would leave the decision to set aside an entry of default within the sound discretion of the trial court, which shall not be reversed absent an abuse of discretion. *Stark Truss Co. v. Superior*

Const. Corp., 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004). Such an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support. *Id.* Effectively, Appellant/Respondent contends that Judge McGee upset Judge Coble's decision not to grant relief from default by failing and refusing to grant an award of damage.

Curiously, we are not reviewing Judge McGee's award of damages, but instead his decision in a default damages setting not to award damages at all. Had an award of damages issued, and the Appellant/Respondent contends that it should have, the standard of review would indicate that the trial court is vested with considerable discretion over the amount of a damages award, and appellate review of the amount of damages is limited to the correction of errors of law. *Austin v. Specialty Transp. Servs, Inc.*, 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004). In reviewing a damages award, the Court of Appeals does not weigh the evidence, but determines if any evidence supports the award. *Id.* at 311, 594 S.E.2d at 873.

The Appellant/Respondent is unaware of authority that indicates the proper standard of review for the order of a trial court that refuses to grant damages in a default setting. To the extent that this appeal will delve into the existence of a first party cause of action by an injured patron against the operator of an establishment that serves alcohol, then arguably the most analogous standard of review is the standard that pertains to the summary dismissal of claims. Viewed through this lens, Judge McGee's Order Denying Plaintiff's Motion for Damages is effectively an order of dismissal under Rule 12(b)(6). In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. *Id.* "If the facts alleged and

inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory," dismissal is improper. *Id.*

STATEMENT OF FACTS

The Respondent/Appellant in this matter is in default. The facts are deemed admitted. Devon Kimble patronized the Respondent/Appellant's bar on the evening of March 5, 2023. He was served to the point where he became extremely and visibly intoxicated. He was permitted to leave the establishment. He attempted to drive himself home and was killed in a single car accident on March 6, 2023. Devon's blood alcohol level was three times the legal limit. His family remains devastated by his loss.

ARGUMENT

1. The lower court err in denying damages to the family of Devon Kimble at a default damages hearing on the grounds that the claim presented by the family was not recognized by South Carolina law when relief from default on the same grounds had been twice denied by Orders of a prior circuit court judge.

There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Charleston Cty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995).

> [T]he prior order of one Circuit Judge may not be modified by the subsequent order of another Circuit Judge, except in cases where the right to do so has been reserved to the succeeding Judge, when it is allowed by rule or statute, or when the subsequent order does not substantially affect the ruling or decision represented by the previous order. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 410, 581 S.E.2d 161, 168 (2003) (quoting *Dinkins v. Robbins*, 203 S.C. 199, 202, 26 S.E.2d 689, 690 (1943)).

On March 22, 2024, the Respondent/Appellant filed a Motion to Set Aside Default citing that good cause existed for the relief because "a meritorious defense exist[ed] due to the first-party nature of the dram shop claim." (Motion to Set Aside Default, p. 1). In Respondent/Appellant's Memorandum in Support of Motion to Set Aside Default, the

Respondent/Appellant cited *Tobias v. Sports Club, Inc*., 332 S.C. 90, 504 S.E.2d 318 (1990) for the proposition that the allegations of the Complaint "clearly articulate an impermissible first-party dram shop case." (Memorandum in Support of Motion to Set Aside Default, pp. 4-5.) Respondent/Appellant's Motion to Set Aside Default was heard by the Honorable Daniel Coble who issued an Order Denying Relief from Default on August 20, 2024, finding in pertinent part that "the [Respondent/Appellant] has not articulated any cause, much less good cause, for having failed to answer the Summons and Complaint in a timely manner." (Order Denying Relief from Entry of Default, para. 13).

On August 29, 2023, Respondent/Appellant filed a Motion to Alter or Amend a Judgment pursuant to Rule 59(e). (Motion to Alter or Amend Judgment). In the Respondent/Appellant's Motion to Reconsider, the Respondent/Appellant again returned to his argument under *Tobias* that relief was warranted because South Carolina does not recognize a cause of action for first party liability:

- "The only way Plaintiff could prevail in this case is with a default judgment. Absent a default, Plaintiff would not be able to sustain a cause of action. A first party cause of action against Jay's on behalf of Plaintiff cannot exist." (Motion to Alter or Amend Judgment, p. 6).

Respondent/Appellant's Motion pursuant to Rule 59(e) was thereafter denied by Order Denying Defendant's Motion for Reconsideration Pursuant to Rule 59(e), SCRCP on September 3, 2024: "After reviewing the applicable law and considering the arguments raised in the Motion, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered." (Order Denying Defendant's Motion for Reconsideration). Having twice heard the Respondent/Appellant's argument that South Carolina does not recognize a first party dram shop cause of action, Judge Coble twice denied relief to the

Respondent/Appellant. From a circuit court perspective, Judge Coble's rulings were final in this regard and it was improper for any other circuit court judge to revisit this issue. An invitation to revisit the matter followed nonetheless.

On September 17, 2024, a default damages evidentiary hearing was conducted before the Honorable Thomas W. McGee, III. In a damages hearing after default, "defense counsel's participation is limited to cross examination and objection to plaintiff's evidence." *Howard v. Holiday Inns, Inc*., 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978). Furthermore, in its cross examination, a defaulting party is limited to cross examination on issues related to damages, not liability. *Doe v. S.B.M.*, 327 S.C. 352, 488 S.E.2d878 (1997). "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be **no consequence of default**." *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013). **[Emphasis Added]**.

Despite the limitations placed upon a defaulted party at a default damages hearing and despite the existence of two prior circuit court Orders foreclosing the issue of whether South Carolina recognizes a first party dram shop during, during the default damages hearing the Respondent/Appellant returned to his argument that there could be no "damages" because South Carolina does not recognize a first party dram shop case. Over Appellant/Respondent's objection that Judge McGee was being recruited improperly to "re-reconsider" a matter that had already been consider and reconsidered by a prior circuit court judge, Judge McGee entertained the argument.

On October 29, 2024, Judge McGee entered an Order Denying Plaintiff's Motion for Damages finding that damages were not permissible despite the default because the Appellant/Respondent's claim is not recognized by South Carolina law. (Order Denying

Plaintiff's Motion for Damages). On October 30, 2024, the Appellant/Respondent filed a Motion to Reconsider Judge McGee's Order Denying Plaintiff's Motion for Damages. (Motion to Reconsider Order Denying Motion for Damages). The Motion to Reconsider was denied by Order of Judge McGee dated December 6, 2024. (Order Denying Motion to Reconsider).

The Respondent/Appellant's argument at the default damages hearing that South Carolina does not recognize a first party dram shop cause of action was nothing more than a re-caste of the argument which was twice advanced and which twice failed before a prior circuit court judge. The argument was not a cross-examination of the Appellant/Respondent's damages evidence as permitted by *Holiday*. The argument was an impermissible collateral attack on Judge Coble's prior Orders. Judge McGee erred in accepting the Respondent/Appellant's argument and in agreeing to review an issue that had been twice reviewed and twice ruled upon by a prior circuit court judge. Based upon the record before Judge McGee, the Appellant/Respondent was entitled to an award of damages and a judgment against the Respondent/Appellant. After the grant of a judgment, the Respondent/Appellant would then have the opportunity if he so chose to appeal the prior interlocutory Orders of Judge Coble. Respectfully, it was improper for Judge McGee to assume the role of a court of appeals of Judge Coble.

2. The lower court erred in finding that he could not award damages to the family of Devon Kimble because South Carolina law does not recognize a first party cause of action for the patron of an establishment who is over-served alcoholic beverages under any theory. To put it otherwise, the lower court erred in granting the Respondent/Appellant de facto immunity from liability to patrons who the Respondent/Appellant has overserved alcohol.

The lower court held that "South Carolina does not recognize a 'first party' cause of action against the tavern owner by an intoxicated adult **predicated on an alleged violation of [S.C. Code**

Ann. 61-4-580(2)] and/or [61-6-2220]." (Order, p. 3), citing *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 91, 504 S.E.2d 318, 319 (1990). **[Emphasis Added]**. Yes. The Appellant/Respondent's Complaint clearly sets forth in part a cause of action by an intoxicated adult predicated on the alleged violation of the South Carolina dram shop statutes. However, the Complaint **also** sets forth causes of action sounding in common law negligence based upon the negligent hiring, training and supervision of the Respondent/Appellant's personnel, as well as other conduct described therein. The lower court erred in holding that *Tobias* "makes it clear that there is no recognized common law or statutory 'first party' dram shop cause of action in South Carolina, **which are the only claims raised in Plaintiff's Complaint**." (Order, p. 6.) **[Emphasis Added]**.

In support of its holding, the lower court cited the following excerpt from *Tobias*: "We now join the majority of jurisdictions that have addressed this issue, and hold that South Carolina does not recognize a 'first party' cause of action against the tavern owner by and intoxicated adult **predicated on an alleged violation of [S.C. Code Ann. 61-4-580(2)] and/or [61-6-2220]**." (Order, p. 6.) **[Emphasis Added]**. The lower court was both incorrect about the claims asserted in the Appellant/Respondent's Complaint, and incorrect in the holding of *Tobias* and its impact on the Complaint.

Placed into context, the Court in *Tobias* had granted *certiorari* to consider the Court of Appeals' decision holding that the defenses of contributory negligence and assumption of the risk were available in a negligence suit brought by an intoxicated adult patron against the tavern owner who served him. *Tobias*, 91, 319. This context is all important. *Tobias* was decided prior to South Carolina's adoption of comparative negligence. As such, contributory negligence and assumption of the risk were defenses with the potential to create an absolute bar to recovery; however, they

were also defenses which could have been overcome by a claim of negligence per se arising out of a violation of the dram shop statutes.

Prior to the adoption of comparative negligence in 1991, the doctrine of contributory negligence was the long-prevailing standard for tort recovery in South Carolina. "Contributory negligence is a want of ordinary care upon the part of a person injured by the actionable negligence of another, combining and concurring with that negligence, and contributing to the injury as a proximate cause thereof, without which the injury would not have occurred." *Gladden v. S. Ry. Co.*, 142 S.C. 492, 522-23, 141 S.E. 90, 99 (1928) (citation omitted). Under contributory negligence, if a plaintiff was negligent to **any** extent in contributing to his own injury, the plaintiff was completely barred from recovering damages from a negligent defendant. *Gladden*, 142 S.C. at 523, 141 S.E. at 100; *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986).

Similarly, assumption of the risk as a complete bar to recovery was effectively abolished by this Court in *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 508 S.E.2d 565 (1998), in which our Court held assumption of the risk had been largely subsumed by the adoption of comparative negligence. "Although assumption of the risk is no longer recognized as a complete defense in a negligence action, it remains a facet of comparative negligence which may be charged to the jury." *Howard v. South Carolina Dep't of Highways*, 343 S.C. 149, 156 n.4, 538 S.E.2d 291, 294 n.4 (Ct. App. 2000).

The defenses of contributory negligence and assumption of the risk were alive and well at the time of the *Tobias* decision and their application to a claim of negligence per se was central to the Court's decision. As such, *Tobias* did not seek to determine whether a first party who was injured after having been over-served alcohol by a tavern owner could recover under **any theory**.

Instead, the Court was grappling with the potential unfairness that would result if a first party brought a dram shop action against a tavern owner based upon a negligence per se statutory violation theory that would prevent the tavern owner from asserting the injured party's own negligence and/or assumption of the risk in over consuming alcohol as a defense to the action.

The *Tobias* review involved a negligence per se analysis to determine the purpose of the statute, whether the plaintiff was a member of class to be protected and whether the harm suffered was the type against which the statute sought to protect:

> "An action for negligence based upon an alleged violation of a statute . . . cannot be maintained where it appears that the statute . . . was enacted . . . for a purpose wholly different from that of preventing the injury of which complaint is made. To afford a right of action for injury from the violation of a statute . . . the complainant's injury must have been such as the statute . . . was intended to prevent. If none of the consequences which the enactment was designed to guard against have resulted from its breach, such a breach does not constitute an actionable wrong, even though some other injurious consequence has resulted. It is not enough for a plaintiff to show that the defendant neglected a duty imposed by statute and that he would not have been injured if the duty had been performed. He must go further and show that his injury was caused by his exposure to a hazard from which it was the purpose of the statute to protect him." *Bell v. Atlantic Coast Line Railway Co.*, 202 S.C. 160, 174, 24 S.E. (2d) 177, 183 (1943), quoting 38 Am. Jur. *Negligence*, Section 163 at 834.

In applying this test to the South Carolina dram shop statutes, the *Tobias* court found:

> *South Carolina Code Ann. § 61-4-580(2)* prohibits the knowing sale of beer or wine to an intoxicated person, while *§ 61-6-2220* prohibits the sale of alcoholic beverages contained in minibottles to intoxicated persons. In recognizing a private cause of action for a violation of these statutes, 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 an even greater risk to the public at large, when he leaves the establishment. *Christiansen, supra*; *Daley v. Ward, 303 S.C. 81, 399 S.E.2d 13 (1990)*. We agree. The Court of Appeals went further, however, and held that another of the statutory purposes was to protect the intoxicated person from their own incompetence and helplessness, and therefore concluded the intoxicated patron himself was entitled to bring a negligence suit for a statutory violation. We disagree, and now hold 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,* 3, 319.

The *Tobias* court did not hold that there can be no cause of action on **any theory** by an intoxicated patron against the tavern owner that overserved him. The *Tobias* court did not grant *de facto* immunity to tavern operators who serve alcohol to patrons. Under the "new" South Carolina comparative negligence framework, the playing field is balanced. Moreover, the concerns over the inequity of a stacked deck in which the intoxicated patron's own conduct would be unavailable as a potential defense to a claim for injuries no longer exists. If it is to be the policy of the State of South Carolina that no intoxicated patron of a tavern can ever bring a common law negligence claim against a tavern operator for injuries he or she sustained after being over served alcohol, then any such edict should issue from the South Carolina legislature – not from the trial court bench.

The Court in *Tobias* was called upon to ascertain and to give effect to the statutory intent behind the South Carolina dram shop statutes. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Kiriakides v. United Artists Commc'ns, Inc.,* 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used . . . ."). If a statute's language is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *TNS Mills, Inc. v. S.C. Dep't of Revenue,* 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998). The *Tobias* court did just that – it sought to determine whether the South Carolina dram shop statutes created a private cause of action for a first party who is over served alcohol and suffers injuries. To be clear, *Tobias* held:

"We hold today that **our alcohol control statutes do not create a first party cause of action** for an intoxicated adult patron, but that they do permit a third-party action." *Id.,* 92, 319. **[Emphasis Added]**. *Tobias* has been lazily and incorrectly cited as standing for the proposition that there can be no first party liability on **any theory** which is simply incorrect.

As a result of the incorrect application of *Tobias* to the Appellant/Respondent's Complaint, the lower court erred in refusing to award damages to the grieving family of Devon Kimble.

CONCLUSION

There are consequences to evading service of process. There are consequences to default. Our circuit court judges do not sit as courts of appeal to one another. Judge Coble twice heard the Respondent/Appellant's argument that the Respondent/Appellant is not entitled to relief from default on the grounds that South Carolina does not recognize a first party dram shop cause of action on any theory. Judge Coble twice denied relief to the Respondent/Appellant. At the damages hearing stage, it was error for Judge McGee to entertain the same argument again in the guise of an argument against damages and in doing so effectively to overrule Judge Coble by denying damages to the Appellant/Respondent.

The lower court further erred in the interpretation of *Tobias* as standing for the proposition that South Carolina does not recognize a first party cause of action by an injured patron against a bar operator on any theory, when the decision is clearly limited to claims arising out of violations of the South Carolina dram shop statutes.

Respectfully submitted,

{SIGNATURE PAGE TO FOLLOW}

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