STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD)	DOCKET NO. 13-CP-20-55
)	
Caitlin Elisabeth Braun,)	
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING DEFENDANT BEN ARNOLD SUNBELT BEVERAGE COMPANY OF SOUTH CAROLINA, L.P.'S MOTION FOR SUMMARY JUDGMENT
)	
The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., Two Heels, Inc. d/b/a State Street Pub and Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course)	
)	
Defendants.)	

This matter came before the Court on Thursday, February 20, 2014 in Winnsboro, South Carolina. Specifically before the Court was the Joint Motion of Defendants Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., and Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course. Appearing on behalf of the Plaintiff Caitlin Elisabeth Braun were H. Ronald Stanley, Esquire and Jerry L. Finney, Esquire. Appearing on behalf of the Defendant Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course was Daniel R. McCoy, Esquire. Appearing on behalf of the Defendant Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., was John E. Cuttino, Esquire. The Defendant Two Heels, Inc. d/b/a State Street Pub was dismissed prior to the hearing of this Motion.

FACTUAL BACKGROUND

This case arises from an automobile accident which occurred in Lexington County on May 16, 2011. The material facts are undisputed. Plaintiff Caitlin Braun, then a 24 year old part-time bartender and college graduate with an earned Bachelor of Science degree in

Hospitality Management, had been working as a beverage hostess at a charity golf tournament at the Indian River Golf Course in Lexington County. The Defendant Ben Arnold Sunbelt Beverage Company of South Carolina, L.P. was one of many beverage alcohol distributors who agreed to provide beverage products at the tournament site. During the tournament, Plaintiff Caitlin Braun tended a vendor table on the golf course, from which she provided and poured small "tasting" amounts of various alcoholic beverage products for passing golfers to sample if they so chose. By her own admission in her Complaint and deposition, Plaintiff Braun also consumed alcoholic beverages during the day.

Well after the tournament concluded and Plaintiff Braun's responsibilities at the tournament had ended, Braun was driving her personal car on a roadway near the golf course where the tournament had been held. While operating her vehicle under the influence of alcohol and/or other drugs, Plaintiff Braun crossed the center line of a two-lane road at a high rate of speed and struck head-on an oncoming vehicle operated by Devin Shumate. Shumate was gravely injured in the collision and his four (4) year old daughter Gabriella was killed.

Plaintiff Braun was thereafter charged with violating South Carolina's felony DUI statutes and, in addition, was named as a Defendant in civil actions brought by Shumate in the Fairfield County, South Carolina Court of Common Pleas (2011-CP-20-301 and 2011-CP-20-302) for his injuries, and for the death of his daughter Gabriella. The civil actions were eventually settled at mediation. On February 8, 2012, Braun pled guilty to one charge of Felony DUI (S.C. Code 56-5-2945). On August 7, 2012, Braun was sentenced to eighteen (18) months in prison and assessed a fine of $10,100.00 (Ten Thousand One Hundred Dollars).

Plaintiff Braun brings the current action against Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., asserting a sole cause of action for negligence against it, contending it

breached duties allegedly owed to her, which she claims have resulted in personal injury and other damages to her for which she seeks to be compensated.

PROCEDURAL HISTORY

Defendants Ben Arnold Sunbelt Beverage Company of South Carolina, L.P (hereinafter "Ben Arnold") and Sunbelt Golf Development, Inc. d/b/a Indian River Golf Course (hereinafter "Indian River") filed a Joint Motion for Summary Judgment.

Specifically, Defendant Ben Arnold moved for summary judgment on the following seven (7) grounds, each of which was argued to the Court:

1. In pleading guilty to one charge of Felony DUI, Plaintiff Braun has admitted her legal responsibility for the automobile accident on May 16, 2011 from which her alleged injuries and damages arise. Therefore, she is estopped judicially and collaterally from now denying her liability for this accident and the damages she alleges result therefrom.
2. Having admitted her fault and liability for the accident of May 16, 2011 which gives rise to her damage claims, Plaintiff Braun is negligent as a matter of law and to such a degree that her claims are barred.
3. In her pleadings previously filed with this Court in "Shumate vs. Braun, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Braun, et al.", Fairfield Civil Action No. 2011-CP-20-302, Plaintiff (then Defendant) Braun denied that Ben Arnold was negligent as she now alleges. Therefore, she is estopped judicially and collaterally from pursuing the same negligence claims against these Ben Arnold, which she previously denied.

4. The Releases and Stipulations of Dismissal executed by Plaintiff in "Shumate vs. Ben Arnold, et al.", Fairfield County Civil Action No. 2011-CP-20-301 and "Shumate vs. Ben Arnold, et al.", Fairfield Civil Action No. 2011-CP-20-302, bar the claims of Plaintiff Braun against Defendant Ben Arnold.
5. Plaintiff Braun cannot recover as a matter of law, for her claim of "loss of liberty and freedom due to her incarceration for Felony DUI resulting from the death of an occupant in the vehicle that was struck by the Plaintiff", because the Plaintiff Braun voluntarily pled guilty to Felony DUI, admittedly knowing that incarceration would be a mandatory element of her sentence.
6. South Carolina does not recognize the cause of action Plaintiff purports to assert against Defendant Ben Arnold for injuries she sustained as a result of intoxication claimed to have been facilitated by Defendants and, therefore, Plaintiff's Complaint should be dismissed with prejudice.
7. In the alternative, and assuming as true the allegations of Plaintiff's Complaint which allege that her relationship with Ben Arnold was that of employee-employer, Plaintiff's sole and exclusive remedy against Defendant Ben Arnold is a Workers' Compensation claim and, therefore, this Complaint should be dismissed.

Plaintiff Braun concedes that the claim against Defendant Ben Arnold rests on the assertion that Defendant Ben Arnold had a legal duty to monitor her during the tournament and/or to prevent her from drinking to intoxication. This Court has considered all the submissions and arguments from the parties. Based on all items in the record before it, the Court orders as follows:

RULING

Rule 56(c) SCRCP, provides that summary judgment shall be granted if 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. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Quality Towing Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009) (internal citations omitted). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Trico Surveying Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). In response to a Motion for Summary Judgment, a nonmoving party may not rest upon the mere allegations of its pleadings. Rule 56(e) SCRCP.

Plaintiff Braun's Complaint consistently and repeatedly asserts her alleged employment relationship with Ben Arnold, and suggests that employment relationship gave rise to duties Ben Arnold allegedly owed her, but breached. Viewing those allegations in the light most favorable to the Plaintiff as alleged in the Complaint, and only for the purpose of this Motion, Braun's sole remedy against Ben Arnold as her employer is the South Carolina Worker's Compensation Act, not a civil lawsuit such as this. This alone is grounds for granting summary judgment in favor of Defendant Ben Arnold.

Further, even if Plaintiff Braun's relationship with Ben Arnold was not that of an employee-employer subject to the Workers' Compensation Act, South Carolina law does not recognize the cause of action Braun attempts to assert against Ben Arnold in this circumstance.

Braun's sole cause of action against Defendant Ben Arnold is one for *negligence*. Braun has alleged that Defendant Ben Arnold had a duty to monitor her actions to prevent her from drinking to intoxication. Her Complaint alleges she became intoxicated by consuming beverage alcohol while tending Ben Arnold's vendor table earlier in the day on which the accident occurred, and further claims that Defendant Ben Arnold was negligent in failing to monitor and control Braun's alcohol use and failing to prevent her from becoming intoxicated.

To maintain a cause of action for negligence, a 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; a plaintiff still has the burden of proving the three essential elements in addition to the existence of a statute that establishes a duty apart from any common law duty. *See Freeman v. Colwell Mortgage Corp.,* 297 S.C. 335, 342, 377 S.E.2d 108, 110-11 (Ct. App. 1989).

South Carolina has never recognized a general common law duty for a person or business to prevent an adult from becoming intoxicated and injuring himself because of their alcohol intoxication. Our Courts have concluded that it is the consumption of the alcohol, and not its *supply,* that is the focus of the liability analysis. *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). The Supreme Court of South Carolina has explained 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).

Furthermore, the Supreme Court of South Carolina has held that South Carolina does not recognize a 'first party' cause of action against establishments by an intoxicated adult predicated on an alleged violation of S. C. Code Ann. §§ 61-5-30 and/or 61-9-410. *See Tobias*, 332 S.C. 90, 504 S.E.2d 318 (recognizing an absolute bar to "'first party' cause[s] of action against [a] tavern owner by an intoxicated adult predicated on an alleged violation of [alcohol control statutes,]" and elaborating that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct"); *Lydia v. Horton*, 355 S.C. 36, 583 S.E.2d 750 (2003) (relying on *Tobias* to bar plaintiff's recovery where plaintiff, who drove a vehicle after becoming voluntarily intoxicated and sustained injuries in a car accident, sued the person who loaned plaintiff the car under a theory of negligent entrustment).

Finally, the South Carolina Court of Appeals has ruled that a social host incurs no liability to either first or third parties injured by an intoxicated guest over the age of twenty-one (21) years old. *See Garren v. Cummings & McCrady, Inc.*, 289 S.C. 348, 345 S.E.2d 508 (Ct. App. 1986) (holding that a driver had no cause of action in negligence against a social host who gratuitously 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); *Marcum v. Bowden*, 372 S.C. 452, 643, S.E.2d 85 (2007) (same proposition).

Here, Plaintiff alleges she became intoxicated by consuming beverage alcohol products while she was promoting beverage products to golfers on the golf course during the tournament. It is undisputed that Braun was of legal drinking age and was serving herself the beverage alcohol. She then caused herself injury through her own actions by later driving under the influence—a charge she voluntarily and knowingly pled guilty to in the criminal case brought

against her by the State of South Carolina. South Carolina Courts have consistently refused to recognize the duty that Plaintiff is attempting to impose on Defendant Ben Arnold. Because Plaintiff's Complaint fails to assert any recognizable duty owed to the Plaintiff by Defendant Ben Arnold, nor any accepted cause of action, Defendant Ben Arnold's Motion for Summary Judgment is **GRANTED**. Further, because this Court's ruling is based upon the threshold grounds of #6 and #7 set forth previously herein, the remaining grounds are moot and are not addressed by this Order at this time. An analysis of Defendant Ben Arnold's additional grounds in support of its Motion was not necessary for this Order but the other grounds appearing in the Record as argued by Defendant Ben Arnold support summary judgment.

THEREFORE, IT IS HEREBY ORDERED that Ben Arnold Sunbelt Beverage Company of South Carolina, L.P.'s Motion for Summary Judgment is **GRANTED,** and Plaintiff's Complaint against it is hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable R. Knox McMahon
Presiding Judge

April 24, 2014

Winnsboro, South Carolina

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July 31, 2014

The Honorable V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Caitlin Elisabeth Braun
vs.
The Ben Arnold Sunbelt Beverage Company of South Carolina, L.P., et. al.
Docket No.: 2013-CP-20-55

Dear Ms. Allen:

I apologize for the missing pages that we left out of the Order that was issued by the trial court judge on April 24, 2014. I have enclosed, herein, a complete copy of the Order which contains pages 1-8.

Thank you for your kind assistance in this matter.

Very truly yours,

H. Ronald Stanley

HRS\eja

cc: John E. Cuttino, Esquire
Jerry Leo Finney, Esquire

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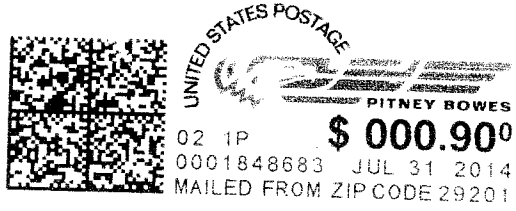

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