

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

Lindsey Stewart, Personal Representative of )  
the Estate of Shaun Robert Moore, )

Plaintiff, )

v. )

Green Apple, LLC, d/b/a Applebee's; )  
John/Jane Doe, and Stabler E. Inabinet, )

Defendants. )

IN THE COURT OF COMMON PLEAS

CASES NOS.:  
2014-CP-38-00802  
2014-CP-38-00803

2015 AUG 14 A 10:51

FILED  
WANDA B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

ORDER GRANTING  
SUMMARY JUDGMENT TO  
DEFENDANT GREEN APPLE,  
LLC, D/B/A APPLEBEE'S  
JUN 15 2016

SC Court of Appeals

Defendant Green Apple, LLC, d/b/a Applebee's (hereinafter referred to as "Green Apple") moved for an order granting summary judgment to Green Apple pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in the above-captioned litigation.

The Motion was heard in open court on May 15, 2015. Shane M. Burroughs of Lanier & Burroughs, LLC appeared on behalf of Plaintiff. Drew Hamilton Butler of Richardson, Plowden & Robinson, P.A. appeared on behalf of Green Apple. The Court had before it the pleadings and motions filed in the above-captioned litigation, including Green Apple's Motion for Summary Judgment, the accompanying Memorandum of Law in Support, and the Affidavit of Sandra Johnson.

Based upon this Court's review of the documents filed in this litigation and the testimony and other evidence presented at the hearing, the Court hereby grants Green Apple's Motion for Summary Judgment for the reasons set forth herein.

ATTEST: TRUE COPY

Wanda B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

## 1. FACTUAL FINDINGS AND PROCEDURAL HISTORY

Plaintiff, as the personal representative of the Estate of Shaun Robert Moore, filed a wrongful death and survival action against Green Apple. See Amended Complaints (2014-CP-38-802 [Wrongful Death]) and (2014-CP-38-803 [Survival Action]).

In her complaints against Green Apple, Plaintiff alleges that Moore was an employee of Green Apple d/b/a Applebee's. On October 18, 2012, Moore was terminated by the manager of Green Apple after allegedly consuming alcohol while working. Plaintiff asserts that Moore was forced to leave the premises even though Green Apple allegedly knew that Moore was "grossly intoxicated, did not have transportation and lived in St. Matthews, South Carolina, approximately 15 miles away from [Green Apple] and had no other way to get home, but to walk." Moore, while attempting to cross US-21 as a pedestrian, was struck and killed by Defendant Stabler L. Inabinet who was operating his motor vehicle and traveling north on US-21. See Amended Complaints, ¶¶ 6-9.

Plaintiff has alleged that Green Apple was negligent and grossly negligent in the following particulars:

1. In failing to maintain proper policies and procedures for intoxicated persons on [Green Apple's] premises as it relates to providing transportation to said persons;
2. In failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws;
3. In failing to call a cab for [Moore] even though [the manager] knew or should have known that he was grossly intoxicated and had to walk approximately fifteen (15) miles to get home; [and]
4. In forcibly removing an intoxicated person from Defendant Green Apple's premises without providing transportation.

Amended Complaints, ¶¶ 10-11.

## II. LAW AND ANALYSIS

Plaintiff's claims against Green Apple arise out of the alleged intoxication of Moore while on Green Apple's premises and Green Apple's alleged failure to protect Moore from his voluntary intoxication by preventing Moore from leaving the premises or providing proper transportation to Moore. South Carolina, however, does not recognize a first party cause of action against a tavern owner for injuries sustained by the intoxicated person, and accordingly, Plaintiff's claims against Green Apple fail as a matter of law. Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998).

Certain South Carolina statutory provisions prohibit the knowing sale of alcoholic beverages to an intoxicated person. Id. at 92, 504 S.E.2d at 319. In Tobias, the South Carolina Supreme Court recognized that a private cause of action for a violation of these statutes against a tavern owner who continues to serve an intoxicated person who later injures a third party promotes public safety and prevents an already intoxicated person from becoming more intoxicated and a greater risk to the public at large when he leaves the establishment. Id.

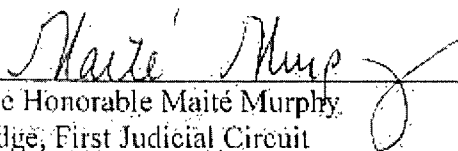
The Supreme Court, however, rejected the contention that an additional public policy of South Carolina's alcohol control statutes was to protect the intoxicated person himself from his own incompetence and helplessness and held instead that "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." Id. The Court concluded that while a third party could bring a negligence action against a tavern owner for injuries caused by an intoxicated person, the intoxicated adult could not bring such an action for his own injuries. Id. at 92-93, 504 S.E.2d at 319; see also Marcum v. Bowden, 372 S.C. 452, 458-59, 643 S.E.2d 85, 88 (2007) (observing a commercial host is only liable to third parties for injuries caused by an intoxicated person).

(observing that because South Carolina does not have a Dram Shop Act, the civil remedy arises out of criminal statutes). The liability upon a commercial host to those injured by intoxicated persons flows from the host's violation of these alcohol control statutes, and without a violation of these applicable statutes, no duty of the host arises. Plaintiff, who does not allege that Green Apple sold any alcoholic beverages to Moore, has therefore failed to state a claim against Green Apple as a matter of law.

### III. CONCLUSION

Plaintiff's allegations against Green Apple stem from Moore's voluntary intoxication and Green Apple's alleged failure to protect Moore from the consequences of his voluntary intoxication. Green Apple is entitled to judgment as a matter of law on these allegations because South Carolina does not recognize a first party cause of action against a commercial host for injuries sustained by the intoxicated person to his own person. Furthermore, any such liability only arises out of the host's violation of criminal statutes prohibiting the knowing sale of alcoholic beverages to an intoxicated person. Plaintiff makes no allegation in her complaints that Green Apple violated these statutes by selling alcoholic beverages to Moore. Where there is no allegation that Green Apple contributed to Moore's intoxicated condition by selling him alcoholic beverages, no duty was owed to Moore by Green Apple under South Carolina law.

THEREFORE IT IS ORDERED that the Motion for Summary Judgment filed by Green Apple be GRANTED for the reasons set forth herein.

  
The Honorable Maité Murphy  
Judge, First Judicial Circuit

Aug 3, 2015.

In Lydia v. Horton, 355 S.C. 36, 42-43, 583 S.E.2d 750, 754 (2003), the South Carolina Supreme Court held that an intoxicated adult could not recover on a first party negligent entrustment cause of action. In Lydia, the plaintiff was intoxicated when the defendant allowed the plaintiff to borrow his car. The plaintiff drove the car in his intoxicated state and wrecked the vehicle in a single-car accident which left him with severe injuries. The plaintiff brought suit against the defendant alleging that the defendant knew or should have known that the plaintiff was not competent to operate the vehicle. In holding that the plaintiff could not recover against the defendant on a first party negligent entrustment claim, the Court reaffirmed the principle articulated in Tobias that a plaintiff, who was voluntarily intoxicated when an accident occurred, cannot attempt to deflect the responsibility that should be imposed upon himself towards another for injuries sustained by the plaintiff. Id.

Tobias and Lydia preclude Plaintiff's first-party negligence action against Green Apple. Here, Plaintiff, as the personal representative of Moore, alleges that Moore consumed alcohol while working, became grossly intoxicated, and was forced to leave the premises and walk home. Plaintiff seeks to impose liability upon Green Apple for Moore's own helplessness and incompetence caused by his voluntary intoxication. Under the reasoning set forth in the Supreme Court's precedents in Tobias and Lydia, there was no duty of Green Apple to protect Moore who was voluntarily intoxicated. Under these facts, Green Apple is entitled to judgment as a matter of law where South Carolina law precludes liability upon Green Apple for Moore's voluntary intoxication and his resulting death from that intoxication.

In addition, while it is clear that Plaintiff's first party cause of action against Green Apple is prohibited under South Carolina law, liability in South Carolina upon a tavern owner for injuries caused by an intoxicated person is premised on the knowing sale of alcoholic beverages

to an intoxicated person. "At common law in American courts, a tavern owner could not be held civilly liable for injuries caused by an over served, intoxicated patron." Lydia, 355 S.C. at 41, 583 S.E.2d at 753. South Carolina courts ultimately recognized a limited cause of action against a seller of alcohol for injuries caused to third parties by a purchaser of alcohol when the commercial host knowingly sold alcoholic beverages to an intoxicated person in violation of the criminal statutes forbidding the sale of alcohol to intoxicated persons. Marcum, 372 S.C. at 458-59, 643 S.E.2d at 88.

To state a claim of negligence against a defendant tavern owner, a plaintiff's cause of action therefore must be predicated upon a showing that the commercial host violated South Carolina's alcohol control statutes which prohibit the sale of alcoholic beverages to intoxicated persons. Id. at 459, 643 S.E.2d at 88; S.C. CODE ANN. § 61-4-580 ("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...") (emphasis added); § 61-6-2220 ("A person or establishment licensed to sell alcoholic liquors or liquor by the drink pursuant to this article may not *sell* these beverages to persons in an intoxicated condition. . . .") (emphasis added).

Plaintiff has not alleged in her complaints that Green Apple sold any alcoholic beverage to Moore. The sale of alcoholic beverages in violation of South Carolina's alcohol control statutes is a crucial element of a claim arising out of injuries caused by an intoxicated person. Where Plaintiff has not shown that Green Apple violated the applicable criminal statutes, Plaintiff cannot establish that Green Apple owed any common law duty to Moore. See Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 415, 417, 697 S.E.2d 558, 562-63 (2010)