THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
COURT OF COMMON PLEAS
THE HONORABLE MAITE MURPHY
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2016-001312
CIVIL ACTION NO. 2014-CP-38-00802 and 2014-CP-38-00803

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

APPELLANT,

versus

Green Apple, LLC, doing business as Applebee's, John/Jane Doe, Manager, and Stabler L. Inabinet,

DEFENDANTS,

Of whom Green Apple, LLC, doing business as Applebee's is the

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. **THE LOWER COURT PROPERLY GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WHERE THE APPELLANT'S COMPLAINT FAILS BOTH AS A "DRAM SHOP" CAUSE OF ACTION AND AS A GENERAL NEGLIGENCE ACTION.**

II. **THE TRIAL COURT PROPERLY FOUND THE MOTION FOR SUMMARY JUDGMENT WAS RIPE AND ADDITIONAL TIME FOR DISCOVERY WAS NOT REQUIRED**

COUNTERSTATEMENT OF THE CASE

Appellant, 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]).

On October 18, 2012, Moore, a Green Apple employee, was terminated by his manager after consuming alcohol while working. The Appellant asserts that, following his termination, 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." While attempting to cross US-21 as a pedestrian, Moore was subsequently struck and killed by a motor vehicle operated by Defendant Stabler L. Inabinet. See Amended Complaints, ¶¶ 6-9.

In the Complaints, Appellant alleged that Green Apple was negligent and grossly negligent as follows:

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.

The Amended Complaints were filed on August 5, 2014. On March 19, 2015, Green Apple filed a Motion for Summary Judgment. On June 1, 2015, the Honorable Maite Murphy heard Green Apple's Motion for Summary Judgment. On August 14, 2015, Judge Murphy filed an order granting Green Apple's Motion for Summary Judgment. The Appellant filed a Rule 59(e) Motion for Reconsideration, which was denied via Form 4 order on May 3, 2016. The Appellant subsequently filed an appeal, which consolidated the wrongful death and survival actions into one appeal. This Initial Brief of Respondent follows.

COUNTERSTATEMENT OF FACTS

On October 18, 2012, Green Apple fired Moore for voluntarily consuming alcohol while working. His manager, Sandra Johnson, submitted an affidavit asserting that she believed he consumed two drinks while working. She stated that he did not appear intoxicated at the beginning of his shift nor did he appear intoxicated at the time of his firing. Johnson's affidavit attests that Moore was able to "count his 'end of shift' money thoroughly and correctly" after being fired. She further stated that he walked with

a steady gait and did not slur his words. After Moore was fired, Johnson witnessed him make a telephone call for a ride home. (Johnson Affidavit) On the night he was fired, Moore clocked out at 9:06 p.m. (Transcript, p. 24, ll. 1-9; Employee Punch Report)

At 10:39 p.m., Moore was struck and killed by a vehicle traveling North on U.S. 21. (South Carolina Traffic Collision Report Form, p. 1) The Traffic Report and accompanying MAIT report states that Moore stepped directly in front of the oncoming vehicle. Immediately prior to the accident, a witness had attempted to convince Moore to get out of the roadway, but Moore became irate and stepped in front of the oncoming vehicle. The witness stated that Moore smelled of alcohol in the moments before the accident. (South Carolina Highway Patrol Advanced Collision Investigation Report, p. 4)

ARGUMENT

I. THE LOWER COURT PROPERLY GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WHERE THE APPELLANT'S COMPLAINT FAILS BOTH AS A "DRAM SHOP" CAUSE OF ACTION AND AS A GENERAL NEGLIGENCE ACTION.

Respondent submits that the Trial Court properly dismissed the Complaint for Appellant's failure to identify a duty owed by Green Apple. Additionally, the Trial Court properly found that the Appellant failed to demonstrate Green Apple violated any South Carolina laws governing taverns as alleged in the Complaint. Further, even if this Court were to analyze the Complaint strictly through the lens of general negligence as advocated by the Appellant, the Appellant has failed to show Green Apple owed a legal duty to Moore.

Appellant's Complaint against Green Apple arose out of Green Apple's alleged failure to protect Moore following Moore's termination for voluntary intoxication. The Complaint asserts Green Apple was negligent and grossly negligent as follows:

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.

The Trial Court properly found that the Appellant's claims failed as a matter of law where South Carolina law does not support a first-party cause of action against Defendant Green Apple for Moore's injuries, which resulted from Moore's voluntary intoxication. (Trial Court Order, p. 4 (Describing the Complaint as a "first-party negligence action against Green Apple," the Trial Court found "there was no duty of Green Apple to protect Moore who was voluntarily intoxicated.")).

Though the Appellant argues the Complaint did not set forth a "dram shop" cause of action, the Complaint alleges Green Apple was negligent in "failing to operate a licensed drinking establishment in a proper manner and consistent with South Carolina laws." The Appellant argues that they are not seeking to enforce liability against Green Apple as a tavern owner, but the Complaint reads to the contrary. The Complaint's allegation of failure to comply with South Carolina tavern laws encompasses South

Carolina alcohol control statutes within its scope. Therefore, analysis of South Carolina law governing the sale of alcohol was appropriate where a general allegation regarding the violation of such statutes had been made.

The Appellant specifically argues the Trial Court erred in analyzing Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998) when granting Green Apple's Motion for Summary Judgment. As examined by the Trial Court, South Carolina law prohibits the knowing sale of alcoholic beverages to an intoxicated person. Id. at 92, 319. As noted by the Appellant, Green Apple did not sell Moore alcohol. Rather, Moore was fired for stealing alcohol. Moore's theft of the alcohol, however, does not remove him from the umbrella of Tobias' general analysis regarding the ability of a voluntarily intoxicated individual to bring a first-party claim against another for injuries sustained as a result of their own voluntary intoxication. In Tobias, the South Carolina Supreme Court held that a tavern owner could be liable to a third party if a tavern owner serves alcohol to an intoxicated person who, in turn, injuries the third party. Tobias notes the tavern owner's liability for violation of these statutes enhances public safety. Id. In so holding, however, Tobias specifically rejected the argument that South Carolina's alcohol control statutes provide protection to the intoxicated individual who may wish to bring a first party action for injuries arising following his own incompetence and helplessness. The Supreme Court 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." Id. at 92-93, 504 S.E.2d at 319.

The Trial Court additionally cited Lydia v. Horton, 355 S.C. 36, 42-43, 583 S.E.2d 750, 754 (2003), noting that in this case, "the South Carolina Supreme Court held

that an intoxicated adult could not recover on a first party negligent entrustment cause of action." The Trial Court noted that like Tobias, Horton reaffirms the principle that a voluntary intoxicated third party "cannot attempt to deflect the responsibility that should be imposed upon himself towards another for injuries sustained by the plaintiff." (Trial Court Order, p. 4).

In Horton, The South Carolina Supreme Court analyzed the broad applicability of Tobias, stating the following:

> In *Tobias v. Sports Club, Inc.,* 332 S.C. 90, 504 S.E.2d 318 (1998), this Court expressly overruled *Christiansen* holding that we would not permit an intoxicated adult to bring a first party cause of action against a tavern proprietor predicated on a violation of the dram shop statutes. This Court stated, "public policy is not served by allowing the intoxicated adult patron to maintain a suit for injuries which result from his own conduct." *Id.* at 90, 504 S.E.2d at 320. Our Court noted that its decision did not preclude a third party from bringing a cause of action under the statutes. *Id.* at 90, 504 S.E.2d at 319.
>
> We apply these same public policy considerations to this case. We disagree with the Court of Appeals' conclusion that *Tobias* public policy considerations only have bearing in comparing fault but have no bearing on whether or not to impose an outright bar to a first party negligent entrustment cause of action. The essence of this case and the *Tobias* case are the same, for in both cases, the plaintiff, who was voluntarily intoxicated when the accident occurred, is attempting to deflect the responsibility that should be imposed upon himself towards another. Just as this plaintiff cannot bring a first party cause of action to challenge the discretionary conduct of the tavern owner, he cannot bring the same action to challenge the discretionary conduct of his entrustor.

Lydia v. Horton, 355 S.C. 36, 42–43, 583 S.E.2d 750, 754 (2003)

The South Carolina Supreme Court has said that the Tobias public policy considerations apply to cases where a voluntarily intoxicated Plaintiff attempts to shift the responsibility from himself to another. Likewise, the Trial Court found that the principles articulated in Tobias and Horton supported a finding that Green Apple could

not be found liable in a first-party negligence action brought on Moore's behalf. The Trial Court noted that the "Plaintiff seeks to impose liability upon Green Apple for Moore's own helplessness and incompetence caused by his voluntary intoxication." Id. It is undisputed that the Appellant brought a first-party negligence action stemming from voluntary intoxication. And, as such, the Trial Court properly applied Tobias and Horton case law that individuals cannot recover against tavern owners for a first party's injury and/or death stemming from their voluntary intoxication.

The Appellant asserts Tobias and other cited cases were inapplicable where the Appellant intended to bring a general negligence cause of action rather than a "dram shop" cause of action. However, Tobias sounds in negligence law. Tobias overruled Christiansen, which was a negligence action allowing first party liability in a cause of action against a tavern. Where Tobias applied to the negligence action brought in Christiansen, then Tobias appropriately applies to the case at hand. (See Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (Ct. App. 1985) overruled by Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (1998); Tobias v. Sports Club, Inc., 323 S.C. 345, 352, 474 S.E.2d 450, 454 (Ct. App. 1996), aff'd as modified, 332 S.C. 90, 504 S.E.2d 318 (1998) "The cause of action recognized in Christiansen sounds in negligence.... Christiansen and the decisions which followed it clearly indicate liability should be predicated upon a negligence standard.") Respondent submits the allegations of statutory violations and negligence framed within the Complaint properly summoned analysis under Tobias.

The Appellant attempts to distinguish itself from a dram shop case because, as noted by the Appellant and Trial Court, the Appellant cannot sustain a case against Green

Apple for violation of South Carolina alcohol control statutes. At the Motion for Summary Judgment hearing, the Appellant repeatedly conceded that Tobias would defeat any causes of action brought in a "dram shop" context stating, "If this is a first party dram shop case in South Carolina it's a loser;" "first party dram shop liability case which doesn't exist in South Carolina;" and "the case law for first party dram shop is not good in South Carolina." (Transcript, pg. 28, ll. 20-21; pg. 32, ll. 13-17; pg. 33, l. 7-8). As the Appellant acknowledged at the Motion for Summary Judgment hearing, the Trial Court properly found that the Appellant failed to demonstrate that Green Apple violated South Carolina law, including the alcohol control statutes. However, even if the Complaint were reinterpreted and this case were analyzed under a pure negligence standard, as the Appellant requests, this case still fails as a matter of law.

The Appellant's brief states that the "Appellant seeks to hold Green Apple liable because it knew of Mr. Moore's intoxication and lack of a phone or transportation but forced him out of the premises any way." (Initial Brief of Appellant, p. 7). Neither the Complaint nor the Initial Brief of the Appellant, however, set forth a viable basis for Green Apple's alleged negligence where Green Apple did not owe a duty to Moore and the Appellant has failed to prove the contrary. While the Appellant argues the reasonableness of Green Apple's conduct is a matter for the jury, if the Appellant cannot prove Green Apple owed a duty to Moore, there can be no negligence for a jury to assess.

South Carolina has long held one must prove a duty to sustain a negligence action.

> "An essential ingredient in any conception of negligence is that it involves the violation of a legal duty, which one person owes another-the duty to take care for the safety of the person or property of the other; and the converse of the proposition is that, where there is no legal duty to exercise, there can be no

> actionable negligence. Therefore it is reasoned that a plaintiff, who grounds his action upon the negligence of the defendant, must show, not only that the conduct of the defendant was negligent, but also that it was a violation of some duty which the defendant owed him."

Kershaw Motor Co. v. S. Ry. Co., 136 S.C. 377, 134 S.E. 377, 378 (1926) (quoting Thompson on Negligence, vol. 1, § 3).

"An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without such a duty, there can be no actionable negligence." Rogers v. S. Carolina Dep't of Parole & Cmty. Corr., 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995)(citing South Carolina Elec. & Gas Co. v. Utilities Constr. Co., 244 S.C. 79, 135 S.E.2d 613 (1964); Kershaw Motor Co. v. Southern Ry. Co., 136 S.C. 377, 134 S.E. 377 (1926)). "If the plaintiff fails to prove the defendants owed her a legal duty of care, she fails to prove actionable negligence." Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007)).

In Nelson v. Piggly Wiggly, the South Carolina Court of Appeals set forth that in order to prevail on a negligence claim, a Plaintiff must show:

> (1) the defendants owed her a duty of care;
> (2) the defendants breached that duty by a negligent act or omission; and
> (3) she suffered damage as a proximate result of that breach.

Id. (citing Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000)).

The Appellant urges this Court to disregard the line of cases analyzed by the Trial Court and to examine this case as a general negligence case. The Appellant states that a general negligence burden would not require the violation of specific statutes, which the Appellant concedes she cannot prove, but would instead require the demonstration that

Green Apple owed a duty to Moore, Green Apple breached that duty, Moore suffered damage as a proximate result of that breach.

"Whether the law recognizes a particular duty is an issue of law to be decided by the court." (Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997)). In Carson, the South Carolina Supreme Court examined a fact pattern wherein an employer and employee went drinking after work during which time the employee became voluntarily intoxicated. The employer was driving the employee when the employee exited the vehicle. There was some dispute over whether the employer kicked the employee out of the car or let the employee out at the employee's request. Regardless, the employer drove away and left the employee on the side of the road. The employee was subsequently struck and killed by another motor vehicle. Id.

In Carson, the Court analyzed whether or not the employer owed the employee a duty. The Court noted that "[a]n affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance... The common law ordinarily imposes no duty on a person to act; however, where an act is voluntarily undertaken, the actor assumes the duty to use due care." Id. at 217 (citing Rayfield v. South Carolina Dept. of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct.App.1988); Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Sherer v. James, 290 S.C. 404, 351 S.E.2d 148 (1986)).

Carson held that in order for the employer to have a duty to the intoxicated employee, they would have needed to voluntarily assume a legal care of duty by having "'taken charge of' a helpless person." Carson at 217–18, 5–6 (quoting McGee By & Through McGee v. Chalfant, 248 Kan. 434, 806 P.2d 980, 983 (1991).

Carson concluded the employer had no duty to the intoxicated employee and the Complaint was dismissed as South Carolina states that "[i]n a negligence action, if there is no duty, then the defendant is entitled to a directed verdict" Id. at 216–17, 5. In so finding, the Court noted that, like the case at hand, that if one assumed the employee had become intoxicated to the point of incapacity, there was no evidence the employer caused the intoxication. Id. at 219, 6.

The Appellant's brief bases Green Apple's duty on the following: (1) the alleged knowledge of Moore's alcohol consumption and intoxication and (2) the alleged knowledge of Moore's lack of means of communication and safe transportation. (Initial Brief of Appellant, p. 8) Johnson's affidavit states that at the time of his termination, Moore did not appear intoxicated and she observed him make a phone call for a ride home. However, even if one were to assume the facts as the Appellant presents them, this does not create a duty for Green Apple. "First, the court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law.... Foreseeability of injury, in and of itself, does *not* give rise to a duty." Nelson v. Piggly Wiggly Cent., Inc., at 781. The Appellant failed to prove the first prong of the negligence test that Apple Gold owed Moore a legal duty of care. The Appellant concedes Green Apple did not violate any statutory duties. The Appellant further failed to demonstrate any duty created by "contract, relationship, status, property interest, or some other special circumstance." Likewise, as discussed below, the facts as pled by the Appellant establish that Green Apple did not voluntarily assume a duty to act.

In Carson, the Court analyzed the allegation that the employer had kicked the employee out of his car. The Court determined that this was not evidence that the employer had "assumed to render services for [the employee's] benefit," but was actually evidence to the contract that the employer did not intend to take responsibility for the Appellant's wellbeing. Id. at 219, 6. Similarly, the underlying Complaint in this case demonstrates that Apple Gold did not intend to take responsibility for Moore's wellbeing following his termination. The Appellant argues that Apple Gold should have taken charge of Moore to make sure he got home safely. Under Carson, however, Apple Gold had no duty to assume responsibility for Moore. Carson states that unless Apple Gold voluntarily assumed a duty to take charge of Moore's safety, then no duty existed under the law. According to the facts alleged in the Complaint, even if one were to assume Moore was intoxicated and helpless, Apple Gold did not assume responsibility for his travel following his termination. The Appellant argues that Apple Gold *should have* assumed responsibility for Moore because it was dangerous for him to walk home intoxicated. The Appellant's argument that Green Apple failed to assume responsibility of Moore evidences that no duty was created where any duty would have been voluntarily assumed and, according to the Appellant, Green Apple refused to assume this duty.

The Appellant further argues Apple Gold could have foreseen a threat to Moore's safety and this somehow created a duty. Under Carson, however, foreseeability of a danger does not create a duty. The Appellant failed to cite any case law or South Carolina statutory law that would impose a duty upon an employer to call a cab or provide transportation for an intoxicated employee. Without a duty, there can be no negligence as a matter of law.

In this matter, the Appellant is asking this Court to impose upon Green Apple the duty to control the dangerous conduct of Moore. In examining a case were an offender received probation and murdered their prior victim, the South Carolina Supreme Court found the parole officials had no duty to warn the victim absent specific threats of harm to the victim. In so holding, the Court stated, "**Generally, one has no duty to control the dangerous conduct of another** or to warn a potential victim of such conduct." Rogers v. S. Carolina Dep't of Parole & Cmty. Corr., at 255, 332. (emphasis added). According to the facts presented at the Motion for Summary Judgment hearing, Moore stole alcohol from his employer, was fired, and then, while in the dark and wearing dark clothing, jumped in front of a car which struck and killed him (Transcript, p. 4, ll. 18-25). South Carolina has said one does not generally have a duty to control the dangerous conduct of another and this duty should not change when the dangerous individual personally suffers the injury.

The Appellant incorrectly argues that the Trial Court failed to consider the Complaint as a negligence action, but the Trial Court refers to the Complaint as "first-party negligence action against Green Apple." (Trial Court Order, p. 4). The Trial Court further correctly states that "there was no duty of Green Apple to protect Moore who was voluntarily intoxicated." Id. Additionally, the Trial Court did not err in utilizing Tobias and Horton case law analysis to articulate this conclusion. The Appellant argues the Trial Court erred in stating that the Appellant needed to prove violation of criminal statute to give rise to Green Apple's liability. However, as discussed, the Trial Court was not presented with any facts that would give rise to a general negligence duty that the Appellant advocates for. Where no facts supported the creation of a general duty of

Green Apple to Moore, the Trial Court correctly stated that the Appellant needed to prove a violation of a criminal statute to give rise to a duty.

The Trial Court did not err in granting Respondent's Motion for Summary Judgment and the Appellant has failed to prove otherwise. As a result, Respondent's respectfully request this Court affirm the Trial Court ruling.

II. THE TRIAL COURT PROPERLY FOUND THE MOTION FOR SUMMARY JUDGMENT WAS RIPE AND ADDITIONAL TIME FOR DISCOVER WAS NOT REQUIRED

The Appellant argues that the case was not ripe for the Trial Court to grant a Motion for Summary Judgment because they had outstanding discovery matters. In the 59(e) Motion for Reconsideration, the Appellant raised the argument that the Motion for Summary Judgment was not ripe due to pending discovery. The Trial Court dismissed this argument via Form 4 Order. Respondent submits the issues at hand are questions of law and would not be impacted by additional discovery. Moreover, at the time of the Motion for Summary Judgment hearing on June 1, 2015, the Appellant had not taken any depositions despite having filed the Amended Complaints over ten months earlier, on August 5, 2014. (Transcript, p. 29, ll. 19-20).

> Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Id. at 112, 410 S.E.2d at 543.
> Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.' " Id. at 112, 410 S.E.2d at 544.

Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 114-15-410 S.E.2d 537, 545 (1991)).

In Dawkins, the Court found that Summary Judgment was appropriate despite Respondent's argument that it was premature because they did not have a full and fair opportunity for discovery. The Court found that "discovery was unlikely to create any genuine issue of material fact." Id. at 71, 439–40 ("Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct.App.1995) (affirming summary judgment where appellants 'advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment'); See Baughman, 306 S.C. at 112, 410 S.E.2d 537, S.E.2d at 544 (nonmoving party must demonstrate that further discovery will likely uncover additional relevant evidence); see also George v. Fabri, 345 S.C. at 452, 548 S.E.2d at 874 (2001) (purpose of summary judgment is to dispose of cases which do not require a fact finder).")

The Trial Court properly found that the Appellant failed to meet her burdens as a matter of law. A fact finder was not required to dispose of the case. The Appellant failed to demonstrate further discovery would uncover additional relevant evidence. Additionally, where South Carolina has previously held four months was a sufficient amount of time to develop the factual documentation of the case, the Appellant has failed to demonstrate why the same could not be accomplished in over ten months.

For the reasons set forth above, Respondents request this Court affirm the Trial Courts' Order Granting Respondent's Motion for Summary Judgment.

CONCLUSION

For the reasons set forth herein, the Trial Court's order granting summary judgment to Respondents should be affirmed where (1) The Trial Court properly dismissed the Complaint for Appellant's failure to identify a duty owed by Green Apple; (2) The Trial Court properly found that the Appellant failed to demonstrate Green Apple violated any South Carolina laws governing taverns as alleged in the Complaint; (3) Even if this Court were to analyze the Complaint strictly through the lens of general negligence as advocated by the Appellant, the Appellant has failed to show Green Apple owed a legal duty to Moore; (4) The case was ripe for the Motion for Summary Judgment and the Appellant has failed to demonstrate otherwise. As a result, Respondent respectfully requests this Court affirm the Trial Court's Order Granting Respondent's Motion for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent, Green Apple, LLC, doing business as Applebee's, do hereby certify that I have this date served the foregoing Initial Respondents' Brief, dated September 27, 2016, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

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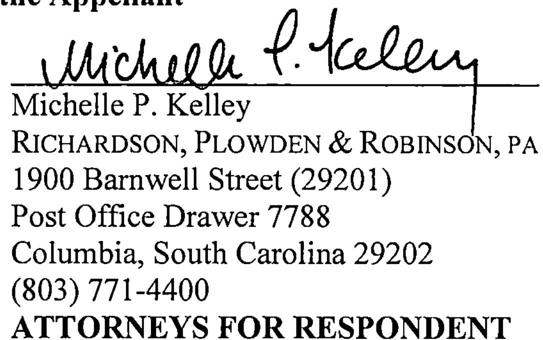

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September 27, 2016

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SEP 27 2016
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Lindsey Stewart, Personal Representative of the Estate of Shawn Robert Moore v. Green Apple, LLC, d/b/a Applebee's*
Appellate Case No. 2016-001312
RPR's File No. 7513-009

Dear Ms. Kitchings:

Enclosed for filing please find an original and one (1) copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal. Also enclosed is Proof of Service of the Brief and Designation of Matter.

Please file the documents and return one file-stamped copy with our runner. By copy of this letter, I am this day serving attorneys for Appellant with a copy of the same.

If the Court requires anything further or you have any questions, please do not hesitate to contact me.

Sincerely,

Michelle P. Kelley
SC Bar No. 75198

MPK:sjl
Enclosures

cc: Kathleen C. Barns, Esquire (Via email and U.S. Mail) (with enclosures)
Shane M. Burroughs, Esquire (Via email and U.S. Mail) (with enclosures)
Justin T. Bamberg, Esquire (Via email and U.S. Mail) (with enclosures)