



## FACTUAL FINDINGS

1. The undisputed evidence presented to the Court established the automobile accident, from which the “first” case of *Latoria Cooks v. Emily Brown* arose, occurred in 2014. That action was filed in 2016 and ultimately resolved by settlement. The “second” case, the one at issue here and the subject of this Summary Judgment, captioned *Latoria Cooks v. Pearlz Vista, Inc. et al.*, (hereinabove captioned) was filed in 2017. Both cases are brought by the same Plaintiff, represented throughout by the same counsel. The “first” case was a negligence action by the injured Cooks against the driver of another vehicle who caused a two-car accident. The “second” case at issue here is a Dram Shop action arising out of the automobile accident, with the Plaintiff alleging the three Defendant businesses caused Brown (Defendant in the “first” case) to become intoxicated resulting in the accident.
2. The Defense presented to the Court the deposition of the driver, Brown, who was deposed by Plaintiff in the first case in 2016. In the course of Brown’s deposition, Brown repeatedly stated she was unaware of where she had been prior to the accident in response to repetitive attempts by Plaintiff’s counsel to establish her activities of the evening, her drinking, and where she had been drinking prior to the accident. Despite the best efforts of Plaintiff’s Counsel, and as succinctly outlined in the Motion for Summary Judgment, the driver Brown had essentially no recollection of the evening of the accident stating repeatedly she could not “recall where [she] was coming from,” was with friends but could not remember who, remembered she had been in the Vista and at a bar, but could not recall

which one, did not remember how much she had to drink that night prior to the accident, did not remember any of the bars she may have gone to that night, and did not remember the last consumption of alcohol prior to the accident. The sum total of the driver's recollections was that she had no specific recollection of the evening and provided no substantive or evidentiary assistance to Plaintiff's case.

3. I find that four (4) years have elapsed since the accident, with two separate suits filed by the same Plaintiff and same counsel since 2016 with ample opportunity for Plaintiff to discover evidence in support of her case. Plaintiff's counsel concedes his efforts to discover any documentary evidence such as credit card receipts, were unsuccessful.
4. Plaintiff, in her Amended Responses to Defendant's (Art Bar) Requests to Admit on July 23, 2018 admitted:

**RESPONSE TO REQUEST NUMBER 1:** Plaintiff currently does not have specific evidence placing Emily Brown at Art Bar on 9/12/14 or 9/13/14 or evidence indicating that she consumed alcohol there; however, based upon her deposition testimony, in the wreck case, she **most probably** was there on the above dates. Further, discovery is necessary as Plaintiff is informed and believes that such evidence does exist. (emphasis added).

This case is presently scheduled for trial in two (2) weeks.

## LEGAL FINDINGS

I find that ample opportunity for research, investigation, formal and informal discovery have been accorded Plaintiff who simply lacks sufficient evidence to defeat summary judgment. While Plaintiff's counsel argues that Brown "most likely" visited Defendants' businesses but could not be sure, this is insufficient to defeat summary judgment. Plaintiff has offered this Court mere speculation but no opposing affidavits,

and no real, material evidence for trial. “For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation.” Shealy v. Doe, 370 S.C. 194, 205, 634 S.E.2d 45, 51 (Ct. App. 2006)(citing Gastineau v. Murphy, 331 S.C. 565, 570, n. 2, 503 S.E.2d 712, 714 n. 2 (1998)).

Here, there is no evidence that Brown actually visited the Defendants’ locations on the evening in question. However, even *if* Brown visited Defendants’ businesses, there is simply no evidence offered by Plaintiff of any specific sale of alcohol by Defendants to Brown. There is no evidence, circumstantial or direct, that Defendants’ or their agents sold or provided alcohol to Brown while she was intoxicated on the evening in question – key evidence for a Dram Shop action. Accordingly, Plaintiff is unable to offer a scintilla of evidence to survive summary judgment. “. . . [T]he scintilla of evidence upon which a case should be sent to the jury must be real, material, and pertinent and relevant evidence, not speculative and theoretical deductions.” Turner v. Am. Motor-ists Inc. Co., 176 S.C. 260, 180 S.E. 55, 57 (1935).

When opposing a summary judgment motion, the non-moving party must do more than “simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing there is a genuine issue for trial.” Baughman v. American Telephone & Telegraphy, 306 S.C. 101, 401 S.E.2d 537 (1991). If a summary judgment motion has been properly made and supported, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCR; Belton v. Cincinnati Ins. Co., 360 S.C. 575,

580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. Hall v. Fedor, 349 S.C. 169, 175, 561, S.E.2d 654, 657 (Ct. App. 2002).

Notwithstanding the rule on summary judgment that a court must view the facts in the light most favorable to the non-moving party, Courts cannot ignore “facts unfavorable to the party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Hopson v. Clary, 321 S.E. 312, 468 S.E.2d 305 (Ct. App. 1996).

I find a verdict for Plaintiff would not be reasonably possible upon the facts developed in this case as Plaintiff is unable to present to the Court a genuine issue of material fact in support of her Dram Shop action. Therefore, summary judgment in favor of Defendants is GRANTED.

IT IS SO ORDERED.

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The Honorable Paul M. Burch  
Presiding Judge for the Court of Common Pleas

Columbia, South Carolina  
this \_\_\_\_ day of September, 2018.



Richland Common Pleas

**Case Caption:** Latoria Cooks vs Pearlz Vista Inc , defendant, et al

**Case Number:** 2017CP4005538

**Type:** Order/Summary Judgment

So Ordered

s/Paul M. Burch, Judge #2048

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