

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Paul Burch, Circuit Court Judge

Case No. 2017-CP-40-05538
Appellate Case No: 2018-002026

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SC Court of Appeals

Latoria R. Cooks.....Appellant,

v.

Pearlz Vista, Inc., d/b/a
Pearlz Oyster Bar, Carolina
Ale House Operating Company,
LLC, d/b/a Carolina Ale House
and Art Bar, Inc.,.....Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista, Inc., d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and At Bar,
Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTH JUDICIAL CIRCUIT

) Case Number: 2017-CP-40-05538

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

This matter is before the Court on Plaintiff's Motion for Reconsideration. After carefully reviewing the record and my prior order in the above-referenced matter, the Plaintiffs' Notice and Motion for Reconsideration, is hereby DENIED.

THEREFORE, Plaintiff's Motion for Reconsideration is hereby DENIED without further hearing.

AND IT IS SO ORDERED.

The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Pageland, South Carolina
October 17, 2018



Richland Common Pleas

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

Case Number: 2017CP4005538

Type: Order/Form 4

So Ordered

s/Paul M. Burch, Judge #2048

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Latoria R. Cooks,	)	
	)	Case No.: 2017-CP-40-05538
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR RECONSIDERATION OR TO
Pearlz Vista, Inc., d/b/a Pearlz	)	ALTER OR AMEND THE ORDER OF
Oyster Bar, Carolina Ale House	)	THE COURT GRANTING SUMMARY
Operating Company, LLC, d/b/a	)	JUDGMENT
Carolina Ale House, and Art Bar,	)	
Inc.,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE THAT THE PLAINTIFF, by and through her undersigned counsel will move before the Court on the tenth (10th) day after service for an Order reconsidering and/or altering and amending the Order of the Court entered on September 7, 2018, granting Defendants joint motion for Summary Judgment.

This motion is based upon the following Grounds:

I. The Court erred in granting Defendants motion for Summary Judgement based on the evidence submitted and relied upon by plaintiff, or the Court applied the incorrect standard to the evidence submitted. The standard to be applied is whether the Plaintiff showed a "scintilla" of evidence to sustain her claim. In Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801, 381 S.C. 326 (S.C., 2009) our Supreme Court clarified the proper standard to be applied in a motion for Summary Judgment:

We first address Respondent's argument that Petitioner must present more than a mere scintilla of evidence to withstand a motion for summary judgment. The rule followed in the federal court system provides that "a 'mere scintilla of evidence' is not sufficient to withstand the challenge." Rogers v. Norfolk Southern Corp., 356 S.C. 85, 92,

588 S.E.2d 87, 90 (2003), quoting Crinkley v. Holiday Inns, 844 F.2d 156, 160 (4th Cir. 1988). We recognize that the court of appeals has been somewhat inconsistent on whether a mere scintilla of evidence will overcome a motion for summary judgment. This Court, however, has consistently held that where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment. Accordingly, we hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.

Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801, 381 S.C. 326 (S.C., 2009)

Here the evidence shows that Ms. Brown went out to Bars with friends until almost 3:30 a.m. (Depo of Brown p. 14). She had taken someone home and was headed to her mother's house. (Depo of Brown p. 14). After the accident she had a Blood Alcohol Concentration (BAC) of .16 (Depo of Brown p. 25). After being questioned and repeatedly denying that she remembered where she had been out drinking, she admitted that she 'most likely' would have been drinking at Art Bar, Pearlz and Ale House that evening and early morning. She also testified that Art Bar was open until 3:00 a.m. and that was "normally" where she went last. (Depo of Brown p. 26). There is no evidence whatsoever that she consumed alcohol at any place other than Ale House, Pearlz and Art Bar prior to the accident.

Given the fact that the record clearly reflects that Ms. Brown is a reluctant witness who may be feigning memory loss, she has testified that that she was most likely at Ale House, Pearlz and Art Bar prior to being in the accident at 3:30a.m. where she was taken into custody and her blood test indicated that she had a BAC of .16, twice the amount established as the presumptive amount necessary to be considered intoxicated. Clearly the inferences here, which must all be decided in Plaintiff's favor would lead one to conclude

that the defendant's in this action served Ms. Brown alcohol when she would have been in an intoxicated condition.

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Knight v. Austin, 396 S.C. 518, 722 S.E.2d 802 (2012); Rule 56(c), SCRPC. In making this determination, the court must view the evidence and draw all reasonable inferences in a light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009). "However, in cases requiring a heightened burden of proof . . . the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id.

The fact that Ms. Bown testified that Defendants establishments were "most likely" where she had consumed alcohol is sufficient to establish liability on the defendants. Similarly, when an expert in a professional negligence case testifies he is required to express his opinion to a "most probably" or "most likely" standard. When an expert testifies that a fact "most likely" occurred his testimony is considered sufficient. "In determining whether particular evidence meets this test it is not necessary that the expert actually use the words "most probably."" Gamble v. Price, 289 S.C. 538, 347 S.E.2d 131 (Ct.App.1986). It is sufficient that the testimony is such "as to judicially impress that the opinion . . . represents his professional judgment as to the most likely one

among the possible causes...." Norland v. Washington General Hospital, 461 F.2d 694, 697 (8th Cir.1972).

II. The Court erred in granting summary judgment when the plaintiff had not had a full and fair opportunity to complete discovery. Aside from the fact that there was significant discovery outstanding, the essential exercise required to allow plaintiff a "full and fair" opportunity to complete discovery was pending due to Defendant Art Bar's objection to plaintiff taking the deposition of Ms. Brown. Plaintiff noticed the deposition of Ms. Brown on July 23, 2018 (Plaintiff began scheduling the deposition around July 15th however it took until July 23rd to confirm a date with all opposing attorneys). On July 23, 2018 defendant Art Bar filed a motion for a protective order to prevent plaintiff from taking the deposition of Ms. Brown. It requires a tortured interpretation of the term "full and fair opportunity" to conclude that plaintiff had been given a full and fair opportunity to complete discovery when the defendant Art Bar had prevented plaintiff from taking the most necessary and essential deposition in any dram shop case. Further, defendant's motion for a protective order was wholly without merit and filed for the sole purpose of delaying plaintiff from being able to acquire the exact evidence she needed to defeat defendant's motion for summary judgment.

Further, defendant's assertion that because Ms. Brown previously testified in the prior action (wreck case) that she didn't remember where she had been that evening should not foreclose plaintiff from seeking additional testimony and evidence from her. In that deposition she testified that she normally paid with a debit or credit card at a bar. (Depo of Brown pp 19-20). Based upon that information plaintiff served a subpoena with her deposition notice requiring her to bring all debit and credit card statements for

the three month period surrounding the wreck. That information would likely refresh her recollection as to where she had been that evening and approximately how much she had consumed, or may have provided plaintiff with proof of the amount spent for alcohol at the defendant's establishment.

Plaintiff is not seeking an opportunity to go on a fishing expedition however it is likely that even if due to some mental abnormality Ms. Brown now cannot truthfully remember where she had been drinking that evening she may have shortly after the accident provided that information to another person. Specifically Ms. Brown was represented for her DUI charge and most probably would have related to her attorney where she had been that evening. Since I am sure that she would not wish to impede plaintiff from finding out the truth she may very well consent to a limited waiver of the attorney-client privilege so that plaintiff could obtain that information from her criminal attorney. However, defendant has prevented plaintiff from obtaining that waiver by preventing her from taking Ms. Browns deposition. (Plaintiff's counsel had contacted Ms. Brown however she preferred that her deposition be taken as opposed to discussing the case with counsel).

Our Courts take a very restrictive view on allowing summary judgment when the plaintiff has legitimate reasons that he has been unable to obtain the evidence necessary to prove her case. This is especially true when, as here, one of the defendants has actually prevented plaintiff from obtaining the information. In Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (S.C., 1990) the Supreme Court stated:

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously

invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice p 56.02, p. 56-39 (2d ed. 1990); see, e.g., First Chicago Int'l v. United Exchange Co., 836 F.2d 1375 (D.C.Cir.1988); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir.1985); Tyler v. City of Enterprise, 521 So.2d 951 (Ala.1988); Gangadean v. Leumi Fin. Corp., 13 Ariz.App. 534, 478 P.2d 532 (1970); Commercial Bank of Kendall v. Heiman, 322 So.2d 564 (Fla.Dist.Ct.App.1975); Board of Education v. Van Buren & Firestone, Architects, Inc., 165 W.Va. 140.

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (S.C., 1990).

III. In conclusion, plaintiff moves before the court requesting that the court reconsider its ruling granting summary judgment to defendants on the grounds that first, plaintiff has submitted sufficient evidence to defeat defendant's motion; secondly that summary judgment is inappropriate where, as here, plaintiff has not had a full and fair opportunity to complete discover; and thirdly this motion may also be supported by such other and further information and arguments as plaintiff shall submit at the hearing on this matter.

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September 15, 2018
Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Latoria R. Cooks,	)	DEFENDANT ART BAR'S
	)	RESPONSE IN OPPOSITION
Plaintiff,	)	TO PLAINTIFF'S
	)	MOTION FOR RECONSIDERATION
v.	)	
	)	
Pearlz Vista, Inc., d/b/a Pearlz Oyster	)	Civil Action No.: 17-CP-40-05538
Bar, Carolina Ale House Operating	)	
Company, LLC, d/b/a Carolina Ale	)	
House, and Art Bar, Inc.,	)	
	)	
Defendant.	)	

Defendant Art Bar respectfully responds in opposition to Plaintiff's Motion for Reconsideration as follows:

1. **Plaintiff had ample time for discovery.** The Complaint in this action was filed on September 13, 2017. The summary judgment motion was filed nine months later on June 15, 2018 but not heard until September 5, 2018. This matter was scheduled for the jury trial term beginning September 17, 2018. *Exhibit A.* Plaintiff had nearly a year in this case alone for full and fair discovery to develop any facts in support of her action but did not do so.

Importantly, the present action was the last of two related lawsuits. Plaintiff, in the first action against the at-fault driver, had full opportunity for discovery involving the at-fault driver, including facts to support the present Dram Shop action. While that first action was pending, from August 29, 2016 until October 6, 2017, Plaintiff "discovered" no evidence in support of the Dram Shop action even after fully deposing the at-fault driver and conducting discovery. *Exhibit B.* In the driver's deposition, Plaintiff questioned her extensively concerning her whereabouts on the day in question, any

establishments she visited, and ascertained her banking information. In total, Plaintiff had two years to discover facts in support of the Dram Shop action. Plaintiff failed to do so.

Under Rule 56(e), SCRCP:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by *affidavits* or as otherwise provided in this rule, must set forth *specific facts* showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Id. (emphasis added). In opposing summary judgment, Plaintiff presented no affidavits, no specific facts, only vague recollections from the deposition of the only known witness, the driver of the at-fault vehicle, taken in the first action. This Court considered the deposition extracts, heard arguments of counsel, and concluded unequivocally that Plaintiff had failed to produce evidence meeting even the low bar of “a scintilla of evidence” in support of her case, after more than sufficient time to do so. Plaintiff’s hope that the driver will change her testimony or that maybe she told an attorney her whereabouts is nothing more than speculation and hypothesis. After two years of discovery and on the eve of trial, Plaintiff is not able to provide the court with specific facts to defeat summary judgment.

2. **The Court applied the proper standard.** Plaintiff argues this Court applied the incorrect standard and that “[t]he standard to be applied is whether the Plaintiff showed a ‘scintilla’ of evidence to sustain her claim.” Plaintiff’s Motion, p. 1. That is the standard this Court employed. As set forth on page 4 of the Order Granting Summary Judgment: “Accordingly, Plaintiff is unable to offer a scintilla of evidence to survive summary judgment. The 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.” *Id.* (internal citations omitted).

3. **Plaintiff failed to show a scintilla of evidence to support her Dram Shop claim.** Plaintiff asserts that she met the burden of showing a scintilla of evidence by the driver’s testimony that she “most likely” would have been drinking at the Defendants’ establishments. “Most likely, but I cannot be sure,” is far from the proof required by our courts and even if true, does not relate to the essential elements required in a Dram Shop action. *See* Driver’s Dep. p. 26, line 15. While Plaintiff attempts to draw a parallel between expert testimony and proof needed for summary judgment, the cases cited are simply inapposite here.

Dram Shop liability is statutorily based and imposes a duty on licensed establishments not to serve alcohol to intoxicated persons. S.C. code Ann. §61-4-580, 61-6-2220. As such, the key element of Plaintiff’s case at trial is whether the Defendants served alcohol to the driver and whether the driver was intoxicated when served. Even if the driver had testified she was in Defendant’s establishment prior to the accident (which she did not), there is no evidence – not even a reasonable inference – that the Defendant served much-less over-served alcohol to the driver. Summary judgment is appropriate where a party “fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991).

As our Supreme Court has stated, to meet a scintilla of proof, “. . . there must be some evidence arising out of the testimony which elucidates the issues of fact, and which

enables the jury to form an intelligent conclusion. It does not authorize the admission of **speculative, theoretical, and hypothetical views. . . .**" Turner v. American Motorists Ins. Co., 176 S.C. 260, 180 S.E. 55, 56 (1935)(emphasis added). As such, this Court should deny Plaintiff's Motion for Reconsideration.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT ART BAR,
INC.

Columbia, South Carolina
this 21st day of September, 2018.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster
Bar, Carolina Ale House Operating
Company, LLC, d/b/a Carolina Ale
House, and Art Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05538

**DEFENDANT PEARLZ VISTA INC. D/B/A
PEARLZ OYSTER BAR'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR RECONSIDERATION**

Pearlz Vista Inc. d/b/a Pearlz Oyster Bar ("Pearlz") responds to Plaintiff's Motion for Reconsideration as follows:

With the consent of Art Bar, Inc., Pearlz joins in and adopts Art Bar's previously filed Response in opposition to Plaintiff's Motion for Reconsideration, along with all Exhibits therein, and likewise requests this Court to deny Plaintiff's Motion for Reconsideration.

HAYNSWORTH SINKLER BOYD, P.A.

s/Roopal S. Ruparelia

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September 26, 2018
Columbia, South Carolina

*Attorneys for Defendant Pearlz Vista Inc.
d/b/a Pearlz Oyster Bar*

013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Latoria Cooks,	)	C.A. No.: 2017-CP-40-05538
	)	
Plaintiff,	)	DEFENDANT CAROLINA ALE
	)	HOUSE OPERATING COMPANY,
vs.	)	LLC d/b/a CAROLINA ALE HOUSE'S
	)	RESPONSE IN OPPOSITION TO
Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,	)	PLAINTIFF'S MOTION FOR
Carolina Ale House Operating Company, LLC	)	RECONSIDERATION
d/b/a Carolina Ale House, and Art Bar, Inc.,	)	
Defendants.	)	
	)	

Defendant CAHOC2, LLC, improperly designated as Carolina Ale House Operating Company, LLC d/b/a Carolina Ale House (CAH), responds to Plaintiff's Motion for Reconsideration as follows:

With the consent of Art Bar, CAH respectfully joins/adopts Art Bar's previously filed Response in Opposition to Plaintiff's Motion for Reconsideration, along with the Exhibits therein, and likewise urges this Court to deny Plaintiff's Motion for Reconsideration.

Respectfully submitted,

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Attorney for Carolina Ale House Operating Company, LLC d/b/a Carolina Ale House which should be substituted by CAHOC2, LLC

September 26, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Latoria R. Cooks,	)	
	)	Case No.: 2017-CP-40-05538
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING SUMMARY
	)	JUDGMENT
Pearlz Vista, Inc., d/b/a Pearlz	)	
Oyster Bar, Carolina Ale House	)	
Operating Company, LLC, d/b/a	)	
Carolina Ale House, and Art Bar,	)	
Inc.,	)	
	)	
Defendants.	)	

This Motion for Summary Judgment joined in by all Defendants was consolidated with a Motion for Protective Order filed by counsel for Defendant Art Bar, Inc. and heard by this Court on September 5, 2018. Plaintiff was represented by John W. Carrigg, Jr., and Defendants were represented as follows: Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar by Roopal S. Ruparelia, Carolina Ale House Operating Company, LLC, d/b/a by John P. Riordan, and Art Bar, Inc., by Joseph M. McCulloch. Defendants prepared and submitted three documents to the Court and all counsel by email the day before the hearing, which documents were admitted for the purpose of this hearing, were not objected to, and are made a part of the Court file. These documents included a Timeline of Dates/Events, a page from Plaintiff's Amended Response to Defendant's Request to Admit, as well as the other documents in the Court file and the Motions and attachments to the motions. After careful review and consideration, I hereby **GRANT** Defendants' Motion for Summary Judgment thereby rendering consideration of the Motion for Protective Order moot.

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.

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

Electronically signed on 2018-09-07 15:55:59 page 6 of 6

020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Latoria Cooks,	)	C.A. No.: 2017-CP-40-05538
	)	
Plaintiff,	)	JOINT MOTION BY ALL
	)	DEFENDANTS FOR SUMMARY
vs.	)	JUDGMENT
	)	
Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,	)	
Carolina Ale House Operating Company, LLC	)	
d/b/a Carolina Ale House, and Art Bar, Inc.,	)	
Defendants.	)	
_____	)	

The Defendants, by and through their undersigned counsel, move this Court for an Order, pursuant to Rule 56, SCRPC, granting summary judgment to the Defendants and dismissing the captioned civil complaint. There are no facts in possession of Plaintiff, after full and adequate investigation, which support the allegations of the complaint against any Defendant.

FACTS

The Complaint alleges that on or about September 13, 2014, Emily Lynne Brown ("Brown") was operating a motor vehicle and "slammed her vehicle forcefully into the rear of Plaintiff's vehicle" causing serious injury to Plaintiff (Paragraph 8). Plaintiff alleges in the complaint against these Defendants that Brown was intoxicated at the time of the accident and that Plaintiff achieved the causative state of intoxication after drinking at the establishments of these Defendants (Paragraph 6). Prior to the filing of this lawsuit, Plaintiff, by and through the same counsel, conducted a lawsuit against Brown individually (Case Number 2016-CP-40-05226, captioned Latoria R. Cooks v. Emily Lynne Brown). Brown was deposed by Plaintiff on June 19, 2017 and, under oath, stated the following:

- When the accident occurred she could not remember from where she was coming (T. p. 14, lines 1-3, Exhibit A);
- She said she was out with friends but could not recall who (T. p. 14, lines 6-24; p. 15, lines 11-24, Exhibit A);
- She remembered she had been in "the Vista" and at a bar, but could not recall which one (T. p. 15, lines 2 - 5, Exhibit A);
- She did not remember how much she had to drink that night prior to the accident (T. p. 15, line 25; p. 16, line 2; p. 16, line 22-24, Exhibit A);
- She did not remember "any of the bars [she] went to that night" (T. p. 16, lines 11-21, Exhibit A);
- She did not remember the last consumption of alcohol prior to the accident (T. p. 16, line 25 – p. 17, line 2; Exhibit A);
- She did not remember what time she got to the first bar that night (p. 18, lines 3-5, Exhibit A).
- Eventually, she acknowledges that the Defendant establishments were "the ones we would often go to" and, though she thought it most likely that she would've frequented them that night, she "could not be sure." (T. p.26, lines 6-15).

The sum total of information obtained by this Plaintiff in the deposition of the at-fault driver was that she was responsible but had no specific recall on the "what, when, where, why, or how" of her drinking on the night of and prior to the accident. After substantial discovery efforts by this Plaintiff in both captioned cases, the Plaintiff has no actual evidence of any type, testimonial or documentary, which support the allegations that Plaintiff was actually served or

overserved by any named Defendants prior to the accident, or even if she had actually been at any of the Defendant locations.

Pursuant to those statutes utilized in "Dram Shop" actions, § 61-6-2220 and §61-4-580, S.C. Code, the Plaintiff must prove the required element of the sale of alcohol to an intoxicated person by a defendant to place the parties squarely within the statutory framework. No such proof exists.

There being no genuine issue as to any material fact, the moving parties are entitled to a judgment as a matter of law.

Respectfully submitted,

s/Joseph M. McCulloch

Joseph M. McCulloch

Kathy R. Schillaci

McCulloch & Schillaci, Attorneys at Law

1513 Hampton Street

P.O. Box 11623 (29211)

Columbia, South Carolina 29201

Telephone: 803-779-0005

Facsimile: 803-779-0666

Attorneys for Defendant, Art Bar, Inc.

s/Roopal S. Ruparelia

Roopal S. Ruparelia (SC Bar No. 16003)

Keegan B. Miller (SC Bar No. 102783)

Haynsworth Sinkler Boyd

1201 Main Street, 22nd Floor

P.O. Box 11889 (29211-1889)

Columbia, South Carolina 29201

Telephone: 803 779-3080

Facsimile: 803-765-1243

Attorneys for Defendant Pearlz Vista, Inc. d/b/a

Pearlz Oyster Bar

s/John P. Riordan

John P. Riordan (SC Bar #65284)

Smith Moore Leatherwood

2 West Washington St., Ste. 1100, PO Box 87

Greenville, South Carolina 29602-0087

Telephone: 864-751-7600

Facsimile: 864-751-7800

Attorney for Carolina Ale House Operating
Company, LLC d/b/a Carolina Ale House which
should be substituted by CAHOC2, LLC

Columbia, South Carolina
This 15th day of June, 2018.

Joe McCulloch

From: Joe McCulloch
Sent: Tuesday, September 04, 2018 4:24 PM
To: pburchlc@sccourts.org
Cc: jcarrigg@carrigglaw.com; jack.riordan@smithmoorelaw.com; Ruparelia, Roopal (rruparelia@hsblawfirm.com)
Subject: Cook v. Art Bar, Inc, Pearlz, et. al.
Attachments: 3968_001.pdf

For the purpose of our 9:30 argument on Motion for Summary Judgment, I thought the attached might be helpful in supplementation for what is contained in the court file. Joe McCulloch

From: Copier
Sent: Tuesday, September 04, 2018 3:44 PM
To: Joe McCulloch
Subject: Attached Image

TIMELINE/COOKS V. PEARLZ, INC., ART BAR, INC., ET AL.

09.13.2014	Accident: Automobile accident between Latoria R. Cooks and Emily L. Brown
08.29.2016	Lawsuit Filed Latoria R. Cooks v. Emily L. Brown (driver causing injury) Case No.: 2016-CP-40-05226
06.19.2017	Deposition of Emily L. Brown and full opportunity for discovery
09.13.2017	Lawsuit Filed Latoria R. Cooks v. Pearlz, Inc. d/b/a Pearlz Oyster Bar, et al. Case No.: 2017-CP-40-05538
10.06.2017	Dismissed: Latoria R. Cooks v. Emily L. Brown after settlement (Case No.: 2016-CP-40-05226)
04.06.2018	Filed: Motion to Determine the Sufficiency of Plaintiff's Responses to Request to Admit
04.12.2018	Art Bar's Requests for Admissions to Plaintiff
05.09.2018	Plaintiff's Responses to Art Bar's Requests to Admit
05.22.2018	Motion Hearing: Motion to Determine the Sufficiency of Plaintiff's Responses concluded with agreement Plaintiff would file new Responses to Admit
06.15.2018	Filed: Motion for Summary Judgment (joined by all defendants)
07.23.2018	Plaintiff's Amended Responses to Art Bar's Requests to Admit
07.23.2018	Notice of Deposition of Emily Brown (Sent by Plaintiff's Counsel)
07.23.2018	Filed: Protective Order
08.22.2018	Subpoena for Credit Card Records of Defendants
09.05.2018	Motion Hearing: Motion for Summary Judgment
09.14.2018	Roster Meeting
09.17.2018	Jury Trial term

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LATORIA R. COOKS,

Plaintiff,

vs.

PEARLZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE
OPERATING COMPANY, LLC, d/b/a
CAROLINA ALE HOUSE, AND ART
BAR, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-40-05538

AMENDED
RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

JUL 25, 2018

TO: JOSEPH M. MCCULLOCH, ATTORNEY FOR DEFENDANT ART BAR,
INC.

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff
responds to the Defendant's Requests to admit as follows:

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.

RESPONSE TO REQUEST NUMBER 2: SEE RESPONSE NUMBER 1.

RESPONSE TO REQUEST NUMBER 3: SEE RESPONSE NUMBER 1. In
addition, Defendant would be in possession of that evidence which should be produced
during discovery.

RESPONSE TO REQUEST NUMBER 4: SEE RESPONSE NUMBER 3 ABOVE.

RESPONSE TO REQUEST NUMBER 5: Plaintiff admits she is not in possession
of the evidence at this time; the Defendant would be in possession of such evidence
which should be produced during discovery.

Deposition of Emily Brown Je 19, 2017

- When the accident occurred she could not remember from where she was coming (T. p. 14, lines 1-3, Exhibit A);
- She said she was out with friends but could not recall who (T. p. 14, lines 6-24; p. 15, lines 11-24, Exhibit A);
- She remembered she had been in "the Vista" and at a bar, but could not recall which one (T. p. 15, lines 2 - 5, Exhibit A);
- She did not remember how much she had to drink that night prior to the accident (T. p. 15, line 25; p. 16, line 2; p. 16, line 22-24, Exhibit A);
- She did not remember "any of the bars [she] went to that night" (T. p. 16, lines 11-21, Exhibit A);
- She did not remember the last consumption of alcohol prior to the accident (T. p. 16, line 25 – p. 17, line 2; Exhibit A);
- She did not remember what time she got to the first bar that night (p. 18, lines 3-5, Exhibit A).
- Eventually, she acknowledges that the Defendant establishments were "the ones we would often go to" and, though she thought it most likely that she would've frequented them that night, she "could not be sure." (T. p.26, lines 6-15).

The sum total of information obtained by this Plaintiff in the deposition of the at-fault driver was that she was responsible but had no specific recall on the "what, when, where, why, or how" of her drinking on the night of and prior to the accident. After substantial discovery efforts by this Plaintiff in both captioned cases, the Plaintiff has no actual evidence of any type, testimonial or documentary, which support the allegations that Plaintiff was actually served or

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

HAND DELIVERED
Emily Lynne Brown
213 Potano Court
Lexington, S.C. 29072

RE: LATORIA R. COOKS VS. PEARLZ VISTA, INC, ET AL
CASE NO: 2017-CP-40-05538

Dear Ms. Brown:

Enclosed please find Notice of Deposition, scheduling your deposition for September 5, 2018 at 10:00 a.m. here at our office located at 120 North Lake Drive, Lexington, S.C. 29072. Please also find the attached Subpoena.

Please note that attorney Joseph McCulloch, attorney for Art Bar, Inc. has filed a Motion objecting to the deposition. Therefore, please call to confirm prior to the September 5th date that the deposition is still scheduled.

With kind regards,


Angie D. Rabon, Legal Assistant to
John Carrigg

JWC/adr
Enclosures as stated above
CC: Gene Belk, Attorney

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

LATORIA R. COOKS,)
Plaintiff,)

Civil Action Number: 17-CP-40-05538

v.)

NOTICE OF DEPOSITION
OF

PEARLZ VISTA, INC., d/b/)
PEARLZ OYSTER BAR,)
CAROLINA ALE HOUSE)
OPERATING COMPANY, LLC,)
d/b/a CAROLINA ALE)
HOUSE, AND ART BAR, INC.)
Defendants.)

EMILY LYNNE BROWN

TO: EMILY LYNNE BROWN, 213 Potano Court, Lexington, S.C. 29072

PLEASE TAKE NOTICE that Plaintiffs, through the undersigned attorney, will take the deposition of Emily Lynne Brown on September 5, 2018 commencing at 10:00 a.m. in the Offices of the John Carrigg, Carrigg Law Firm, 120 North Lake Drive, Lexington, S.C. 29072, before a qualified Notary Public for South Carolina; said deposition to be taken pursuant to Rule 30 of the South Carolina Rules of Civil Procedure.

Pursuant to SCRCP 34, Deponent is required to bring with her any and all documents in her possession that relate to the incident complained of in the Complaint, as well as any and all documents reviewed in preparation for her deposition.

THE CARRIGG LAW FIRM


John Carrigg
120 North Lake Drive
Lexington, South Carolina 29072
(803) 785-5511 phone

030

7/23, 2018

(803) 785-5513 fax
e-mail: jcarrigg@carrigglaw.com
ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS IN THE COUNTY OF RICHLAND

LATORIA COOKS,

SUBPOENA IN A CIVIL CASE

Plaintiff

vs.

Case Number: 2017-CP-40-05538

PEARLZ VISTA INC. d/b/a
PEARLZ OYSTER BAR, CAROLINA
ALE HOUSE OPERATING COMPANY,
LLC, d/b/a CAROLINA ALE HOUSE AND
ART BAR, INC.

Pending in RICHLAND County

Defendant

TO: EMILY LYNNE BROWN, 213 POTANO COURT, LEXINGTON, S.C. 29072

YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION CARRIGG LAW FIRM, 120 NORTH LAKE DRIVE, LEXINGTON,
S.C. 29072

DATE AND TIME September 5, 2018 10:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): SEE ATTACHMENT

PLACE:

John Carrigg, Carrigg Law Firm, 120 North Lake Drive,
Lexington, S.C. 29072

DATE AND TIME:

By: September 5, 2018 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30 (b) (6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

JOHN CARRIGG, ATTORNEY for PLAINTIFF

032

120 North Lake Drive, Lexington, S.C. 29072 (803) 785-5511

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

7/23/18

033

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$ _____
	PLACE	
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take responsible steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of this subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed at a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize them and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT TO SUBPOENA
DEPOSITION OF EMILY BROWN

LATORIA COOKS VS. PEARLZ VISTA INC, d/b/a PEARLZ OYSTER BAR, ET AL
CASE NO: 2017-CP-40-05538

ITEMS COMMANDED TO BRING TO DEPOSITION ON SEPTEMBER 5, 2018

- 1) Copies of all debit card statements/bank statements for all accounts for August, September and October 2014
 - 2) Copies of all credit card statements for all credit card from August, September and October 2014
 - 3) Copies of any check registers that cover the period August, September and October 2014.
- The above includes written documents OR documents which you have access to either on line or through the financial institution.

STATE OF SOUTH CAROLINA

COUNTY OF Richland

LATORIA R. COOKS

PLAINTIFF

PERALZ VISTA, Inc. et al

DEFENDANTS

AFFIDAVIT OF SERVICE

DOCKET # 2017-CP-40-5538

IN THE COURT OF Common Pleas

PERSONALLY APPEARED before me BETTY B. KNOTTS who, upon first being duly sworn, says that she served the Letter - Notice of Deposition

Sept 5, 2018 and Subpoena for documents in this action

upon Emily Lynne Brown, by delivering a copy of the said documents to

Myra Brown, (in person/a mother person of discretion) who accepted service, at

213 POTANO COURT, Lexington, SC on the

30 day of July, 2018, that she knows the person so served to be the person

mentioned and described in the above pleadings; and that the deponent is not a party to this action.

Betty B. Knotts
BETTY B. KNOTTS

SWORN to before me this 1st

Day of August, 2018

Angela Dade Rahn [SEAL]

Notary Public for South Carolina

My commission expires 10-5-22

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

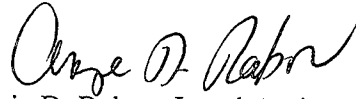
Roopal S. Ruparelia
Keegan B. Miller
Haynsworth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1889

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Case No: 2017-CP-40-05538

Dear Counselors:

Enclosed please find and hereby served upon you the Plaintiff's Supplemental Interrogatories to Defendants and Notice of Taking Deposition of Emily Lynne Brown on September 5, 2018.

With kind regards,



Angie D. Rabon, Legal Assistant to
John Carrigg

JWC/adr
Enclosures as stated above

037

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

vs.

PEARTZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE
OPERATING COMPANY, LLC, d/b/a
CAROLINA ALE HOUSE AND ART
BAR, INC.

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case Number: 17-CP-40-05538

**PLAINTIFF'S SUPPLEMENTAL
INTERROGATORIES
TO DEFENDANT**

TO: ROOPAL S. RUPARELIA, ESQUIRE, ATTORNEY FOR PEARLZ VISTA, INC. d/b/a
PEARLZ OYSTER BAR:

YOU ARE HEREBY SERVED the following written Interrogatories to be answered separately and in writing within thirty (30) days from date of service (but no earlier than forty-five (45) days from the date of the service of the Complaint), pursuant to and in accordance with the provisions of Rule 33 of the South Carolina Rules of Civil Procedure. These Interrogatories are deemed to be continuing, and if complete responses to any of them are not presently available, Supplemental Responses are required at the time the information is available before trial.

1. Give the names, addresses and phone numbers of every credit card processor used by the Defendant during the months of August, September and October 2014.

By:



JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511

038

Facsimile: (803) 785-5513
jcarrigg@carriggglaw.com
ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina
Dated: 7/23/18

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

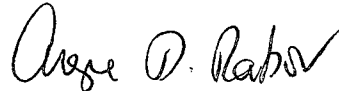
John P. Riordan
Smith Moore Leatherwood
2 West Washington Street, Ste. 1100
Greenville, S.C. 29601

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Carolina Ale House
Case No: 2017-CP-40-05538

Dear Mr. Riordan:

Enclosed please find and hereby served upon you the Plaintiff's Supplemental Interrogatories to Defendants and Notice of Taking Deposition of Emily Lynne Brown on September 5, 2018.

With kind regards,



Angie D. Rabon, Legal Assistant to
John Carrigg

JWC/adr
Enclosures as stated above

040

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

vs.

PEARTZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE
OPERATING COMPANY, LLC, d/b/a
CAROLINA ALE HOUSE AND ART
BAR, INC.

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case Number: 17-CP-40-05538

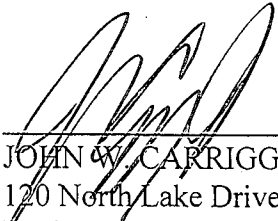
**PLAINTIFF'S SUPPLEMENTAL
INTERROGATORIES
TO DEFENDANT**

TO: JOHN P. RIORDAN, ESQUIRE, ATTORNEY FOR DEFENDANT CAROLINA ALE HOUSE:

YOU ARE HEREBY SERVED the following written Interrogatories to be answered separately and in writing within thirty (30) days from date of service (but no earlier than forty-five (45) days from the date of the service of the Complaint), pursuant to and in accordance with the provisions of Rule 33 of the South Carolina Rules of Civil Procedure. These Interrogatories are deemed to be continuing, and if complete responses to any of them are not presently available, Supplemental Responses are required at the time the information is available before trial.

1. Give the names, addresses and phone numbers of every credit card processor used by the Defendant during the months of August, September and October 2014.

By:


JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511

041

Facsimile: (803) 785-5513
jcarrigg@carrigglaw.com
ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina
Dated: 7/23/18

John Carrigg

ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

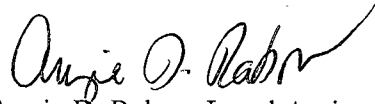
Joseph M. McCulloch
McCulloch & Schillaci
Attorneys at Law
P.O. Box 11623
Columbia, S.C. 29211

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Art Bar, Inc.
Case No: 2017-CP-40-05538

Dear Mr. McCulloch:

Enclosed please find and hereby served upon you the Plaintiff's Supplemental Interrogatories to Defendants and Notice of Taking Deposition of Emily Lynne Brown on September 5, 2018.

With kind regards,



Angie D. Rabon, Legal Assistant to
John Carrigg

JWC/adr
Enclosures as stated above

043

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Latoria R. Cooks,	)	Case Number: 17-CP-40-05538
	)	
Plaintiff,	)	
	)	
	)	PLAINTIFF'S SUPPLEMENTAL
vs.	)	INTERROGATORIES
	)	TO DEFENDANT
	)	
PEARTZ VISTA, INC., d/b/a PEARLZ	)	
OYSTER BAR, CAROLINA ALE HOUSE	)	
OPERATING COMPANY, LLC, d/b/a	)	
CAROLINA ALE HOUSE AND ART	)	
BAR, INC.	)	
	)	
Defendants.	)	

TO: JOSEPH M, MCCULLOCH, ESQUIRE, ATTORNEY FOR DEFENDANT ART BAR, INC.:

YOU ARE HEREBY SERVED the following written Interrogatories to be answered separately and in writing within thirty (30) days from date of service (but no earlier than forty-five (45) days from the date of the service of the Complaint), pursuant to and in accordance with the provisions of Rule 33 of the South Carolina Rules of Civil Procedure. These Interrogatories are deemed to be continuing, and if complete responses to any of them are not presently available, Supplemental Responses are required at the time the information is available before trial.

1. Give the names, addresses and phone numbers of every credit card processor used by the Defendant during the months of August, September and October 2014.

By:


 JOHN W. CARRIGG, JR.
 120 North Lake Drive
 Lexington, South Carolina 29072
 Phone: (803) 785-5511

044

Facsimile: (803) 785-5513
jcarrigg@carrigglaw.com
ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina
Dated: 7/23/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Latoria R. Cooks,	)	
	)	MOTION FOR
Plaintiff,	)	PROTECTIVE ORDER
	)	
v.	)	
	)	
Pearlz Vista, Inc., d/b/a Pearlz Oyster	)	Civil Action No.: 17-CP-40-05538
Bar, Carolina Ale House Operating	)	
Company, LLC, d/b/a Carolina Ale	)	
House, and Art Bar, Inc.,	)	
	)	
Defendant.	)	

The Defendant, Art Bar, Inc., and Defendant Carolina Ale House Operating Company, LLC by and through their undersigned counsel, moves this Court for a protective order pursuant to Rule 26(c) SCRCP for an Order barring Plaintiff from re-deposing deponent Emily Brown, as Plaintiff's counsel has given notice by e-mail of her intent to schedule such a deposition.

FACTS

This Dram Shop litigation arises from an automobile accident between Plaintiff, Latoria Cooks and third-party Emily Brown. Plaintiff sued Emily Brown in action Latoria R. Cooks v. Emily Lynnie Brown, Case No.: 2016-CP-40-05226, alleging Ms. Brown was intoxicated at the time of the accident. During the conduct of that lawsuit, Plaintiff took the deposition of Emily Brown in that action and questioned her extensively about her whereabouts preceding the accident, specifically inquiring about bars and restaurants she may have visited. Ms. Brown testified that she had no recollection of her activities preceding the auto accident, specifically no knowledge of any restaurants or bars where she may have consumed or purchased alcohol.

Plaintiff subsequently settled with the auto insurance carrier of Ms. Brown, and then brought the present Dram Shop Act case against Defendants.

During discovery in this case, Plaintiff produced Ms. Brown's deposition. All Defendants submitted Requests to Admit requesting Plaintiff admit to having no evidence, witnesses, or otherwise that Emily Brown was served alcohol at any of the three (3) Defendant's businesses, much less that they "over served" her. Plaintiff submitted a denial which then led to a motion hearing at which Plaintiff's counsel agreed to re-submit responses consistent with both Brown's deposition and the total absence of evidence as relates to Defendants. That did not occur, and instead, Plaintiff now seeks to re-depose Brown presumably hoping without basis that Ms. Brown will change her testimony. Defendants have joined in a Motion for Summary Judgment (attached).

Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, Defendant requests the Court require Plaintiff's counsel to submit to the Court his justification for the re-deposition of Ms. Brown, and to bar Plaintiff from re-taking a deposition that will only serve to waste Defendants' money and impose an undue financial burden. Defendant also seeks attorney fees and costs in pursuing this action.

Pursuant to Rule 11, counsel certifies that further consultation with opposing counsel would serve no useful purpose.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street.
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666

joe@mccullochlaw.com
kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT ART BAR, INC.

By: /s/ John P. Riordan (SC Bar #65284)
Signed by JMM with permission
Smith Moore Leatherwood, Attorneys at Law
2 W. Washington Street, Suite 1100
Greenville, South Carolina 29601
Telephone: 864.751.7600
Facsimile: 864.751.7800
jack.riordan@smithmoorelaw.com

ATTORNEY FOR DEFENDANT CAHOCS,
LLC d/b/a CAROLINA ALE HOUSE

Columbia, South Carolina
this 23rd day of July, 2018.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Latoria R. Cooks,)

Plaintiff,)

v.)

Pearlz Vista, Inc., d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and Art
Bar, Inc.,)

Defendants.)

IN THE COURT OF COMMON
FIFTH JUDICIAL CIRCUIT

RULE 11 CERTIFICATION

Civil Action No.: 17-CP-40-05538

Pursuant to Rule 11, South Carolina Rules of Civil Procedure, counsel certifies that consultation with opposing counsel concerning Plaintiff's re-deposing of Deponent Emily Brown would serve no useful purpose.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
Telephone: 803.779.0005
Facsimile: 803.779.0666
joe@mccullochlaw.com
kathy@mccullochlaw.com

By: /s/ John P. Riordan (SC Bar #65284)
Signed by JMM with permission
Smith Moore Leatherwood, Attorneys at Law
2 W. Washington Street, Suite 1100
Greenville, South Carolina 29601
Telephone: 864.751.7600
Facsimile: 864.751.7800
jack.riordan@smithmoorelaw.com

Columbia, South Carolina
this 23rd day of July, 2018.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and Art
Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05538

**PEARLZ VISTA INC. d/b/a PEARLZ
OYSTER BAR'S REQUEST TO ADMIT
TO PLAINTIFF**

TO: PLAINTIFF AND HER ATTORNEY JOHN W. CARRIGG, JR., ESQUIRE

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, you are hereby served with these written Requests for Admission for the purpose of the pending Action only. Such Requests for Admission, pursuant to the Rule, shall be deemed admitted unless within thirty (30) days from the date hereof, the undersigned at their address shall receive a written answer or objection.

If objection is made, the reasons therefore shall be stated. The answers to these Requests shall specifically deny the matters, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matters. Any such denial shall fairly meet the substance of the requested admission, and good faith requests that you qualify an answer or deny only part of the matter which is requested to be admitted, you shall specify so much of the Request as being true, and qualify or deny the remainder.

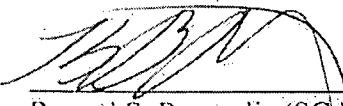
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Please take notice that you may not give lack of information or knowledge as a reason for failure to admit or deny, unless you shall state that you have made a reasonable inquiry into the information known or readily obtainable by you and it is insufficient to enable you to admit or deny.

REQUESTS FOR ADMISSION

1. Admit that you have no evidence Emily Brown consumed or was served alcohol at Pearlz Vista Inc. d/b/a Pearlz Oyster Bar on or about September 13, 2014.
2. Admit that you have no evidence Emily Brown was served alcohol at Pearlz Vista Inc. d/b/a Pearlz Oyster Bar on or about September 13, 2014, in contravention of the statutory or common laws of South Carolina.
3. Admit Pearlz Vista Inc. d/b/a Pearlz Oyster Bar is not liable to Plaintiff for any of the damages alleged in the Complaint.

HAYNSWORTH SINKLER BOYD, P.A.



Roopal S. Ruparelia (SC Bar No. 16003)
Keegan B. Miller (SC Bar No. 102783)
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
rruparelia@hsblawfirm.com
kmiller@hsblawfirm.com

January 23, 2018
Columbia, South Carolina

*Attorneys for Defendant Pearlz Vista Inc. d/b/a
Pearlz Oyster Bar*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster
Bar, Carolina Ale House Operating
Company, LLC, d/b/a Carolina Ale
House, and Art Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

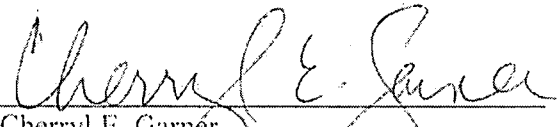
Civil Action No. 2017-CP-40-05538

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 23rd day of January, 2018, caused the foregoing Pearlz Vista Inc. d/b/a Pearlz Oyster Bar's Second Set of Interrogatories to Plaintiff and Pearlz Vista Inc. d/b/a Pearlz Oyster Bar's Request to Admit to Plaintiff to be served via U.S. mail, postage prepaid, *and/or by some other means as referenced below*, on counsel of record at the address(es) shown below:

VIA FIRST CLASS MAIL AND EMAIL

John W. Carrigg, Jr., Esquire
120 North Lake Dr.
Lexington, South Carolina 29072
jcarrigg@carrigglaw.com
Attorneys for Plaintiff


Cheryl E. Garner
Haynsworth Sinkler Boyd, P.A.

April 9, 2018

John W. Carrigg, Jr.
120 North Lake Drive
Lexington, SC 29072

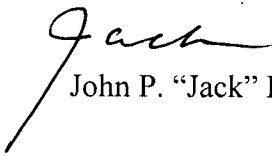
RE: Latoria Cooks v. Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar, Carolina Ale House
Operating Company, LLC d/b/a Carolina Ale House and Art Bar, Inc.
C.A. No.: 2017-CP-40-05538

Dear John:

Enclosed please find Requests to Admit to Plaintiff along with a Certificate of Service of same. Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

Smith Moore Leatherwood LLP


John P. "Jack" Riordan

JPR/lbr
Enclosure

cc: Roopal S. Ruparelia
Joseph M. McCulloch

053

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Latoria Cooks,

Plaintiff,

vs.

Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House, and Art Bar, Inc.,
Defendants.

C.A. No.: 2017-CP-40-05538

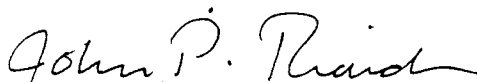
**CAROLINA ALE HOUSE
OPERATING COMPANY, LLC d/b/a
CAROLINA ALE HOUSE REQUESTS
TO ADMIT TO PLAINTIFF**

TO: THE PLAINTIFF ABOVE NAMED:

The Defendant CAHOC2, LLC (improperly designated as Carolina Ale House Operating Company, LLC d/b/a Carolina Ale House and herein below designated "Carolina Ale House") hereby submits to Plaintiff the following Requests for Admission, pursuant to Rule 36, SCRC:

1. Admit that you have no evidence Emily Brown was served alcohol at Carolina Ale House on or about September 12-13, 2014.
2. Admit that you have no evidence Emily Brown consumed alcohol at Carolina Ale House on or about September 12-13, 2014.
3. Admit that you have no evidence Emily Brown was served alcohol at Carolina Ale House on or about September 12-13, 2014, in contravention of the statutory or common laws of South Carolina.
4. Admit Carolina Ale House is not liable to Plaintiff for any of the damages alleged in the Complaint.

Respectfully submitted,



John P. "Jack" Riordan (SC Bar #65284)

Megan M. Early-Soppa (SC Bar #12419)

Smith Moore Leatherwood, LLP

2 West Washington St., Ste. 1100, PO Box 87

Greenville, SC 29602-0087

(864) 751-7600/(864) 751-7800 (Fax)

Jack.riordan@smithmoorelaw.com

Megan.early@smithmoorelaw.com

Attorney for Carolina Ale House Operating Company, LLC

d/b/a Carolina Ale House which should be substituted by

CAHOC2, LLC

April 9, 2018
GREENVILLE 1522352.1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Latoria Cooks,

Plaintiff,

vs.

Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House, and Art Bar, Inc.,
Defendants.

C.A. No.: 2017-CP-40-05538

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Requests to Admit to Plaintiff** were served upon counsel of record this 9th day of April, 2018, by placing the same in the United States Postal Service with proper, first-class postage affixed and addressed as follows:

John W. Carrigg, Jr.
120 North Lake Drive
Lexington, SC 29072

Roopal S. Ruparelia
Keegan B. Miller
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201

Joseph M. McCulloch
McCulloch & Schillaci
1513 Hampton St.
P.O. Box 11623 (29211)
Columbia, SC 29201

Laura Russell

Legal Assistant to:

John P. Riordan (SC Bar #65284)

Smith Moore Leatherwood

2 West Washington St., Ste. 1100, PO Box 87

Greenville, SC 29602-0087

(864) 751-7600/(864) 751-7800 (Fax)

Jack.riordan@smithmoorelaw.com

Attorney for Carolina Ale House Operating Company, LLC

d/b/a Carolina Ale House which should be substituted by

CAHOC2, LLC

056

McCulloch & Schillaci
ATTORNEYS AT LAW

1513 HAMPTON STREET
P.O. Box 11623 (29211)
COLUMBIA, SC 29201
(803) 779-0005 • FAX (803) 779-0666

JOSEPH M. McCULLOCH, JR.
joe@mccullochlaw.com

KATHY SCHILLACI
kathy@mccullochlaw.com

April 12, 2018

Delivered Via U.S. Mail & Email

John W. Carrigg, Esq.
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
jcarrigg@carrigglaw.com

RE: Cooks v. Pearlz Vista, Inc., et. al.
Civil Action No.: 2017-CP-40-05538

Dear Mr. Carrigg:

Enclosed please find Defendant Art Bar Inc.'s First Set of Requests for Admission. Please do not hesitate to contact the office should you have any questions.

Sincerely,



Joseph M. McCulloch

JMM/erg
Enclosure(s)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

Latoria R. Cooks,)

Civil Action No.: 17-CP-40-05538

Plaintiff,)

v.)

**ART BAR INC.'S FIRST SET OF
REQUESTS FOR ADMISSION**

Pearlz Vista, Inc., d/b/a Pearlz)

Oyster Bar, Carolina Ale House)

Operating Company, LLC, d/b/a)

Carolina Ale House and Art Bar,)

Inc.,)

Defendants.)

**TO: JOHN W. CARRIGG, ATTORNEY FOR THE PLAINTIFF, AND
PLAINTIFF LATORIA R. COOKS.**

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Defendant Art Bar, Inc. (hereafter "Art Bar") hereby serves the following requests for admission on Plaintiff, Latoria R. Cooks. Plaintiff is hereby required by Rule 36 to serve answers to these Requests for Admission in writing and under oath within thirty (30) days from the date of service or such requests will be deemed admitted.

DEFINITIONS

Unless the context indicates otherwise, the following words are defined and used herein as follows:

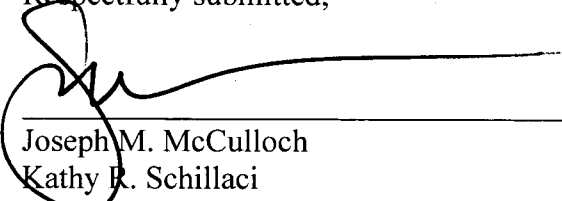
A. "You" and "your" mean the Plaintiff, Latoria R. Cooks and other persons, agents, or entities acting, or purporting to act, on behalf of Plaintiff.

REQUESTS FOR ADMISSION

1. Admin you have no witnesses or testamentary evidence physically placing Emily Brown at the Art Bar at any time on September 12, 2014 or September 13, 2014.

2. Admit you have no witnesses or evidence that Emily Brown consumed alcohol at the Art Bar on September 12, 2014 or September 13, 2014.
3. Admit you have no witnesses or evidence that the Art Bar served Emily Brown alcohol on September 12, 2014 or September 13, 2014 in violation of statutory or common laws of South Carolina.
4. Admit you have no witnesses to prove Emily Brown was served alcohol by the Art Bar on September 12, 2014 or September 13, 2014 after the Art Bar knew or should have known Emily Brown was intoxicated.
5. Admit you have no photographic evidence that the Art Bar served or sold alcohol to Emily Brown on September 12, 2014 or September 13, 2014.
6. Admit you have no documentary evidence, including but not limited to receipts, to show that the Art Bar served or sold alcohol to Emily Brown on September 12, 2014 or September 13, 2014.
7. Admit you have no testamentary evidence to show that the Art Bar served or sold alcohol to Emily Brown on September 12, 2014 or September 13, 2014.

Respectfully submitted,



Joseph M. McCulloch
Kathy R. Schillaci
McCulloch & Schillaci, Attorneys at Law
1513 Hampton Street
P.O. Box 11623 (29211)
Columbia, South Carolina 29201
T: 803.779.0005
F: 803.779.0666

ATTORNEYS FOR THE DEFENDANT

Columbia, South Carolina
this ____ day of February, 2018.

CERTIFICATE OF SERVICE

I, Elizabeth Gunter, an employee of McCulloch & Schillaci, Attorneys at Law, on behalf of the Defendant, Art Bar, Inc., do hereby certify that I have served all parties who have entered an appearance in this action with **Defendant Art Bar's First Set of Requests for Admission** via email and/or first-class United States Mail, with sufficient postage, addressed to:

Parties Served:

John W. Carrigg, Esq.
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
jcarrigg@carrigglaw.com

Clark Ellefson, Registered Agent
1221 Lincoln Street
Columbia, South Carolina 29201

John P. Riordan, Esq.
Smith Moore Leatherwood
2 West Washington Street
Suite 100
Greenville, South Carolina 29601
jack.riordan@smithmoorelaw.com

Keegan B. Miller, Esq.
Haynesworth Sinkler Boyd
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201
kmiller@hsblawfirm.com

This 12th day of April, 2018. Copies have been served on all parties who have appeared in to this action in accordance with Rule 5, SCRPC.



McCulloch & Schillaci Attorneys at Law

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

May 8, 2018

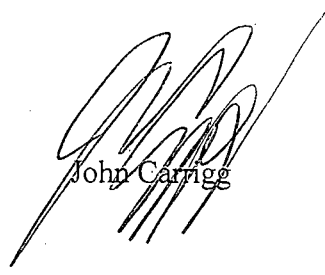
John P. Riordan
Smith Moore Leatherwood
2 West Washington Street, Ste. 1100
Greenville, S.C. 29601

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Carolina Ale House
Case No: 2017-CP-40-05538

Dear Mr. Riordan:

Enclosed please find and hereby served upon you the Plaintiff's Responses to Requests to Admit to Plaintiff.

With kind regards,



John Carrigg

JWC/adr
Enclosures as stated above

062

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

)

)

)

)

RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

)

)

TO: JOHN P. "JACK" RIORDAN, ATTORNEY FOR CAROLINA ALE HOUSE:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff responds to the Defendant's Requests to admit as follows:

RESPONSE TO REQUEST NUMBER 1: DENIED

RESPONSE TO REQUEST NUMBER 2: DENIED

RESPONSE TO REQUEST NUMBER 3: DENIED..

RESPONSE TO REQUEST NUMBER 4: DENIED.

John Carrigg
120 North Lake Drive
Lexington, S.C. 29072
(803) 785-5511 (telephone)
(803) 785-5513 (fax)
jcarrigg@carrigglaw.com
Attorney for Plaintiff

063

Lexington, South Carolina

May 8, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LATORIA R. COOKS,)
Plaintiff,)

Civil Action No.: 17-CP-40-05538

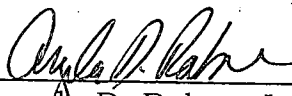
v.)

PERALZ VISTA, INC, d/b/a PEARLZ)
OYSTER BAR, CAROLINA ALE)
HOUSE OPERATING COMPAY,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR ,INC.,)
Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUESTS TO ADMIT** was served on the Defendant via first class U.S. mail postage prepaid and return address clearly marked on the 9th day of May, 2018 at the below address:

John P. Riordan
Smith Moore Leatherwood
West Washington Street, Ste. 1100
Greenville, S.C. 29601
Attorneys for Defendant Carolina Ale House Operating Company


Angela D. Rabon, Legal Assistant
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511
Fax: (803) 785-5513

Lexington, South Carolina

065

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

May 9, 2018

Joseph M. McCulloch
McCulloch & Schillaci
Attorneys at Law
P.O. Box 11623
Columbia, S.C. 29211

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Art Bar, Inc.
Case No: 2017-CP-40-05538

Dear Mr. McCulloch:

Enclosed please find and hereby served upon you the Plaintiff's Responses to Requests to Admit to Plaintiff.

With kind regards,



John Carrigg

JWC/adr
Enclosures as stated above

066

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

)

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RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

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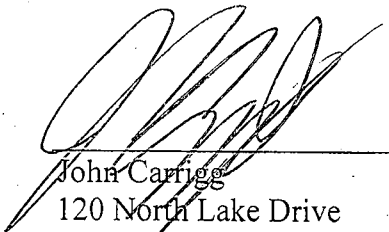
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John Carrigg
120 North Lake Drive
Lexington, S.C. 29072
(803) 785-5511 (telephone)
(803) 785-5513 (fax)
jcarrigg@carrigglaw.com
Attorney for Plaintiff

Lexington, South Carolina
5/8, 2018.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LATORIA R. COOKS,
Plaintiff,

Civil Action No.: 17-CP-40-05538

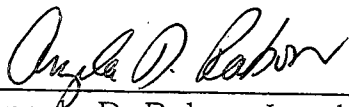
v.

PERALZ VISTA, INC, d/b/a PEARLZ)
OYSTER BAR, CAROLINA ALE)
HOUSE OPERATING COMPAY,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR ,INC.,)
Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUESTS TO ADMIT** was served on the Defendant via first class U.S. mail postage prepaid and return address clearly marked on the 9th day of May, 2018 at the below address:

Joseph M. McCulloch
McCulloch & Schillaci
P.O. Box 11623
Columbia, S.C. 29211
Attorneys for Defendant Art Bar, Inc.


Angela D. Rabon, Legal Assistant
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511
Fax: (803) 785-5513

Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LATORIA R. COOKS,

Plaintiff,

vs.

PEARLZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE,
OPERATING COMPANY, LLC, d/b/a
CAROLINA ALE HOUSE, AND ART
BAR, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-40-05538

RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

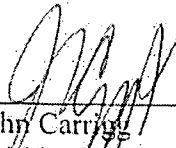
**TO: ROOPAL S. RUPARELIA AND KEEGAN B. MILLER, ATTORNEYS FOR
DEFENDANT PEALZ VISITA, INC d/b/a PEARLZ OYSTER BAR:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff
responds to the Defendant's Requests to admit as follows:

RESPONSE TO REQUEST NUMBER 1: DENIED

RESPONSE TO REQUEST NUMBER 2: DENIED

RESPONSE TO REQUEST NUMBER 3: DENIED..



John Carrigg
120 North Lake Drive
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(803) 785-5511 (telephone)
(803) 785-5513 (fax)
jcarrigg@carrigglaw.com
Attorney for Plaintiff

070

Lexington, South Carolina

1-26, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LATORIA R. COOKS,)
Plaintiff,)

Civil Action No.: 17-CP-40-05538

v.)

PERALZ VISTA, INC, d/b/a PEARLZ)
OYSTER BAR, CAROLINA ALE)
HOUSE OPERATING COMPAY,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR ,INC.,)

Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUESTS TO ADMIT** was served on the Defendant via first class U.S. mail postage prepaid and return address clearly marked on the 27th day of January, 2018 at the below address:

Roopal S. Ruparelia
Keegan B. Miller
Haynsorth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1899
Attorneys for Defendant Pearlz Vista, Inc., d/b/a Pearlz Oyster Bar

Angela D. Rabon
Angela D. Rabon, Legal Assistant
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511
Fax: (803) 785-5513

Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and Art
Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05538

**PEARLZ VISTA INC. D/B/A PEARLZ OYSTER
BAR MOTION TO DETERMINE
THE SUFFICIENCY OF PLAINTIFF'S
RESPONSES TO REQUEST TO ADMIT**

Pursuant to Rule 36(a), SCRPC, Defendant Pearlz Vista Inc. D/B/A Pearlz Oyster Bar ("Pearlz") moves for a determination of the sufficiency of Plaintiff's responses to its Requests to Admit. A copy of the requests and Plaintiff's responses are attached hereto as Exhibits 1 and 2. Additionally, the deposition transcript of Emily Brown is attached as Exhibit 3.

As shown in Ms. Brown's deposition, she repeatedly stated that she was unsure as to which bars or restaurants she visited on the night in question. Despite this, Plaintiff has admitted that she has a valid basis for asserting claims against Pearlz based solely on Brown's deposition testimony.

As set forth above, pursuant to Rule 11, SCRPC, the undersigned counsel affirms that, prior to filing this motion, his office communicated via email with counsel for Plaintiff and attempted in good faith to resolve the matter contained in this motion.

HAYNSWORTH SINKLER BOYD, P.A.

s/Keegan B. Miller

Roopal S. Ruparelia (SC Bar No. 16003)

Keegan B. Miller (SC Bar No. 102783)

1201 Main Street, 22nd Floor

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 - telephone

(803) 765.1243 - fax

rruparelia@hsblawfirm.com

kmiller@hsblawfirm.com

April 6, 2018

Columbia, South Carolina

*Attorneys for Defendant Pearlz Vista Inc. d/b/a
Pearlz Oyster Bar*

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

120 North Lake Drive
Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

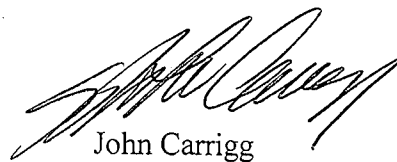
John P. Riordan
Smith Moore Leatherwood
2 West Washington Street, Ste. 1100
Greenville, S.C. 29601

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Carolina Ale House
Case No: 2017-CP-40-05538

Dear Mr. Riordan:

Enclosed please find and hereby served upon you the Plaintiff's Amended Responses to Requests to Admit to Plaintiff.

With kind regards,



John Carrigg

JWC/adr

Enclosures as stated above

CC: Joseph McCulloch, Attorney for Art Bar, Inc.

CC: Roopal S. Raparelia, Attorney for Pearlz Vista, Inc.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

LATORIA R. COOKS,

CASE NO: 2017-CP-40-05538

Plaintiff,

VS.

AMENDED
RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

PEARLZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE)
OPERATING COMPANY, LLC, d/b/a)
CAROLINA ALE HOUSE, AND ART)
BAR, INC.,)

Defendants.

TO: JOHN P. "JACK" RIORDAN, ATTORNEY FOR CAROLINA ALE HOUSE:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff responds to the Defendant's Requests to admit as follows:

RESPONSE TO REQUEST NUMBER 1: Plaintiff admits that she is not in possession of said evidence at this time; however, she is in the process of obtaining evidence to prove the same through discovery.

RESPONSE TO REQUEST NUMBER 2: SEE RESPONSE NUMBER 1 ABOVE.

RESPONSE TO REQUEST NUMBER 3: SEE REPOSENSE NUMBER 1 ABOVE..

RESPONSE TO REQUEST NUMBER 4: DENIED.

John Carnegie
120 North Lake Drive
Lexington, S.C. 29072
(803) 785-5511 (telephone)
(803) 785-5513 (fax)

jcarrigg@carrigglaw.com
Attorney for Plaintiff

Lexington, South Carolina
7/24, 2018

078

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT

LATORIA R. COOKS,)
Plaintiff,)

Civil Action No.: 17-CP-40-05538

v.)

PEARLZ VISTA, INC., d/b/a)
PEARLZ OYSTER BAR, CAROLINA)
ALE HOUSE OPERATING CO., LLC,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR, INC.)

Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies that a true copy of the foregoing

AMENDED RESPONSES TO DEFENDANT'S REQUEST TO ADMIT were

served on the Defendants via first class mail, postage pre-paid, on the

24th day of July 2018, at the address below

Joseph M. McCulloch
McCulloch & Schillaci
P.O. Box 11623
Columbia, S.C. 29211
Attorney for
Defendant Art Bar, Inc.

Roopal S. Ruparelia
Keegan B. Miller
Haynsworth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1889
Attorney for
Defendant Pearlz Vista, Inc.

John P. Riordan
Smith, Moore Leatherwood

079

2 West Washington Street, Ste. 1100
Greenville, S.C. 29601
Attorney for
Defendant Carolina Ale House



Angela D. Rabon, Legal Assistant
Carrigg Law Firm
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jcarrigg@carrigglaw.com

Lexington, South Carolina

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ATTORNEY AT LAW

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Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigglaw.com

July 23, 2018

Roopal S. Ruparelia
Keegan B. Miller
Haynsworth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1889

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Case No: 2017-CP-40-05538

Dear Counselors:

Enclosed please find and hereby served upon you the Plaintiff's Amended Responses to Defendant's Requests To Admit. I apologize for the delay in sending these amended responses.

With kind regards,


Angie D. Rabon, Legal Assistant to
John Carrigg

JWC/adr
Enclosures as stated above
CC: Joseph McCulloch, Attorney for Art Bar Inc.
CC: John P. Riordan, Attorney for Carolina Ale House

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

LATORIA R. COOKS,

Plaintiff,

vs.

PEARLZ VISTA, INC., d/b/a PEARLZ
OYSTER BAR, CAROLINA ALE HOUSE)
OPERATING COMPANY, LLC, d/b/a)
CAROLINA ALE HOUSE, AND ART)
BAR, INC.,)

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

CASE NO: 2017-CP-40-05538

AMENDED
RESPONSES TO DEFENDANT'S
REQUEST TO ADMIT TO
PLAINTIFF

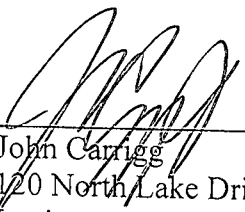
**TO: ROOPAL S. RUPARELIA AND KEEGAN B. MILLER, ATTORNEYS FOR
DEFENDANT PEALZ VISITA, INC d/b/a PEARLZ OYSTER BAR:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff
responds to the Defendant's Requests to admit as follows:

RESPONSE TO REQUEST NUMBER 1: Plaintiff admits that she is not in
possession of the evidence at this time; however, she is in the process of obtaining
evidence to prove the same through discovery.

RESPONSE TO REQUEST NUMBER 2: SEE REPONSE NUMBER 1 ABOVE.

RESPONSE TO REQUEST NUMBER 3: DENIED..



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082

jcarrigg@carrigglaw.com
Attorney for Plaintiff

Lexington, South Carolina
7/24, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT

LATORIA R. COOKS,)
Plaintiff,)

Civil Action No.: 17-CP-40-05538

v.)

PEARLZ VISTA, INC., d/b/a)
PEARLZ OYSTER BAR, CAROLINA)
ALE HOUSE OPERATING CO., LLC,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR, INC.)

Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies that a true copy of the foregoing

AMENDED RESPONSES TO DEFENDANT'S REQUEST TO ADMIT were

served on the Defendants via first class mail, postage pre-paid, on the

24th day of July 2018, at the address below

Joseph M. McCulloch
McCulloch & Schillaci
P.O. Box 11623
Columbia, S.C. 29211
Attorney for
Defendant Art Bar, Inc.

Roopal S. Ruparelia
Keegan B. Miller
Haynsworth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1889
Attorney for
Defendant Pearlz Vista, Inc.

John P. Riordan
Smith, Moore Leatherwood

084

2 West Washington Street, Ste. 1100
Greenville, S.C. 29601
Attorney for
Defendant Carolina Ale House



Angela D. Rabon, Legal Assistant
Carrigg Law Firm
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Lexington, South Carolina 29072
Phone: (803) 785-5511
Fax: (803) 785-5513
jcarrigg@carrigglaw.com

Lexington, South Carolina

John Carrigg
ATTORNEY AT LAW

Phone: (803) 785-5511

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Lexington, South Carolina 29072

Fax (803) 785-5513

jcarrigg@carrigelaw.com

July 23, 2018

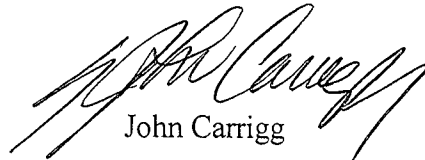
Joseph M. McCulloch
McCulloch & Schillaci
Attorneys at Law
P.O. Box 11623
Columbia, S.C. 29211

RE: Latoria R. Cooks vs. Pearlz Vista, Inc, d/b/a Pearlz Oyster Bar, et al
Your Client: Art Bar, Inc.
Case No: 2017-CP-40-05538

Dear Mr. McCulloch:

Enclosed please find and hereby served upon you the Plaintiff's Amended Responses to Requests to Admit to Plaintiff.

With kind regards,



John Carrigg

JWC/adr

Enclosures as stated above

CC: Roopal S. Ruparelia, Attorney for Pearlz Vista Inc.

CC: John P Riordan, Attorney for Carolina Ale House

086

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	CASE NO: 2017-CP-40-05538
LATORIA R. COOKS,	)	
	)	
Plaintiff,	)	AMENDED
	)	RESPONSES TO DEFENDANT'S
vs.	)	REQUEST TO ADMIT TO
	)	PLAINTIFF
PEARLZ VISTA, INC., d/b/a PEARLZ	)	
OYSTER BAR, CAROLINA ALE HOUSE	)	
OPERATING COMPANY, LLC, d/b/a	)	
CAROLINA ALE HOUSE, AND ART	)	
BAR, INC.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

TO: JOSEPH M. MCCULLOCH, ATTORNEY FOR DEFENDANT ART BAR, INC.

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff responds to the Defendant's Requests to admit as follows:

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.

RESPONSE TO REQUEST NUMBER 2: SEE REPOSENSE NUMBER 1.

RESPONSE TO REQUEST NUMBER 3: SEE RESPONSE NUMBER 1. In addition, Defendant would be in possession of that evidence which should be produced during discovery.

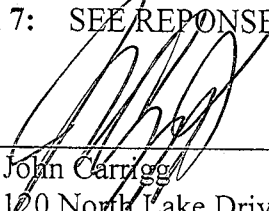
RESPONSE TO REQUEST NUMBER 4: SEE REPOSENSE NUMBER 3 ABOVE.

RESPONSE TO REQUEST NUMBER 5: Plaintiff admits she is not in possession of the evidence at this time; the Defendant would be in possession of such evidence which should be produced during discovery.

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RESPONSE TO REQUEST NUMBER 6: Plaintiff admits that she is not in possession of this evidence at this time; Plaintiff is in the process of obtaining such evidence at this time from Defendant and their credit card processor.

RESPONSE TO REQUEST NUMBER 7: SEE RESPONSE NUMBER 1.



John Carrigg
120 North Lake Drive
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(803) 785-5511 (telephone)
(803) 785-5513 (fax)
jcarrigg@carrigglaw.com
Attorney for Plaintiff

Lexington, South Carolina

7/24, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT

LATORIA R. COOKS,
Plaintiff,)

Civil Action No.: 17-CP-40-05538

v.)

PEARLZ VISTA, INC., d/b/a)
PEARLZ OYSTER BAR, CAROLINA)
ALE HOUSE OPERATING CO., LLC,)
d/b/a CAROLINA ALE HOUSE AND)
ART BAR, INC.)

Defendant.)

CERTIFICATE OF SERVICE

The undersigned employee of the Carrigg Law Firm, Angela D. Rabon, Legal Assistant, hereby certifies that a true copy of the foregoing

AMENDED RESPONSES TO DEFENDANT'S REQUEST TO ADMIT were

served on the Defendants via first class mail, postage pre-paid, on the

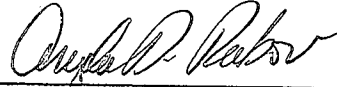
24th day of July 2018, at the address below

Joseph M. McCulloch
McCulloch & Schillaci
P.O. Box 11623
Columbia, S.C. 29211
Attorney for
Defendant Art Bar, Inc.

Roopal S. Ruparelia
Keegan B. Miller
Haynsworth, Sinkler & Boyd
P.O. Box 11889
Columbia, S.C. 29211-1889
Attorney for
Defendant Pearlz Vista, Inc.

John P. Riordan
Smith, Moore Leatherwood

2 West Washington Street, Ste. 1100
Greenville, S.C. 29601
Attorney for
Defendant Carolina Ale House



Angela D. Rabon, Legal Assistant
Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina 29072
Phone: (803) 785-5511
Fax: (803) 785-5513
jcarrigg@carrigglaw.com

Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LATORIA R. COOKS

Plaintiff(s)

vs.

PEARLZ VISTA, INC., d/b/a PEARLZ OYSTER
BAR, CAROLINA ALE HOUSE OPERATING
COMPANY, LLC., d/b/a CAROLINA ALE HOUSE
AND ART BAR, INC.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 40-05538

Submitted By: John Carrigg
Address: 120 North Lake Drive, Lexington, S.C. 29072

SC Bar #: 0015239
Telephone #: (803) 785-5511
Fax #: (803) 785-5513
Other:
E-mail: jcarrigg@carrigglaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: 9/13/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LATORIA COOKS,)

Plaintiff,)

vs.)

PEARLZ VISTA, INC., d/b/a PEARLZ)
OYSTER BAR, CAROLINA ALE)
HOUSE OPERATING COMPANY, LLC,)
d/b/a CAROLINA ALE HOUSE, AND)
ART BAR, INC.)

Defendants.)

TO THE DEFENDANT ABOVE NAMED:

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

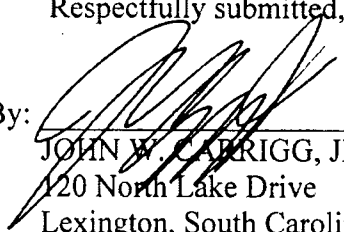
Case No: 17-CP-40-

SUMMONS
(JURY TRIAL REQUESTED)

2017 SEP 13 PM 4:10

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his offices, located at 120 North Lake Drive, Lexington, South Carolina 29072, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer, appear and defend within thirty (30) days after service hereof, exclusive of the date of such service, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

By: 

JOHN W. CARRIGG, JR.

120 North Lake Drive

Lexington, South Carolina 29072

Tel: (803) 785-5511

Fax: (803) 785-5513

S.C. Bar No.: 015239

Lexington, South Carolina

9/13, 2017

093

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case Number: 17-CP-40-

LATORIA R. COOKS,)
)
Plaintiff,)

COMPLAINT

vs.)

(Jury Trial Requested)

PEARLZ VISTA, INC. d/b/a PEARLZ)
OYSTER BAR, CAROLINA)
ALE HOUSE OPERATING COMPANY,)
LLC, d/b/a CAROLINA ALE HOUSE,)
AND ART BAR, INC.)

Defendants.)
_____)

FILED
2017 SEP 13 PM 4:40
CLERK OF COURT
C.S.P.A.L.C.

Plaintiff complaining of Defendant alleges:

1. That the Plaintiff is a citizen and resident of Sumter County, State of South Carolina.
2. That the Defendant, Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar, upon information and belief, is corporation, incorporated in South Carolina, and authorized to do business in the State of South Carolina, and specifically, one of its locations is at 936 Gervais Street, Columbia, South Carolina, where it engaged in the business of serving food and alcoholic beverages to the general public.
3. That the Defendant, Carolina Ale House Operating Company, LLC, d/b/a Carolina Ale House, is upon information and belief, a Limited Liability Company, incorporated in North Carolina and authorized to do business in the State of South Carolina, and specifically, one of its locations is at the Columbia Vista, 708 Lady Street, Columbia, South Carolina, where it is engaged in the business of serving food and alcoholic beverages to the general public.

4. That the Defendant, Art Bar, Inc., is upon information and belief, also a corporation, incorporated in South Carolina and authorized to do business in the State of South Carolina, and is specifically located at 1211 Park Street, Columbia, South Carolina, where it is engaged in the business of serving food and alcoholic beverages to the general public.

5. That Defendants have their principal place of business in Richland County, South Carolina and the subject accident occurred in Lexington County, South Carolina and therefore this court has jurisdiction over the matters contained herein and venue is proper.

6. That on or about the early hours of September 13, 2014, Emily Lynne Brown, with several acquaintances, patronized and purchased numerous alcoholic beverages at each of the above Defendant's businesses, and upon information and belief, at approximately 2:00 a.m., Ms. Brown continued to purchase alcoholic beverages from the Defendant's businesses when Defendants employees either knew or should have known that Ms. Brown was intoxicated and was unable to operate a vehicle when she purchased additional alcoholic beverages.

7. That on that date, upon leaving the Defendants' business establishments, in the early hours of September 13, 2014, Emily Lynne Brown was in an extremely intoxicated state.

8. That as a direct and proximate result of Emily Lynne Brown's intoxication, as she was traveling along I-26 in Lexington County, South Carolina at approximately 3:30 a.m., she was unable to properly operate and control her vehicle and therefore as a result of this intoxication, she slammed her vehicle forcefully into the rear of the Plaintiff's vehicle, causing the Plaintiff's vehicle to travel off the road where it struck a guardrail and overturned, which resulted in serious injuries to the Plaintiff.

9. That the aforementioned collision was directly, solely and proximately caused by the gross negligence, negligence, carelessness, recklessness and/or willfulness of Defendants, jointly or severally, through their agents, servants, and employees, in the following particulars:

A) In knowingly or recklessly failing to stop selling Ms. Brown alcoholic beverages once Defendants knew or should have known that she was in an intoxicated state, and instead continuing to sell alcoholic beverages to a patron, such as Ms. Brown, who was already intoxicated, when they knew or should have known that she was too impaired to drive due to this intoxication, and therefore constituted a potential hazard to the general public should she attempt to drive in this intoxicated state;

B) In failing to take any actions to prevent Ms. Brown from driving a vehicle in this intoxicated state once they were aware of or should have been aware of her extreme intoxication.

C) In failing to have any policies in place to properly deal with intoxicated patrons and/or in failing to enforce these policies with regard to the intoxicated Ms. Brown.

D) In failing to properly train and educate their agents, servants and employees in their procedures and policies for dealing with intoxicated patrons such as Ms. Brown.

All of these actions and/or omissions of the Defendants, jointly or severally, were in violation of the statutes and case law of the State of South Carolina.

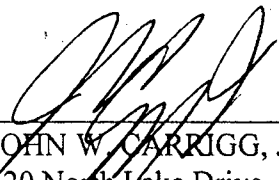
10. That by reason of the gross negligence, negligence, carelessness, recklessness, and/or willfulness of Defendants, and as a direct and proximate result thereof, Plaintiff has been injured and has suffered and will continue to suffer damages in the following respects:

She has sustained injuries in and about various parts of his body including but not limited to her head, neck, left eye, mid-chest, right shoulder, left hip, back and right knee, on account of which she has been caused to suffer and endure considerable pain, discomfort and

mental anguish; she has incurred various expenses for medical treatment and upon information and belief will incur additional expenses; she has been and will continue to be prevented from attending to her ordinary affairs and duties; she has been and will continue to be deprived of the normal enjoyments of life she otherwise would have; and she will continue to endure discomforting physical and mental pain and suffering which she otherwise would not have; and she has been otherwise damaged all to her damage.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in such an amount as shall fairly, justly, and adequately compensate her for her losses, and for such punitive damages as the Court may deem just and proper.

By: _____


JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Phone (803) 785-5511
Facsimile: (803) 785-5513

Lexington, South Carolina

Dated: _____

9/13/17

ATTORNEY FOR PLAINTIFF
jcarrigg@carrigglaw.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Latoria Cooks,

C.A. No.: 2017-CP-40-05538

Plaintiff,

**ANSWER
(JURY TRIAL DEMANDED)**

vs.

Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House, and Art Bar, Inc.,
Defendants.

The Defendant Carolina Ale House Operating Company, LLC d/b/a Carolina Ale House
(hereinafter referred to as "CAH") answering the Complaint of the Plaintiff, would respectfully
show unto the court as follows:

**FOR A FIRST DEFENSE
MOTION TO DISMISS
PER RULES 12(b)(2) & (6)**

1. Pursuant to Rules 12(b)(2) and (6) of the South Carolina Rules of Civil Procedure, CAH moves that the Complaint of the Plaintiff be dismissed as to CAH for lack of personal jurisdiction and failure to state facts sufficient to constitute a cause of action as to CAH (as named, CAH has no involvement with operations in Columbia, SC).

2. Accordingly, even in the light most favorable to Plaintiff, the only reasonable inference as a matter of law is that Judgment dismissing CAH is appropriate per Rule 12(b)(2) or (6), SCRCP (or both).

RICHLAND COUNTY
FILED
2017 OCT 15 PM 1:53
JEANETTE W. BRIDE
C.C.P. & G.

FOR A SECOND DEFENSE
GENERAL AND SPECIFIC DENIAL

3. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

4. Each and every allegation not expressly admitted is denied.

5. Upon information and belief CAH admits the allegations contained in Paragraph 1 of Plaintiff's Complaint.

6. CAH is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint regarding the corporate status of Pearlz; however, upon information and belief, Pearlz does operate a location at the address specified.

7. With regard to the allegations contained in Paragraph 3 of Plaintiff's Complaint CAH denies the allegations regarding corporate status and operations given that CAHOC2, LLC would be the proper party per these allegations and herein asserts all defenses as to CAHOC2, LLC as well.

8. With regard to the allegations contained in Paragraph 4 of Plaintiff's Complaint CAH is without information sufficient to form a belief as to the corporate allegations regarding Art Bar, Inc.; however, upon information and belief, Art Bar, Inc. operates a location at the address alleged.

9. With regard to the allegations contained in Paragraph 5 of Plaintiff's Complaint CAH admits that CAHOC2, LLC has a principle place of business in Richland County; however, upon information and belief, the subject event causing any alleged injury occurred in Lexington County. CAH is otherwise without information sufficient to form a belief as to the truth

regarding appropriate jurisdiction of the allegations as alleged in Paragraph 5 of Plaintiff's Complaint.

10. CAH denies the allegations contained in Paragraph 6 regarding any service to Emily Lynn Brown while intoxicated, especially at approximately 2:00 a.m. or after.

11. CAH is without information sufficient to form a belief as to the truth of the allegations regarding any visitation by Emily Lynn Brown to CAHOC2, LLC's business establishment and denies any service while she was an intoxicated state. Defendant CAH demands strict proof regarding any of the above allegations.

12. CAH is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff's Complaint.

13. CAH denies the allegations contained in Paragraphs 9 and 10 of Plaintiff's Complaint, while having insufficient information to form a belief as to the truth of the allegations regarding the alleged injuries.

FOR A THIRD DEFENSE
BIFURCATION/CAPS/ETC.

14. CAH adopts and realleges each and every allegation set forth above and not inconsistent herewith, as if fully repeated herein.

15. CAH hereby pleads and preserves the right to all protections provided under §15-32-510, S.C. Code of Laws, et. seq., including but not limited to bifurcation of trial phases, caps on punitive damages, and other remedies provided to Defendants.

FOR A FOURTH DEFENSE
ALLOCATION PURSUANT TO §15-38-15

16. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

17. Per §15-38-15, S.C. Code of Laws and the allegations of Plaintiff's Complaint, CAH hereby asserts and/or preserves any and all right to assert that another potential tortfeasor, whether or not a party, potentially caused and/or contributed to the alleged injuries or damages and/or may be liable for any or all of the damages alleged by any other party. CAH cannot be held liable for damages caused by another, whether a party or not, and a specific finding as the allocation of liability is required and hereby demanded.

18. Moreover, CAH asserts and/or preserves any and all argument regarding the allocation of liability and/or damages as to other potential tortfeasors, whether or not a party to the action, as well as the entitlement to a credit and/or offset of any damage award commensurate with funds received by Plaintiff with regard to claims against other tortfeasors.

FOR A FIFTH DEFENSE
EQUAL PROTECTION AND DUE
PROCESS VIOLATIONS

19. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

20. CAH hereby preserves all challenges to the constitutionality of those statutes relied upon by Plaintiff for support of her claims and maintains that its right to equal protection under the law, as provided by both the State and the United States Constitutions, is violated if 15-38-15(f), as asserted, abrogates the application of comparative fault as to a defendant whose conduct involves "the use, sale or possession of alcohol." Such assertion is an unconstitutional and arbitrary infringement on CAH's rights to equal protection and/or due process under the law to be afforded the application of comparative fault. Accordingly, joint and several liability cannot apply and CAH can only be responsible/liable for any foreseeable damage directly and proximately caused by CAH.

21. Likewise, CAH preserves all rights to challenge any assertion that §61-6-2220, S.C. Code of Laws, or other, similar statutes, establishes a separate cause of action for an alleged violation of the statute. CAH's constitutional right to due process under the law is such that no private right of action should exist due to an alleged violation of statute.

FOR A SIXTH DEFENSE
PAIN AND SUFFERING

22. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

23. Any award of damages for pain and suffering against CAH will violate the rights guaranteed to CAH by the Constitution of South Carolina for the following reasons:

(a) Any award of damages for pain and suffering violates the prohibition against excessive fines found in Article I, § 15 of the Constitution of South Carolina because such awards do not bear a reasonable relationship to the compensatory damages.

(b) Any award of damages for pain and suffering violates the guarantee of due process found in Article I, § 3 of the Constitution of South Carolina because of the lack of objective guidelines, rational factors and defined limits on which a jury might base its award, and further, that such guidelines, factors or limits as do exist are arbitrary and void for vagueness.

FOR A SEVENTH DEFENSE
MENTAL ANGUISH

24. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

25. Any award of damages for mental anguish against CAH will violate rights guaranteed by the Constitution of the United States for the following reasons:

(a) Any award of damages for mental anguish violates the prohibition against excessive fines found in the Eighth Amendment to the Constitution of the United States as applied to the states by way of the due process clause of the Fourteenth Amendment of the Constitution of the United States because such awards do not bear a reasonable relationship to compensatory damages.

(b) Any award of damages for mental anguish violates the guarantee of due process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines, rational factors and defined limits on which a jury might base its award and further that such guidelines, factors or limits as do exist are arbitrary and void for vagueness.

FOR AN EIGHTH DEFENSE
PUNITIVE DAMAGES

26. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

27. An award of punitive damages against CAH will violate rights guaranteed to CAH by the Constitution of South Carolina for the following reasons:

(a) Any award of punitive damages violates the prohibition against excessive fines found in Article I, Section 15 of the Constitution of South Carolina.

(b) Any award of punitive damages violates the guarantee of due process found in Article I, Section 3 of the Constitution of South Carolina because of the lack of objective guidelines on which a jury might base its award and further that such guidelines as do exist are arbitrary and void for vagueness.

FOR A NINTH DEFENSE
PUNITIVE DAMAGES

28. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

29. An award of punitive damages against CAH will violate rights guaranteed to CAH by the Constitution of the United States for the following reasons:

(a) Any award of punitive damages violates the prohibition against excessive fines found in the Eighth Amendment to the Constitution of the United States as applied to the states by way of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

(b) Any award of punitive damages violates the guarantee of due process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines on which a jury might base its award and further that such guidelines as do exist are arbitrary and void for vagueness.

FOR A TENTH DEFENSE
MITIGATION OF DAMAGES

30. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

31. Plaintiff and her family have a duty to mitigate damages in a manner provided for by law. Any failure to mitigate damages is pled as a complete defense and bar to the claims of Plaintiff.

32. Therefore, to the extent applicable, CAH seeks dismissal of Plaintiff's prayer for damages in its entirety, or in the alternative, if it is deemed that Plaintiff is entitled to judgment

against CAH, that such judgment be reduced by an appropriate amount for any failure by Plaintiff to mitigate damages.

FOR AN ELEVENTH DEFENSE
INTERVENING/SUPERSEDING
ACTS OF THIRD PARTIES

33. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

34. CAH is not liable to Plaintiff for the resulting damages of the Plaintiff or her family, if any, due to intervening, superseding, negligent, grossly negligent, careless, reckless, willful and wanton acts of one or more third parties (whether a named party or not or whether yet revealed), which negligent and reckless actions were not reasonably foreseeable and intervened, superseded and acted as the direct and proximate cause of the incident and the resulting damages, if any, sustained by the Plaintiff or her family, eliminating any alleged improprieties by CAH, its employees, servants or agents as a proximate cause of any injury or damage.

FOR A TWELFTH DEFENSE
MOTION TO DISMISS PURSUANT
TO RULE 12(b)(7)

35. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

36. While CAH affirmatively denies any service to Emily Lynne Brown while intoxicated on the night in question, out of an abundance of caution and only in light of the allegations of Plaintiff's Complaint, CAH must alternatively maintain that Emily Lynne Brown is an indispensable party pursuant to Rule 19, SCRPC and therefore should either be added as a Defendant or, in her absence, the action as to CAH should be dismissed.

37. Solely if there is any credibility to the spurious allegations of liability as against CAH, the above referenced party should also be joined as a party to this action; in the absence of that party complete relief cannot be accorded among those such as CAH who are already parties to the action and the disposition of the action in her absence may impair or impede the ability of CAH to fully protect its interests and/or leave CAH subject to substantial risk of incurring double, multiple or otherwise inconsistent obligations in this action.

FOR A THIRTEENTH DEFENSE
COMPARATIVE AND/OR
CONTRIBUTORY NEGLIGENCE

38. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

39. The incident and damages complained of by the Plaintiff may have been, at least in part, a direct and proximate result of the negligence, recklessness, carelessness, willfulness, and wantonness of Plaintiff in one or more of the following particulars:

(a) Plaintiff may have failed to act as reasonable and prudent persons would have under the same or similar circumstances; such unfortunate circumstances may constitute additional evidence of the failure to mitigate damages as required and/or the voluntary assumption of risk; and

(b) In any other manner determined through discovery.

40. This defense of potential comparative negligence is pled as a complete and total bar to the claims of the Plaintiff, and as an offset. Such determination is also necessary for full allocation of liability per §15-35-15, S.C. Code of Laws. To the extent it is deemed that true comparative negligence is inapplicable to this matter, such would constitute contributory negligence and amount to a complete bar to any recovery by Plaintiff as to CAH.

41. Even if the conduct of CAH contributed to and operated as a fifty percent or greater proximate cause of the accident and the Plaintiff's damages (which is expressly denied but admitted solely for the purpose of this defense), CAH is entitled to a determination as to the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff which contributed to the incident and to a reduction of any amount awarded to the Plaintiff in an amount equal to that percentage of the negligence, carelessness, recklessness, willfulness, and wantonness of Plaintiff that foreseeably, directly and proximately caused any alleged injury. Such determination is also necessary for full allocation of liability per §15-35-15, S.C. Code of Laws. To the extent it is deemed that true comparative negligence is inapplicable to this matter, such actions would constitute contributory negligence and amount to a complete bar to any recovery by Plaintiff as to CAH.

FOR A FOURTEENTH DEFENSE
ASSUMPTION OF RISK

42. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.

43. Any potentially detrimental actions by Plaintiff may constitute a voluntary, unreasonable assumption of risk, all of which might constitute comparative negligence and/or should be specifically considered in any allocation of liability. Such determination is also necessary for full allocation of liability per §15-35-15, S.C. Code of Laws. To the extent it is deemed that true comparative negligence is inapplicable to this matter, such actions would constitute contributory negligence and amount to a complete bar to any recovery by Plaintiff as to CAH.

FOR A FIFTEENTH DEFENSE
STATUTE OF LIMITATIONS

44. To the extent they are not inconsistent the paragraphs of the previous defenses are incorporated herein by reference.

45. Out of an abundance of caution, CAH hereby preserves any and all defenses that Plaintiff failed to properly file and serve this matter upon CAH within the applicable statute of limitations.

WHEREFORE, having fully answered, CAH prays that the Complaint be dismissed as to CAH and for the costs of this action.

Respectfully submitted,



John P. Riordan (SC Bar #65284)
Smith Moore Leatherwood
2 West Washington St., Ste. 1100, PO Box 87
Greenville, SC 29602-0087
(864) 751-7600/(864) 751-7800 (Fax)
Jack.riordan@smithmoorelaw.com
Attorney for Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House which should be substituted by
CAHOC2, LLC

October 16, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Latoria Cooks,

Plaintiff,

vs.

Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House, and Art Bar, Inc.,
Defendants.

C.A. No.: 2017-CP-40-05538

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 OCT 18 PM 5:53
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I hereby certify that a copy of the Answer was served upon counsel record this
16th day of October, 2017, by placing the same in the United States Postal Service with proper,
first-class postage affixed and addressed as follows:

John W. Carrigg, Jr.
120 North Lake Drive
Lexington, SC 29072

Laura Russell

Legal Assistant to:
John P. Riordan (SC Bar #65284)
Smith Moore Leatherwood
2 West Washington St., Ste. 1100, PO Box 87
Greenville, SC 29602-0087
(864) 751-7600/(864) 751-7800 (Fax)
Jack.riordan@smithmoorelaw.com
Attorney for Carolina Ale House Operating Company, LLC
d/b/a Carolina Ale House which should be substituted by
CAHOC2, LLC

October 16, 2017

Jeanette McBride
Richland County Clerk of Court
1701 Main St.
Columbia, SC 29201

RE: Latoria Cooks v. Pearlz Vista, Inc. d/b/a Pearlz Oyster Bar, Carolina Ale House
Operating Company, LLC d/b/a Carolina Ale House and Art Bar, Inc.
C.A. No.: 2017-CP-40-05538

Dear Ms. McBride:

Enclosed for filing please find the original and one copy the Answer of Carolina Ale House in the above referenced matter along with a Certificate of Service of same. We would appreciate your filing the original and returning a clocked copy to us in the enclosed self-addressed stamped envelope. By copy of this letter we are serving all counsel of record with this Answer. If you have any questions or concerns, please do not hesitate to contact me. Thank you for your help in this regard.

Yours truly,

Smith Moore Leatherwood LLP



John P. "Jack" Riordan

JPR/lbr
Enclosure

cc: John W. Carrigg, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Latoria Cooks,)
)
Plaintiff,)
)
v.)
)
Pearlz Vista, Inc., d/b/a Pearlz Oyster Bar,)
Carolina Ale House Operating Company,)
LLC, d/b/a Carolina Ale House, and Art)
Bar, Inc.)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 17-CP-40-05538

ANSWER OF ART BAR, INC.
(Jury Trial Requested)

RICHLAND COUNTY
FILED
2017 OCT 19 AM 10:55
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

TO: JOHN W. CARRIGG, ESQ., ATTORNEY FOR LATORIA COOKS:

The Defendant, Art Bar, Inc. ("Art Bar") answering the Complaint of Plaintiff, responds to the allegations as follows:

FOR A FIRST DEFENSE
AND BY WAY OF ANSWER

1. Art Bar denies each and every allegation of the Complaint not specifically hereafter admitted.
2. Answering paragraphs 1, 2, and 3 of the Complaint, these paragraphs contain descriptions of other parties, and as such, Art Bar lacks sufficient information about which to admit or deny the allegations, and therefore denies same.
3. Responding to the allegations set forth in paragraph 4 of the Complaint, Art Bar admits that it is a South Carolina corporation located at 1211 Park Street, Columbia, South Carolina and authorized to do business in South Carolina. It further admits it is engaged in food and beverage services in Richland County. It denies any remaining allegations.

FOR AN EIGHTH DEFENSE
(Punitive Damages Unconstitutional – Substantive Due Process)

13. To the extent that the Complaint seeks punitive or exemplary damages, it violate the Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A NINTH DEFENSE
(Bifurcated Jury Trial)

14. To the extent punitive damages are claimed, the Defendant demands a bifurcated jury trial pursuant to S.C. Code Ann. §15-32-520, *et. seq.* and that said damages, if any, are limited to three times the amount of compensatory damages, or the sum of \$500,000.00, whichever is greater, if any.

FOR A TENTH DEFENSE
(Reservation and Non-Waiver)

15. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff allegations. Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR AN ELEVENTH DEFENSE

16. The alleged accident involving Plaintiff was an unavoidable accident not caused by this Defendant and which an ordinary and reasonable person acting under the same or similar circumstances would have been unable to avoid through the exercise of reasonable skill and care. This defense is pled as a complete and total defense of the Plaintiff's claims.

CERTIFICATE OF SERVICE

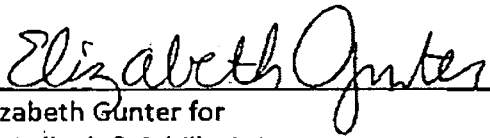
I, an employee of McCulloch & Schillaci, Attorneys at Law, attorneys for Art Bar, Inc., do hereby certify that I have served the Defendant's **ANSWER OF ART BAR, INC.** via U.S. Mail addressed to:

Parties Served:

John Carrigg, Esq.
Carrigg Law Firm
120 North Lake Drive
Lexington, SC 29072
jcarrigg@carrigglaw.com

Clark Ellefson, Registered Agent
1221 Lincoln Street
Columbia, SC 29201

This 17th day of October, 2017.


Elizabeth Gunter for
McCulloch & Schillaci, Attorneys at Law

RICHMOND
FILED
2017 OCT 19 AM 10:55
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

McCULLOCH & SCHILLACI
ATTORNEYS AT LAW

1513 HAMPTON STREET
P.O. Box 11623 (29211)
COLUMBIA, SC 29201
(803) 779-0005 • FAX (803) 779-0666

JOSEPH M. McCULLOCH, JR.
joe@mccullochlaw.com

KATHY SCHILLACI
kathy@mccullochlaw.com

October 17, 2017

Delivered Via U.S. Mail

Jeanette McBride
Clerk of Court for Richland County
1701 Main Street – Room 205
Columbia, South Carolina 29201

RE: Latoria Cooks v. Pearlz Vista, Inc., et. al.
Civil Action No.: 2017-CP-40-05538.

Dear Ms. McBride

Please find enclosed for filing the Answer of Defendant Art Bar, Inc. in the above captioned case. I have also enclosed a copy of the Answer and a self-addressed, pre-stamped envelope, if you would please clock and return the copy I would be most appreciative. By copy of this letter, we are serving all counsel.

Sincerely,

Joseph M. McCulloch

JMM/erg
Enclosure(s)

cc: John Carrigg, Esq.
Clark Ellefson

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and Art
Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05518

PEARLZ VISTA INC. d/b/a
PEARLZ OYSTER BAR'S ANSWER
TO PLAINTIFF'S COMPLAINT
(Jury Trial Requested).

RICHLAND COUNTY
FILED
2017 OCT 26 PM 1:13
JANETTE W. BRIDE
C.C.P. & G.S.

Defendant Pearlz Vista Inc. d/b/a Pearlz Oyster Bar ("Defendant") answers the Complaint of Latoria R. Cooks ("Plaintiff") as follows, stating that each and every allegation of the Complaint not admitted, explained or qualified is denied:

FOR A FIRST DEFENSE

1. Defendant lacks knowledge or information sufficient to fully form a belief as the allegations of Paragraph 1 of the Complaint.
2. Defendant denies the allegations of Paragraph 2 of the Complaint as stated.
3. Defendant lacks knowledge or information sufficient to fully form a belief as the allegations of Paragraph 3.
4. Defendant lacks knowledge or information sufficient to fully form a belief as the allegations of Paragraph 4.
5. The allegations of Paragraph 5 draw legal conclusions and hence require no response.
6. Defendant denies the allegations of Paragraph 6 of the Complaint.

7. Defendant lacks knowledge or information sufficient to fully form a belief as the allegations of Paragraph 7, denies the same and demands strict proof thereof.

8. Defendant lacks knowledge or information sufficient to fully form a belief as the allegations of Paragraph 8, denies the same and demands strict proof thereof.

9. Defendant denies the allegations of Paragraph 9, including all subparts contained therein.

10. Defendant denies the allegations of Paragraph 10.

11. Defendant denies the Wherefore Paragraph.

FOR A SECOND DEFENSE

12. Plaintiff's Complaint fails to state a claim for which relief can be granted.

FOR A THIRD DEFENSE

13. Plaintiff's damages, if any, are the sole and proximate result of the actions or omissions of another person or entity.

FOR A FOURTH DEFENSE

14. Plaintiff has failed to mitigate her damages if any.

FOR A FIFTH DEFENSE

15. Plaintiff's damages, if any, were caused by an intervening and/or superseding cause.

FOR A SIXTH DEFENSE

16. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative Plaintiff's recovery, if any, should be reduced by virtue of Plaintiff's own negligence.

FOR A SECOND DEFENSE

17. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE

18. Plaintiff's claims are barred by the equitable doctrine of laches or any other relevant equitable defense.

FOR AN EIGHTH DEFENSE

19. If Plaintiff sustained damages in the manner alleged in the Complaint, then the alleged damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Defendant or of anyone for whose conduct Defendant is in any way responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of Plaintiff and/or other parties to this action, all of which will be shown at the trial of this case, and for which Plaintiff can have no recovery against Defendant or, in the alternative, for which Plaintiff's recovery should be appropriately reduced.

FOR A NINTH DEFENSE

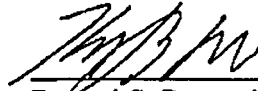
20. Punitive damages are unconstitutional under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution and similar provisions of the South Carolina Constitution.

FOR A TENTH DEFENSE

21. Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be required in discovery or otherwise.

WHEREFORE, having fully answered the Complaint of Plaintiff Latoria R. Cooks, Defendant Pearlz Vista Inc. d/b/a Pearlz Oyster Bar, prays the same be dismissed with costs and for such other and further relief as may be deemed just and proper.

HAYNSWORTH SINKLER BOYD, P.A.



Robpal S. Ruparelia (SC Bar No. 16003)
Keegan B. Miller (SC Bar No. 102783)
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
rruparelia@hsblawfirm.com
kmiller@hsblawfirm.com

OCT 25, 2017
Columbia, South Carolina

*Attorneys for Defendant Pearlz Vista Inc. d/b/a
Pearlz Oyster Bar*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Pearlz Vista Inc. d/b/a Pearlz Oyster Bar,
Carolina Ale House Operating Company,
LLC, d/b/a Carolina Ale House, and Art
Bar, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-05538

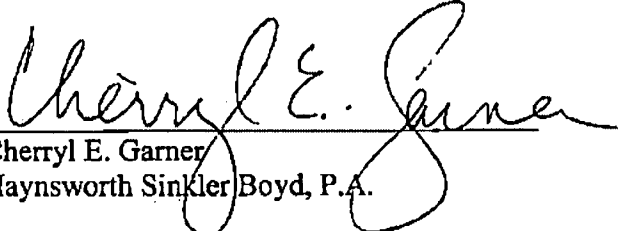
CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 OCT 26 PM 1:13
JEANNETTE W. MCBRIDE
Clerk, P. & G.S.

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 25th day of October, 2017, caused the foregoing **Pearlz Vista Inc. d/b/a Pearlz Oyster Bar's Answer to Plaintiff's Complaint** to be served via U.S. mail, postage prepaid, *and/or* by *some other means as referenced below*, on counsel of record at the address(es) shown below:

VIA EMAIL AND U.S. MAIL

John W. Carrigg, Jr., Esquire
120 North Lake Dr.
Lexington, South Carolina 29072
PH: (803) 785-5511
FAX: (803) 785-5513
jcarrigg@carrigglaw.com
Attorneys for Plaintiff


Cherryl E. Garner
Haynsworth Sinkler Boyd, P.A.

COUNTY OF RICHLANDLATORIA R. COOKS

Plaintiff(s)

vs.

EMILY LYNNE BROWN

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 40- 05226

Submitted By: JOHN CARRIGG
 Address: 120 NORTH LAKE DRIVE
LEXINGTON, S.C. 29072

SC Bar #: 0015239
 Telephone #: (803) 785-5511
 Fax #: (803) 785-5513

Other: _____
 E-mail: jcarrigg@carrigglaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Conversion (310) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☒ Motor Vehicle Accident (320) | ☐ Condemnation (410) |
| ☐ General (130) | ☐ Medical Malpractice (220) | ☐ Premises Liability (330) | ☐ Foreclosure (420) |
| ☐ Breach of Contract (140) | Previous Notice of Intent Case # | ☐ Products Liability (340) | ☐ Mechanic's Lien (430) |
| ☐ Fraud/Bad Faith (150) | 20 <u>-NI-</u> | ☐ Personal Injury (350) | ☐ Partition (440) |
| ☐ Failure to Deliver/
Warranty (160) | ☐ Notice/ File Med Mal (230) | ☐ Wrongful Death (360) | ☐ Possession (450) |
| ☐ Employment Discrim (170) | ☐ Other (299) _____ | ☐ Assault/Battery (370) | ☐ Building Code Violation (460) |
| ☐ Employment (180) | | ☐ Slander/Libel (380) | ☐ Other (499) _____ |
| ☐ Other (199) _____ | | ☐ Other (399) _____ | |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) _____ | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) _____ | ☐ Transfer of Structured
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) _____ | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) _____ | ☐ Motion to Quash Subpoena in
an Out-of-County Action (660) | | |
| ☐ Sexual Predator (510) | ☐ Pre-Suit Discovery (670) | | |
| ☐ Permanent Restraining Order (680) | | | |

Submitting Party Signature: _____

Date: 8-25-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LATORIA R. COOKS,)

Plaintiff,)

vs.)

EMILY LYNNE BROWN,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No: 16-CP-40-

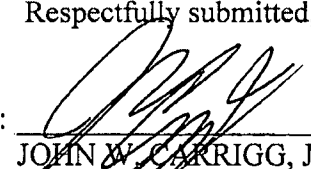
SUMMONS
(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2016 AUG 29 PM 1:02
JEANETTE M. MCBRIDE
C.L.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his offices, located at 120 North Lake Drive, Lexington, South Carolina 29072, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer, appear and defend within thirty (30) days after service hereof, exclusive of the date of such service, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

By: 

JOHN W. CARRIGG, JR.
120 North Lake Drive
Lexington, South Carolina 29072
Tel: (803) 785-5511
Fax: (803) 785-5513
S.C. Bar No.: 015239

Lexington, South Carolina
8/25, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LATORIA R. COOKS,)

Plaintiff,)

vs.)

EMILY LYNNE BROWN,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case Number: 16-CP-40-_____

COMPLAINT

(Jury Trial Requested)

RICHLAND COUNTY
FILED
2016 AUG 29 PM 4:02
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff complaining of Defendant alleges:

1. That the Plaintiff is a citizen and resident of Lexington County, State of South Carolina.
2. That the Defendant, upon information and belief, is also a citizen and resident of Richland County, State of South Carolina.
3. That this court has jurisdiction over the matters contained herein and venue is proper.
4. That on or about September 13, 2014 at or about approximately 3:36 p.m. Plaintiff was operating her vehicle, a 1997 Ford SUV, traveling west on I-26 near Lexington, South Carolina at approximately 60 mph.
5. That at the same time and place, Defendant, driving impaired under the influence of alcohol and/or drugs, was operating her vehicle, a 2010 Ford SUV, also traveling west on I-26, directly behind the Plaintiff, at approximately 65 mph.
6. However, as the Defendant was traveling along I-26, and approached the Plaintiff's vehicle, she slammed forcefully into the rear of the Plaintiff's vehicle, causing the

Plaintiff's vehicle to travel off the road where it struck a guardrail and overturned, which resulted in serious injuries to the Plaintiff.

7. That the aforementioned collision was directly, solely and proximately caused by the gross negligence, negligence, carelessness, recklessness and/or willfulness of Defendant in the following particulars:

- A) In driving under the influence of alcohol and/or drugs;
- B) In driving too fast for the conditions then and there prevailing;
- C) In following too closely to the Plaintiff's vehicle;
- D) In failing to keep a proper lookout for other traffic;
- E) In failing to properly apply her brakes in a timely manner; and
- F) In failing to keep her vehicle under proper control;
- G) In failing to act as a reasonable person would have acted under all of the

circumstances then and there prevailing;

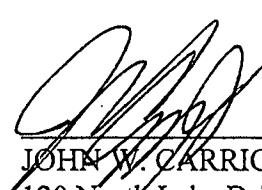
All of these actions and/or omissions of the Defendant, in the operation of her vehicle on this date and time, were in violation of the statutes and case law of the State of South Carolina.

8. That by reason of the gross negligence, negligence, carelessness, recklessness, and/or willfulness of Defendant, and as a direct and proximate result thereof, Plaintiff has been injured and has suffered and will continue to suffer damages in the following respects:

She has sustained injuries in and about various parts of his body including but not limited to her head, neck, left eye, mid-chest, right shoulder, left hip, back and right knee, on account of which she has been caused to suffer and endure considerable pain, discomfort and mental anguish; she has incurred various expenses for medical treatment and upon information and belief will incur additional expenses; she has been and will continue to be prevented from

attending to her ordinary affairs and duties; she has been and will continue to be deprived of the normal enjoyments of life she otherwise would have; and she will continue to endure discomforting physical and mental pain and suffering which she otherwise would not have; and she has been otherwise damaged all to her damage.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual and punitive damages in such an amount as shall fairly, justly, and adequately compensate her for her losses, and for such punitive damages as the Court may deem just and proper.

By: 

JOHN W. CARRIGG, JR.

120 North Lake Drive

Lexington, South Carolina 29072

Phone (803) 785-5511

Facsimile: (803) 785-5513

Lexington, South Carolina

Dated: 8-25-16

ATTORNEY FOR PLAINTIFF

jcarrigg@carrigglaw.com

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

v.

Emily Lynne Brown,

Defendant.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-40-05226

STIPULATION OF DISMISSAL

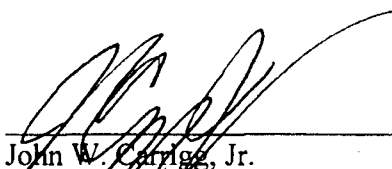
RICHLAND COUNTY
FILED
2017 OCT -6 PM 1:34
JENNIFER W. McBRIDE
C.C.P. & G.S.

WHEREAS, the parties in the above-referenced action have reached a satisfactory resolution of the issues contained therein and wish to end the same pursuant to Rule 41(a) of the South Carolina rules of Civil Procedures; and

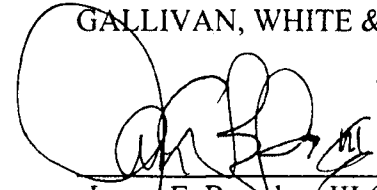
WHEREAS, all parties hereto agree to bear their own costs and expenses associated with this action;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the parties hereto, by and through their undersigned counsel agree to dismiss the complaint with prejudice.

CARRIGG LAW FIRM


John W. Carrige, Jr.
120 North Lake Drive
Lexington, South Carolina 29072
Attorney for Plaintiff

GALLIVAN, WHITE & BOYD, P.A.


James E. Brogdon, III (SC Bar # 79159)
Post Office Box 7368
Columbia, South Carolina 29202
Attorney for Defendant

Date: 9/20, 2017

Date: October 3, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoria R. Cooks,

Plaintiff,

vs.

Emily Lynne Brown,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-05226

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 OCT -6 PM 1:34
JEANETTE W. MCBRIDE
C.P. & G.S.

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

1. Stipulation of Dismissal

PARTIES SERVED:

John Carrigg, Esquire
120 North Lake Drive
Lexington, SC 29072

Attorney for Plaintiff

Date: October 4, 2017


Kelly Edrington, Legal Assistant

Emily Lynne Brown

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

LATORIA R. COOKS,
Plaintiff(s),

vs.

Case No.: 2016-CP-40-05226

EMILY LYNNE BROWN,
Defendant(s).

DEPOSITION OF EMILY LYNNE BROWN

DATE TAKEN: Monday, June 19, 2017

TIME START: 11:15 a.m.

TIME END: 11:53 a.m.

LOCATION: Carrigg Law Firm
120 North Lake Drive
Lexington, South Carolina

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFF
LATORIA R. COOKS:

CARRIGG LAW FIRM
BY: JOHN CARRIGG, ESQUIRE
120 North Lake Drive
Lexington, South Carolina 29072
jcarrigg@carrigglaw.com
803.785.5511.

ATTORNEYS FOR STATE FARM INSURANCE COMPANY
AS UIM CARRIER:

GALLIVAN, WHITE & BOYD, P.A.
BY: JAMES E. BROGDON, III, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
jbrogdon@gwblawfirm.com
803.779.1833

ALSO PRESENT:

LATORIA R. COOKS

I N D E X

	PAGE
EXAMINATION	
BY MR. CARRIGG	4
Certificate of Reporter	33

E X H I B I T S

(None were proffered.)

1 The deponent waives the right to read and
2 sign the deposition transcript.

3 - - - - -

4 EMILY LYNNE BROWN, being first
5 duly sworn, testified as follows:

6 - - -

7 EXAMINATION

8 - - -

9 BY MR. CARRIGG:

10 Q. Just to start out, my name is John Carrigg.
11 I represent Latoria Cooks seated to my left. We just
12 finished doing her deposition, and I'm here to take
13 your deposition today. It's just my opportunity to
14 talk to you to find out what information you have
15 related to this accident prior to the actual trial in
16 this case.

17 If during the course of the deposition I ask
18 you a question that you don't understand, please ask me
19 to clarify it for you. Okay? Mr. Brogdon is seated to
20 your right. He is an attorney who is representing the
21 underinsured carrier in this case, and I guess in
22 effect representing you as the named party, although I
23 think there's some legal issues with whether it's
24 actual attorney-client privilege representation.

25 A. Okay.

1 Q. One of the things, at the end of this
2 deposition, the court reporter will ask you if you want
3 to read and sign. Have you given any thought to that?

4 A. No, I won't be reading and signing.

5 Q. You're going to waive reading and signing?

6 A. Right.

7 Q. All right. And if you need to take a break,
8 let me know. I don't anticipate this will take more
9 than about 30 or 45 minutes, maybe an hour at the
10 longest. Okay?

11 A. (Nods head.)

12 Q. All right. If you could, please state your
13 full name for the record.

14 A. Emily Lynne Brown.

15 Q. And Lynne is spelled?

16 A. L-y-n-n-e.

17 Q. What's your current address, Ms. Brown?

18 A. 3110 Gadsden, G-a-d-s-d-e-n, Street,
19 Columbia, South Carolina 29201.

20 Q. And do you have a current telephone number?

21 A. 803-529-5577.

22 Q. And how long have you lived at the 3110
23 Gadsden Street address?

24 A. For about two months now.

25 Q. All right. And is that an apartment that you

1 rent?

2 A. It's a house.

3 Q. It's a house. Do you own the house?

4 A. Renting.

5 Q. You're renting. Does anyone live with you
6 there at the house?

7 A. Yes.

8 Q. Who lives with you there?

9 A. My boyfriend.

10 Q. What's your boyfriend's name?

11 A. Is that -- how is that relevant to this case?

12 Q. Well, he lives in Richland -- he lives here
13 locally, and I mean, I'm entitled to make sure I don't
14 put him or his relatives on the jury.

15 A. Okay.

16 Q. What's his name?

17 A. Greg Placone, P-l-a-c-o-n-e.

18 Q. And where does Craig work, do you know?

19 A. Nexsen Pruet.

20 Q. Okay. What's he do there?

21 A. He's an attorney.

22 Q. He's a lawyer?

23 A. Construction.

24 Q. Okay. All right. And where did you live
25 prior to the 3110 Gadsden Street?

1 A. 1402 Victoria Street, Columbia 29201.

2 Q. And was that an apartment or a house?

3 A. It was a duplex.

4 Q. All right. What part of town is that?

5 A. Cottontown.

6 Q. Cottontown. Okay. And did you have any
7 roommates there?

8 A. No.

9 Q. That was by yourself?

10 A. Correct.

11 Q. How long were you -- how long did you live
12 there?

13 A. About seven months.

14 Q. And you moved out from there to move into the
15 Gadsden Street address, correct?

16 A. Correct.

17 Q. Okay. And where did you live prior to
18 Victoria, do you know?

19 A. 213 Potano, P-o-t-a-n-o, Court, Lexington,
20 29072.

21 Q. Is that a house?

22 A. House. With my mother.

23 Q. That's your mother's home?

24 A. Uh-huh.

25 Q. And what is your mother's name?

1 A. Myra Brown.

2 Q. All right. Do you have any relatives that
3 live in Richland County?

4 A. My father.

5 Q. Okay.

6 A. David Brown.

7 Q. What does he do?

8 A. He's a nuclear engineer, Westinghouse.

9 Q. And does he work at Savannah River Site?

10 A. No.

11 Q. Where does she work?

12 A. Off Bluff Road.

13 Q. Bluff Road. Does he work as part of the V.C.
14 Summer construction project?

15 A. He is not -- I don't know.

16 Q. You don't know. Okay. And does your mother
17 work?

18 A. Yes.

19 Q. Where does she work?

20 A. Southeastern Insurance Consultants, SIC.
21 They're third-party GPA.

22 Q. Where are they located?

23 A. I couldn't tell you the address in Lexington.

24 Q. Somewhere in Lexington?

25 A. Blythewood, Lexington area.

1 Q. Well, Blythewood is not in the Lexington
2 area. Blythewood is out in Northeast Richland.

3 A. Then I don't know where it's located.

4 Q. Okay. You think in Blythewood, or you don't
5 know?

6 A. I'm not sure.

7 Q. Okay. Okay. Do you have any other relatives
8 that live in the Richland area, Richland County?

9 A. My sister.

10 Q. Your sister. Okay. What's her name?

11 A. Jennifer Denise Brown.

12 Q. All right. Is she married or single?

13 A. She's married.

14 Q. What's her husband's name?

15 A. Leslie. Leslie Turner.

16 Q. Okay. She does not go -- she didn't change
17 her name to Turner when she got married?

18 A. She did, that would be correct.

19 Q. So Jennifer Denise Brown Turner?

20 A. Uh-huh.

21 Q. And do you know where Jennifer works?

22 A. She works for Jim Hudson.

23 Q. The car dealer?

24 A. Uh-huh.

25 Q. And where does Leslie Turner work?

1 A. He's works for himself.

2 Q. Do you know what he does for a living?

3 A. Plumbing.

4 Q. Where are you currently employed?

5 A. I'm not employed at the moment.

6 Q. Where did you last work?

7 A. At Ogletree Deakins.

8 Q. D-e---

9 A. -a-k-i-n-s.

10 Q. What did you do there?

11 A. I was an immigration attorney. Immigration
12 paralegal.

13 Q. All right. And why did you leave that job?

14 A. Because I'm going to go back to school.

15 Q. Okay. And you're going back to school for
16 what?

17 A. English as a second language, teaching.

18 Q. How long did you work for Ogletree?

19 A. A year and two months, three months.

20 Q. Okay. And oh, let me ask you this. I got
21 the phone number. Do you have an email address?

22 A. Elbrown --

23 Q. Elbrown.

24 A. -- 0810@gmail.com.

25 Q. You said you lived with your boyfriend, I

1 assume you all are dating, Greg Placone, correct?

2 A. Yes.

3 Q. How long have you all been dating?

4 A. About four months.

5 Q. Four months. Did you -- were you in any type
6 of relationship prior to that?

7 A. We worked at together at Nexsen Pruet.

8 Q. No, no, not you and him.

9 A. No.

10 Q. Were you in a relationship with another man
11 prior to that?

12 A. No. No.

13 Q. Okay. Again, I'm not trying to pry into your
14 private life.

15 A. I understand.

16 Q. I don't want to put an ex-boyfriend on the
17 jury. You understand?

18 A. I understand.

19 Q. I'm entitled to ask those questions.

20 All right. Now, when the accident occurred
21 back in 2014, the accident report shows your address as
22 405 Harbison Boulevard, Apartment 621.

23 A. Uh-huh.

24 Q. Were you living there at the time?

25 A. Yes.

1 Q. And would that have been the address you --
2 when you kind of counted back for me you living at
3 Gadsden Street now, and you've been there about four
4 months, you said, or two months?

5 A. I've been there about two months, yes.

6 Q. And seven months prior to that, you were at
7 Victoria Street, then you were at your mother's house
8 at 213 P-o-t-a-n-o Court, Potano, correct?

9 A. Correct.

10 Q. And that's here in Lexington?

11 A. Uh-huh.

12 Q. Was the prior -- how long were you living at
13 your mother's house back during that period of time?

14 A. Close to three years. A few months after the
15 accident.

16 Q. Right after the accident, you moved back?

17 A. Okay.

18 Q. At the 405 Harbison, did you live with anyone
19 at that address?

20 A. No.

21 Q. What was that? I mean, was it like an
22 apartment, a townhouse?

23 A. It was a condo.

24 Q. And you lived there by yourself?

25 A. Correct.

1 Q. All right. So you had Ogletree, you worked
2 for Ogletree for about a year and two months, and you
3 left there about how long ago?

4 A. Two weeks.

5 Q. Two weeks ago.

6 A. (Nods head.)

7 Q. And you said you worked there for about a
8 year and two months. Where did you work before that?

9 A. Nexsen Pruet.

10 Q. All right. What did you do at Nexsen Pruet?

11 A. Antitrust litigation. I was a paralegal.

12 Q. And how long were you employed with Nexsen
13 Pruet?

14 A. Close to two years.

15 Q. Okay. All right. And why did you leave
16 there?

17 A. Because I wanted to pursue a different type
18 of law.

19 Q. All right. Let me ask you about the wreck.
20 Let's see here. The date of accident was 9-13-14. Do
21 you recall that?

22 A. Yes.

23 Q. Okay. It happened at about 3:00 in the
24 morning, 3:30 in the morning. Where were you coming
25 from and driving to when the accident occurred?

1 A. I was coming -- I can't recall where I was
2 coming from, but I know I was going to my mother's
3 house in Lexington.

4 Q. All right. Why were you out at such a late
5 hour, 3:30 in the morning?

6 A. I was out with friends.

7 Q. You had been out?

8 A. I had taken someone home.

9 Q. You had been out with friends?

10 A. (Nods head.)

11 Q. You said you had taken someone home. Who did
12 you take home?

13 A. I can't recall their name.

14 Q. When you took that person home, do you
15 remember where you dropped them off?

16 A. I can't recall.

17 Q. You just don't remember where it was?

18 A. It's been a while, and I don't remember.

19 Q. Did you stay with that -- when you took that
20 person home, did you stay with them for a while before
21 you left?

22 A. No.

23 Q. So you just dropped them off?

24 A. Correct.

25 Q. All right. Where had you been prior to

1 taking that person home?

2 A. In The Vista.

3 Q. Do you remember what -- were you all at a
4 bar?

5 A. Yes. I can't recall which one.

6 Q. You don't remember which bar you were at?

7 A. I do not.

8 Q. Were you out with someone that you were in a
9 boyfriend/girlfriend relationship with?

10 A. No.

11 Q. You were out with friends?

12 A. Correct.

13 Q. And do you remember the names of any of the
14 friends you were out with?

15 A. No, I do not.

16 Q. How many of them were out with you?

17 A. I can't recall.

18 Q. Was it one or two or --

19 A. More than one.

20 Q. More than one. I mean, was it a group like
21 six or seven of you?

22 A. I can't recall.

23 Q. Don't remember?

24 A. Don't remember.

25 Q. How much had you had to drink that night

1 before the accident?

2 A. I don't remember.

3 Q. Had you had any alcohol to drink that night
4 before the accident?

5 A. Yes.

6 Q. What time did you all go out that evening?

7 A. I can't remember.

8 Q. After work? Did you go home first before
9 going out?

10 A. I can't remember.

11 Q. And you don't remember any of the bars you
12 went to that night?

13 A. I don't remember.

14 Q. Were they in The Vista?

15 A. Yes.

16 Q. Okay.

17 A. That, I do know.

18 Q. And you don't remember which ones they were?

19 A. No, sir.

20 Q. Why do you think you don't remember?

21 A. Because it's been about three years.

22 Q. Okay. You don't remember how much you had to
23 drink?

24 A. I do not.

25 Q. Do you remember the last time you consumed

1 alcohol prior to the accident?

2 A. I do not.

3 Q. So you would have left -- you would have had
4 to have left somewhere in The Vista and you drove one
5 of the people that was in your group home, correct?

6 A. Correct.

7 Q. And you don't remember the names of any of
8 your friends that were in that group?

9 A. Correct.

10 Q. Are you still friends with any of these
11 people?

12 A. I am not.

13 Q. You're not? Were they -- how did you know
14 them?

15 A. From bars, going out.

16 Q. Just from going out at bars?

17 A. Uh-huh.

18 Q. So these were not people you worked with?

19 A. No.

20 Q. None of them worked with you?

21 A. No.

22 Q. They were not any type of social friend aside
23 from just going out drinking together?

24 A. No.

25 Q. These are just people you would meet up with

1 to go out drinking?

2 A. Correct.

3 Q. Do you remember approximately what time you
4 got to the first bar that night?

5 A. I do not remember.

6 Q. Would it have been before 10:00 in the
7 evening?

8 A. Yes.

9 Q. So would it have been before 6:00 in the
10 evening?

11 A. I don't remember.

12 Q. Do you know if you ate that evening?

13 A. I don't remember.

14 Q. You don't remember if you ate dinner?

15 A. I do not remember.

16 Q. Do you remember if you ate lunch that day?

17 A. I don't remember. I would assume so.

18 Q. Okay. But you don't know if you ate dinner
19 that evening?

20 A. Correct.

21 Q. At the time you lived on -- you worked --
22 where were you working at the time of this accident?

23 A. I was working at Nexsen Pruet.

24 Q. And none of the people you were out with also
25 worked with Nexsen Pruet?

1 A. Correct.

2 Q. You described these people as friends, but
3 were they close friends?

4 A. They were more of acquaintances.

5 Q. Acquaintances. Did you have their phone
6 numbers?

7 A. No.

8 Q. How did you get in touch with them?

9 A. We would just meet up. I might have had one
10 or two of their phone numbers, but I don't speak to
11 these people anymore, so I don't --

12 Q. Okay. You all would just kind of meet up.
13 Where would you all generally meet up?

14 A. The Vista.

15 Q. Well, The Vista is kind of a big place, so
16 could you narrow it down for me?

17 A. I don't recall.

18 Q. Okay. Did you -- was anyone buying you
19 alcohol that evening?

20 A. I don't recall.

21 Q. Would you have bought your own alcohol?

22 A. Most likely.

23 Q. Okay. Did you -- how did you normally pay
24 for stuff at a bar?

25 A. Credit card. Debit card.

1 Q. Credit or debit card.

2 Do you still bank with the same banks?

3 A. Yes.

4 Q. Who do you bank with?

5 A. Wells Fargo.

6 Q. And you would have had a debit card with
7 Wells Fargo?

8 A. Correct. Debit and credit.

9 Q. Okay. Would you have had any other credit
10 cards?

11 A. I don't recall.

12 Q. Okay. Was it ever your practice to pay cash
13 for drinks at bars?

14 A. Not often. I don't often carry cash.

15 Q. Okay. We know you were in the accident on
16 Interstate 20 around 3:30 in the morning. From where
17 the accident occurred to the person you dropped off, do
18 you know about how far that would be?

19 A. About ten miles or less.

20 Q. So 15, 20 minutes at the most?

21 A. (Nods head.)

22 Q. So you would have left and you said that you
23 remember dropping someone off?

24 A. Uh-huh.

25 Q. Would it have been a female friend or a male

1 friend?

2 A. It was a male.

3 Q. A male friend. You don't recall where you --
4 I mean, I'm not asking exact locations or exact
5 addresses, I'm just asking general areas where you
6 might have dropped this person off.

7 A. I honestly cannot recall.

8 Q. Cannot recall?

9 A. Huh-uh.

10 Q. Okay. You dropped this person off, and then
11 you would have headed towards your mother's home?

12 A. Correct.

13 Q. Why were you going to your mother's house
14 that night?

15 A. Because I would stay with her every now and
16 then.

17 MR. CARRIGG: Okay. Let's go -- I need to
18 just go off the record for a second. Well, no,
19 before I go off, I'm going to ask you your Social
20 Security number, but I'm not going to have it
21 transcribed. I'm just going to write it down
22 myself. So let's go off the record for a second.

23 (Off the record.)

24 BY MR. CARRIGG:

25 Q. I asked you your date of birth and Social

1 Security number, which you told me off the record; is
2 that correct?

3 A. Correct.

4 Q. Okay. All right. Do you recall how the
5 accident happened?

6 A. Yes.

7 Q. Tell me what you remember.

8 A. I was getting onto 20 and coming on the on
9 ramp, and I remember there were two cars in front of me
10 that I was trying to speed ahead to merge. And so I
11 was trying to go around them, and that's when I hit
12 Ms. Cooks.

13 Q. You ran into the back of Ms. Cooks?

14 A. (Nods head.)

15 Q. You just misjudged the distance?

16 A. Correct.

17 Q. You struck her vehicle with the front of your
18 vehicle and the rear of her vehicle; is that correct?

19 A. Correct.

20 Q. About how fast were you going when the
21 collision occurred?

22 A. I can't remember exactly. Between 60 and 70,
23 I would assume.

24 Q. Okay. Are you aware of what the speed limit
25 is there?

1 A. 60.

2 Q. Okay. Did you talk -- after the accident,
3 did you talk to Ms. Cooks at all?

4 A. I do not recall, but I don't think so.

5 Q. Okay. Do you know what happened -- after the
6 collision, what did you observe, what happened?

7 A. After the collision, my car flipped several
8 times.

9 Q. Okay.

10 A. And landed upside down.

11 Q. Did you suffer any injuries in the collision?

12 A. I did not. Cuts and scrapes and bruises, but
13 that was all.

14 Q. Your car was a total loss; is that correct?

15 A. Correct.

16 Q. Was that your vehicle?

17 A. That was my vehicle.

18 Q. Do you know what happened to Ms. Brown's car?

19 A. No.

20 Q. Do you know what happened to Ms. Cooks' car?

21 A. I do not.

22 Q. After the -- after the collision, you started
23 tumbling over; is that correct?

24 A. (Nods head.)

25 Q. Did you get out of your vehicle after it came

1 to a rest?

2 A. I did. Someone pulled me out from the rear.

3 Q. Okay. Do you know who that person was?

4 A. I do not.

5 Q. Okay. After the accident your vehicle came
6 to a rest, how long were you in the vehicle before they
7 got you out of it?

8 A. I would say less than five minutes.

9 Q. Okay. So quickly?

10 A. (Nods head.)

11 Q. Did they render medical attention to you, or
12 did anyone render medical attention to you there?

13 A. When the ambulance arrived.

14 Q. Okay. Now, you did not -- the officer did
15 not ask you to do a field sobriety test at the scene?

16 A. He did the --

17 Q. Eye?

18 A. -- eye thing.

19 Q. What's called a Horizontal Gaze Nystagmus
20 test?

21 A. Yes.

22 Q. Did he ask you to do any type of field
23 sobriety test?

24 A. (Shakes head.)

25 Q. Did he advise you there at the scene or at

1 the hospital that you were under arrest for DUI?

2 A. At the hospital.

3 Q. He came to the hospital later?

4 A. Yes.

5 Q. And he met you there?

6 A. Yes. He waited.

7 Q. And he -- and you consented to a blood sample
8 being drawn?

9 A. Yes.

10 Q. Okay. Do you know of any reason there was
11 anything improper -- or anything improper done with the
12 blood sample, the way it was drawn, the method which it
13 was kept by the officer or anything of that nature?

14 A. Not to my knowledge.

15 Q. Were you -- had you -- have you at any time
16 ever been shown by either -- well, officer or attorney
17 representing you in the accident the toxicology
18 results?

19 A. Yes.

20 Q. And do you know what they are?

21 A. I don't remember. I knew there was a high
22 blood alcohol concentration.

23 Q. .16, does that sound familiar?

24 A. Yes. It was going to say .15, but yeah.

25 Q. Do you dispute that you would have had a

1 blood alcohol content of .16 that evening?

2 A. Can you repeat?

3 Q. Do you dispute in any fashion that you would
4 have had a blood alcohol content of .16 that evening?

5 A. No.

6 Q. Going -- and I'm not trying to belabor the
7 point, but do you remember any of the bars or
8 restaurants you were at in The Vista that evening?

9 A. I can tell you the ones we would often go to.

10 Q. What ones did you often go to?

11 A. Art Bar, maybe Pearlz, and Ale House. That's
12 all I can recall.

13 Q. Okay. Do you think it would have been the
14 Art Bar, Pearlz, and Ale House that night?

15 A. Most likely, but I cannot be sure.

16 Q. You don't know -- which was the place you all
17 normally went to last?

18 A. I think at the time Art Bar was open the
19 latest, so that might have been.

20 Q. Art Bar would have been open till 3:00?

21 A. Something to that effect.

22 Q. All right. As a result of this accident, you
23 were charged with driving under the influence; is that
24 correct?

25 A. Yes.

1 Q. And did you enter a plea to driving with an
2 unlawful alcohol content?

3 A. Correct.

4 Q. Do you remember when that was?

5 A. October of 2015.

6 Q. Okay.

7 A. I believe.

8 Q. Your attorney was DJ Carson?

9 A. Correct.

10 Q. Let me ask you, have you at any time in your
11 lifetime ever been arrested, arrested, for DUI prior to
12 this?

13 A. Yes.

14 Q. When was that?

15 A. Around or about 2010.

16 Q. Was that a charge that was ultimately reduced
17 to reckless driving?

18 A. Correct.

19 Q. Would it have been in Sumter, South Carolina?

20 A. No.

21 Q. Where would it have been?

22 A. It was city of Irmo.

23 Q. Town of Irmo?

24 A. Correct.

25 Q. I'm shown a violation date for a reckless

1 driving on 10-31-2011.

2 A. Yes, that is correct.

3 Q. You think that's --

4 A. I remember it was Halloween.

5 Q. It was Halloween night?

6 A. (Nods head.)

7 Q. And was there an accident involved in that
8 DUI arrest?

9 A. No.

10 Q. What do you remember the name of the officer?
11 Riley Null?

12 A. That's correct, yes.

13 Q. Did you have a lawyer for that one?

14 A. Yes.

15 Q. Who was your attorney?

16 A. Jason Peavy.

17 Q. P-e---

18 A. P-e-a-v-y.

19 Q. Did you take a DataMaster Breathalyzer test
20 for that one?

21 A. I cannot recall. I believe so.

22 Q. Do you remember what you scored on it?

23 A. No.

24 Q. Would it have been -- it would have obviously
25 been over a .10?

1 A. I would assume. I don't know.

2 Q. That was generally the minimum to charge
3 during that period.

4 A. Okay.

5 Q. Do you know why they reduced it to reckless
6 driving?

7 A. Honestly, no.

8 Q. About how -- well, let me see. It shows the
9 disposition date as March the 7th, 2012. Does that
10 sound about right?

11 A. Yes.

12 Q. The end of October, so November, December,
13 January, February, March, five or six months?

14 A. Yes. That makes sense.

15 Q. Have you ever been arrested for any other
16 thing?

17 A. No.

18 Q. Any other charges?

19 A. No.

20 Q. Just the two DUI charges, that's it?

21 A. Correct.

22 Q. Back to the date of the accident, at the time
23 when you would go out, I assume, socially drinking with
24 your friends, approximately how many -- what did you
25 like to drink, I guess would be a good question? I

1 mean, was it liquor or mixed drinks, beer?

2 A. I can't recall. It could have been one or
3 the other.

4 Q. All right. Do you remember how many
5 alcoholic drinks you might normally consume in an
6 evening?

7 A. No, I don't remember.

8 Q. Okay. You didn't have any kind of like
9 preset limit for yourself, like I've had five, I'm not
10 going to have any more?

11 A. No.

12 Q. Do you still go out and drink alcohol
13 occasionally?

14 A. No.

15 Q. Do you drink alcohol at all now?

16 A. No.

17 Q. What caused you to stop drinking alcohol?

18 A. This.

19 Q. Are you a member of any clubs or
20 organizations or other kind of community organizations
21 or anything?

22 A. No.

23 Q. Are you a member of any church?

24 A. No.

25 Q. Or any -- or your mother or father -- are

1 your mother and father married still?

2 A. They're divorced.

3 Q. Are either one of them a member of a church?

4 A. No.

5 Q. Okay. I think you listed a brother and
6 sister that live here locally. Are either one of them
7 a member of any clubs, groups, organizations, or
8 anything like that?

9 A. No. No, that I'm aware of.

10 Q. Do you have any close, personal friends?

11 A. No.

12 Q. Do you have any friends that you don't
13 consider close, personal friends?

14 A. No.

15 Q. Okay. Obviously, back at the time of this
16 accident, you did have some people you considered --

17 A. Acquaintances.

18 Q. -- acquaintance friends. And you say you do
19 not associate with them any further, is that because of
20 your quitting drinking?

21 A. Correct.

22 Q. And I assume they still go out and drink, you
23 would guess?

24 A. I would assume.

25 Q. Okay. You admit that the accident was your

1 fault, correct?

2 A. Correct.

3 MR. CARRIGG: All right. I have no further
4 questions. Thanks.

5 MR. BROGDON: No questions. You're done.

6 THE COURT REPORTER: Do you need a copy of
7 the transcript, Mr. Brogdon?

8 MR. BROGDON: Yes.

9 (The deposition concluded at 11:53 a.m.)
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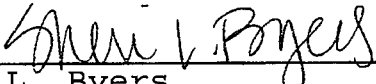
CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of June, 2017, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
October 30, 2023

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2017CP4005538
	)	
LATORIA R. COOKS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
PEARLZ VISTA INC D/B/A PEARLZ	)	
OYSTER BAR, CAROLINA ALE HOUSE)	)	
OPERATING COMPANY, LLC, D/B/A)	)	
CAROLINA ALE HOUSE AND ART	)	
BAR, INC.,	)	
	)	
DEFENDANTS,	)	

September 5, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE PAUL BURCH, JUDGE.

APPEARANCES:

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KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MR. MCCULLOUGH: Your Honor, with your permission,
2 I'm Joe McCullough. I represent Art Bar, Inc., and these
3 lawyers represent the other two defendant parties. We
4 have all joined together in the motion for summary
5 judgment which you have before you.

6 By communications with your clerk, you were kind
7 enough to agree to incorporate a protective order, which
8 was filed, and yesterday, Your Honor, we filed with your
9 clerk a couple of documents.

10 As I contemplated the easiest way to present this to
11 you, I thought a timeline would be pertinent, so your
12 clerk has that, Your Honor. I can give you another copy.

13 There are two other documents, Your Honor.

14 THE COURT: I've got it.

15 MR. MCCULLOUGH: One of the documents is a piece of
16 the kind of discovery that is no longer required to be
17 filed with the court. It's a response to request to
18 admit, so we provided to your clerk yesterday three
19 documents, a timeline, a response to the request to admit,
20 which I think is pertinent to this discussion, and the
21 third document is simply pages from their references to
22 specific extracts from the deposition and is pertinent
23 again to the summary judgment motion, which is also a page
24 taken directly out of the motion for summary judgment. So
25 I guess it's redundant a little bit, but I thought it

1 would crystallize the argument.

2 So if I may, I'd like to talk just a moment about the
3 facts, and I know these lawyers are upset with me for
4 telling you this would take 30 minutes. I don't think it
5 will take 30 minutes, but I suspect it will take 15. You
6 know, when lawyers tell you 15, it sometimes bleeds over,
7 so I --

8 THE COURT: Just so they take it out on you, not me.

9 MR. MCCULLOUGH: Well, I'm sure they will, Your
10 Honor. I'll take them all to lunch. I did not -- one, I
11 thought that by any stretch we would be longer than what
12 you have heard before, so I thought out of a courtesy to
13 the lawyers, this would make sense.

14 So, Your Honor, the background of the case is fairly
15 well set out in the timeline. This involved an automobile
16 accident in 2014. The accident involved an automobile
17 driven by somebody named Emily Brown, who collided with
18 Mr. Carrigg's client, Latoria Cook. At the time of that
19 accident, there were issues about her state of impairment
20 from alcohol, but none of us were involved at that stage.

21 Sometime in 2016, Mr. Carrigg filed a lawsuit, which
22 was filed Latoria Cook vs. Emily Brown, the driver of the
23 vehicle alone. That lawsuit went through the deliberative
24 discovery process, presumably, but one document we
25 received in the fairly extensive discovery in this

1 lawsuit, which was filed in 2017.

2 We received -- just for illustration, these are the
3 plaintiff's document production, which is fairly
4 substantial. It listed a number of witnesses. It also
5 contained a deposition of the driver of the other vehicle,
6 Ms. Brown.

7 And, Your Honor, this is a Dram Shop Act. The first
8 lawsuit was simply a lawsuit based upon the negligent
9 operation of the vehicle by Ms. Brown as alleged by Mr.
10 Carrigg. In that case, he took Ms. Brown's deposition.
11 In her deposition, Your Honor -- and we attached to the
12 motion for summary judgment a copy of Ms. Brown's
13 deposition, but I've extracted that in the three pages
14 since yesterday.

15 The sum total of Ms. Brown's testimony was she
16 couldn't remember at the time of the accident where she
17 was going and where she was coming from. She could not --
18 she thought that she had been out with friends, but
19 couldn't recall who.

20 She remembered she had been in the Vista and at a bar
21 but couldn't recall which ones. She didn't remember how
22 much she had to drink prior to the accident. She did not
23 remember any of the bars she went to that night. She did
24 not remember what time she got to the first bar that
25 night. She did not remember when she left bars that

1 night. She did not remember how much she had to drink.

2 She did not -- and, ultimately, acknowledged in
3 response to a fairly leading question from Mr. Carrigg,
4 which I would have done myself in an attempt to save a bad
5 lawsuit. He said, Well, you know, the ones you would
6 normally go to would be what? And, apparently, our bars
7 were mentioned, but she said she couldn't be sure where
8 she went.

9 So the dram shop legislation requires fairly specific
10 showings by the plaintiff. They were over-served.
11 Obviously, it does include where you got over-served and
12 there is no proof of that whatsoever in this case. That's
13 really the essence of the summary judgment motion.

14 Despite discovery and investigations, which began in
15 2014, one lawsuit, Latoria Cook vs. Emily Brown, the
16 driver, apparently, fairly significant discovery took
17 place, including Ms. Brown's deposition, which you have.

18 Mr. Carrigg has the original because I think he
19 noticed the deposition. This lawsuit, which includes
20 fairly significant discovery, but it culminated, Your
21 Honor, several months ago as the timeline illustrates with
22 the filing of request to admit bind all three of the
23 defendant parties.

24 And we submitted to Mr. Carrigg a series of requests
25 to admit, admit or deny, that you have no evidence to

1 establish that your client was even in our bars. Because
2 the only evidence, Your Honor, could come from Ms. Brown
3 and she doesn't remember or, at least, in 2014 -- or 2016
4 when her deposition was taken, she didn't remember
5 anything. And there's no reason to expect her memory
6 would have improved nearly four years later,
7 four-and-a-half years later.

8 We received back from Mr. Carrigg a series of
9 responses to our fairly extensive requests to admit or
10 deny and he denied them all. We had a concern about that.
11 Because at that point, we had all received discovery in
12 the form of a list of witnesses.

13 The only fact witnesses to the incident were, as I
14 recall, the highway patrolman, who obviously has no idea
15 where this lady was coming from; Ms. Brown, who has no
16 idea where she was coming from; and the plaintiff, who was
17 simply driving a car and injured and has no idea where she
18 was coming from.

19 In the -- we then filed a motion to request that
20 Mr. Carrigg clarify his answers to the request to admit
21 since he denied all of our requests to admit that he had
22 no evidence and no information to get to go forward in
23 this case.

24 By agreement, he resubmitted on July 25th, 2018 a --
25 and this was, I think, Your Honor, after we filed the

1 motion for summary judgment. He submitted, as you have
2 from my email to your clerk yesterday, plaintiff currently
3 does not have specific evidence placing Emily Brown at Art
4 Bar on 9/12/14 or 9/13, since this may have cut across the
5 midnight hour since, but of course, Ms. Brown doesn't
6 remember or has no evidence indicating that she consumed
7 alcohol there, referring to Art Bar, which I submitted to
8 the court. I presume counsel for the defendants have
9 received very similar responses.

10 Based upon her deposition testimony in the wreck
11 case, she most probably was there on the above dates. She
12 was most probably there. Well, that's not really what the
13 deposition says, and that's why I've submitted those
14 deposition extracts.

15 And the deposition in full, if the court needed to go
16 further to determine -- to make a determination, I would
17 suggest reading from Page 14 to Page 27 of the deposition
18 because those are the pertinent pages within which the
19 extracts that were sent to your clerk yesterday, that's
20 where they derived.

21 But the sum total here is that Mr. Carrigg, perhaps,
22 despite his best efforts since 2014 has no ability to
23 prove that Ms. Brown had been to the Vista nor where she
24 had been and, certainly, that she was not over-served as
25 the dram shop requires, act requires, at any of these

1 bars.

2 Now, I recognize, being a beneficiary and a
3 plaintiff's lawyer from time to time, I'm a switch hitter,
4 I suppose, Your Honor. I've sued bars, and I've
5 represented bars.

6 So I understand this is the Elysian Field, it's a
7 very profitable area, but this is a dry well. It's a dry
8 hole despite Mr. Carrigg's best efforts.

9 Now, Mr. Carrigg noticed the deposition of Ms. Brown.
10 Sometime I believe -- it may have been after, it may have
11 been immediately preceding the motion for summary
12 judgment, but he's noticed Ms. Brown's deposition again.

13 I submitted to -- or filed, Your Honor, and the
14 reason I asked the protective order be joined together is
15 that -- you know, for Mr. Carrigg, he's trying to save a
16 case that for all intents and purposes is dead and lacking
17 in evidentiary value.

18 I question whether it should have been filed based
19 upon what he had in 2016, but repetitively taking the same
20 person's deposition in a case that arises out of the same
21 set of facts, while it's not specifically prohibited by
22 the rules, I think that fairness to the parties here,
23 after all this time since 2014 with no evidence, you just
24 should not allow a case to go forward when you are wishing
25 on a star.

1 So his request for the re-deposing of a person who
2 definitively and explicitly said she had no recollections,
3 and there's no basis that we've been advised to believe
4 that her recollections have been refreshed.

5 I think it's significant that Mr. Carrigg has not
6 filed an affidavit or filed anything that I'm aware of in
7 response to the motion for summary judgment, which he is
8 permitted to do, if not required to do by the cases, and
9 so he stands on his pleadings and he stands on the facts
10 as I've explained them to you.

11 Now, Your Honor, you've been around for, I think you
12 said, 26 years.

13 THE COURT: Seven.

14 MR. MCCULLOUGH: As a judge and a lawyer before that,
15 of course, so I won't bore you with the law on summary
16 judgment. Of course, it's that business about genuine
17 issues of fact, if there are any.

18 THE COURT: I think it's a scintilla.

19 MR. MCCULLOUGH: It's just all so black letter and
20 boilerplate, Your Honor. But I think it is significant
21 that the nonmoving party from Baughman vs. Marian
22 Telephone and Telegraph (phonetic), the nonmoving party
23 must do more than show a metaphysical doubt as to material
24 facts, but must come forward with specific facts showing a
25 genuine issue of -- for the trial. There isn't any.

1 There is not a scintilla.

2 This would not survive a directed verdict, for sure.
3 There is no evidence, and to continue to allow the
4 foraging with some glimmer that maybe he is going to
5 stumble over an acorn at this late day after four years, I
6 ask the court not to allow that and we move for summary
7 judgment.

8 THE COURT: Thank you, sir.

9 Mr. Carrigg.

10 MR. CARRIGG: Your Honor, I won't be quite as lengthy
11 as Mr. McCullough. That is a case where you have two
12 separate cases, and I guess you're hearing both motions at
13 the same time, the protective order motion and the summary
14 judgment motion. I'd like to address the protective order
15 motion first.

16 THE COURT: Okay.

17 MR. CARRIGG: And I think Mr. McCullough references
18 the standard correctly that the rules do not prohibit my
19 taking the deposition of Ms. Emily Brown.

20 What Mr. McCullough said in his introduction was very
21 correct. The first case was a wreck case, and I will tell
22 you exactly where we were procedurally in that case.

23 We had settled with the liability carrier. We had a
24 UIM carrier that was reluctant to pay the underinsured
25 motorist coverage and so we -- in the lawyers talking, it

1 was we'll take Ms. Brown's deposition and maybe we can get
2 this paid.

3 We took Ms. Brown's deposition, and primarily, it was
4 because this was -- we knew that it was not her first DUI
5 arrest. I believe it was her first conviction and she was
6 convicted of DUAC in this case.

7 In any event, we took her deposition. We not dwell
8 upon the dram shop aspect. We were just asking the facts
9 of what happened that day. She was a very, very reluctant
10 witness. She is a paralegal. I believe she's still a
11 paralegal. She was a paralegal at Ogletree at the time,
12 extremely reluctant witness.

13 She did have an alcohol level of .16, which would
14 obviously indicate she had had a significant amount to
15 drink. The accident occurred right after 3 o'clock in the
16 morning, which would tell me that actually she was
17 probably at Mr. McCullough's place last because that's
18 where everybody goes in the wee hours of morning --

19 MR. MCCULLOUGH: Your Honor, I don't know that
20 there's evidence. That might have been good fodder for an
21 affidavit.

22 MR. CARRIGG: Well, that --

23 MR. MCCULLOUGH: I don't know that.

24 MR. CARRIGG: That's sort of the reputation for it.

25 MR. MCCULLOUGH: Though your clerk may know the

1 answer to that, Your Honor.

2 MR. CARRIGG: In any event, Your Honor, we have far
3 more than a scintilla of evidence. Initially, I denied
4 request to admit.

5 I made amendments to those because I don't have any
6 hard and fast evidence, but this is where we are going.
7 When we subpoenaed -- or we took the deposition of.

8 Ms. Brown in the wreck case, we were not centering on
9 this case. We asked some questions relating to it. We
10 got the information that she provided us, but we also did
11 not subpoena financial records.

12 She testified in that deposition that she primarily
13 pays with a debit or credit card. Part of this deposition
14 in this new dram shop case, we have sent her a subpoena
15 and also subpoenaed -- sent a subpoena for her to produce
16 her debit card records and her credit card records around
17 this time hoping that that will refresh her memory.

18 The fact of the matter is she testifies -- she goes
19 through the whole list of I don't know where I went; I
20 don't know where I was; I don't know how much I had to
21 drink; I don't know if I ate dinner that night; I was out
22 with friends.

23 What are their names?

24 I don't know what their names are.

25 I mean, clearly, a reluctant witness. Now, I am

1 saddled with the reluctant witness, but that ought not --
2 her reluctance to tell the truth, and I think clearly she
3 is not telling the truth in the first deposition.

4 Her alcohol content, as I said, was .16, which is not
5 sufficient to cause significant memory loss. I mean,
6 you're going to remember where you went. You may not like
7 your memories exactly, but you're going to remember.
8 You're going to remember the people you were out with.

9 In this deposition which we seek to take, we're
10 asking for her financial records. There are other
11 witnesses that if she still maintains she does not have a
12 memory of this that we can develop.

13 Her mother and father are both living and work here
14 in Columbia. Her sister works here. She was represented
15 by D.J. Carson in the criminal matter. One of the things
16 we will ask is that she waive the attorney/client
17 privilege because he may have notes about who she was with
18 and where she had been.

19 But her testimony, even during the automobile
20 accident case, was -- I'm asking her, do you think it --
21 and this was on Page 26, Do you think it would have been
22 the Art Bar, Pearlz and the Ale House that night?

23 She says, Most likely, but I cannot be sure. That's
24 her testimony.

25 Now, I don't know if that qualifies as a scintilla of

1 evidence, but it seems to be a scintilla of evidence to me
2 that those are the three places she went that night, and
3 quite frankly, that was where she normally went.

4 It's my understanding and doing some research, I --
5 it took me a while to track her down because she left
6 Ogletree for some reason. I don't know why. They
7 wouldn't give me any forwarding information.

8 I couldn't really track down someone that could tell
9 me, so I ended up calling her boyfriend, who was a lawyer,
10 a former -- I found out it was her former boyfriend and I
11 tracked her back down.

12 You know, based on that, it is my understanding that
13 that was a big changing event in her life, and I expect it
14 was because she darn near killed my client. I mean, the
15 cars were in an accident out on the interstate at fairly
16 high speed. Both of them, I believe, rolled over. So it
17 was a significant automobile accident.

18 Now, no one was killed in the accident, but
19 nonetheless, I don't think it means it's any less
20 important than ones where someone was killed. But, Your
21 Honor, she testifies in her deposition that she usually
22 paid with a debit or credit card.

23 Obviously, we didn't have -- we know she banks at
24 Wells Fargo. I had tried, I believe, to send a subpoena
25 prior to filing this action and Wells Fargo just

1 couldn't -- based on what I had, couldn't provide me
2 information on her account, so I don't know if there's
3 information there.

4 I don't know if she has different credit card
5 accounts, which I would find out in this deposition.
6 There is a lot of information, quite frankly, that
7 Ms. Brown can provide.

8 The fact of the matter here is that on the timeline,
9 it looks like we're on the eve of trial. What Mr.
10 McCullough doesn't tell you is that the lawyers and I
11 agreed to submitting a scheduling order months back, Mr.
12 McCullough was the sole objector to that.

13 So he is the creator of the time problem because
14 of -- this case is not three years old, like the last one
15 that was before you. It's not even quite a year old yet.

16 In any event, Your Honor, we believe that there is
17 evidence on that -- one, I believe, Ms. Brown testifies
18 that's likely. I think that one can read when she says
19 that's most likely where I went, to those three bars that
20 night -- and I understand she gives a bunch of specific
21 answers -- but that statement is directly contradictory to
22 her prior testimony that I don't know where I went. I
23 think she knows who she was with.

24 Now, I don't think the plaintiff should be in this
25 case -- it's obviously the same plaintiff in the case, but

1 the plaintiff in this case, in this dram shop case with
2 these defendants should be foreclosed from pursuing their
3 case simply because we had taken the deposition of the
4 prior record.

5 And that's what they're asking the court to do, is
6 basically prevent them from taking the deposition to
7 obtain the evidence and grant us summary judgment because
8 he's got one. And that's sort of where we are.

9 I mean, it is a stay -- it is a standard in the law
10 that summary judgment, a very extreme remedy should not be
11 granted when the parties have not had a full and fair
12 opportunity to complete discovery.

13 Defendant's motion is the reason I haven't been able
14 to complete discovery. In fact, Ms. Brown's deposition
15 was scheduled for this morning at 10 o'clock, but he filed
16 this motion for protective order. So that's sort of where
17 we are. And, quite frankly, Your Honor, I believe the
18 motion should be denied.

19 MR. MCCULLOUGH: Your Honor, very brief rebuttal, if
20 I may. The Court could note from your file that this case
21 is scheduled for trial in two weeks. It is, I suggest to
22 you, no coincidence that the deposition of Ms. Brown was
23 scheduled for this morning, but that's exactly why I moved
24 for a protective order.

25 Now, Mr. Carrigg is a good lawyer, but he's not a

1 virgin to this process. Four years have elapsed, during
2 which time evidence could have been found. He now
3 concedes that he has made efforts to find credit card
4 records that might prove where she was that night, could
5 have done that when he took her deposition two years ago
6 when her recollections were freshest.

7 MR. CARRIGG: Objection. The deposition was taken in
8 '17.

9 MR. MCCULLOUGH: Okay, '17, excuse me, a year ago.
10 So he's only had a year, Your Honor, to see if there are
11 records available, but he says I think, if I recall
12 correctly, that he tried to get those records in 2016.

13 I think he even said before he filed suit.
14 Nonetheless, Your Honor, if Mr. Carrigg calls his
15 deposition of this lady, Brown, cursory on these dram shop
16 issues, I would again create a reference to her
17 deposition.

18 Where were you coming from?

19 I can't recall where I was coming from.

20 Where had you been prior to the accident?

21 In the Vista.

22 Do you recall -- were you at all at a bar?

23 Yes. I can't recall which one.

24 You don't remember which bar you were at?

25 I do not.

1 Repeatedly, she is asked over and over the same
2 question, Where were you, what bar?

3 Now, Mr. Carrigg also says -- and she doesn't
4 remember any of the bars --

5 And you don't remember any of the bars you went to
6 that night?

7 I don't remember.

8 Over and over.

9 Do you know if you ate that evening?

10 I don't remember.

11 You don't remember if you ate dinner?

12 I don't remember.

13 This goes on for pages upon pages upon pages, Your
14 Honor, and today, the scintilla that Mr. Carrigg relies
15 upon is this colloquy on Page 26.

16 Okay. I'm not going to belabor the point, but do you
17 remember any of the bars or restaurants you were at in the
18 Vista that evening? And this was about the ninth time
19 this question has been asked of her.

20 I can tell you the ones we often go to.

21 Which one do you often go to?

22 Art Bar, maybe Pearlz and Ale House. That's all I
23 can recall.

24 Okay. Do you think it would have been Art Bar,
25 Pearlz and Ale House that night?

1 Most likely, but I can't be sure.

2 That's as close as it gets, Your Honor, and I don't
3 think that horseshoe gets us to trial. I hope, I hope.

4 THE COURT: I agree. So prepare me an order.

5 MR. MCCULLOUGH: Thank you. Thank you, your Honor.

6 MR. CARRIGG: Your Honor, you are denying the
7 motion -- you're granting the motion for summary judgment?

8 THE COURT: That way you don't have to worry about a
9 protective order. You can appeal it. It's all going to
10 boil down to that scintilla rule, which I sat on the
11 Supreme Court in Chief Justice Toal's place.

12 I had my say over there a couple of years ago and I
13 told them I thought the federal rule should have been
14 adopted, but we're stuck with the scintilla.

15 MR. MCCULLOUGH: Yes, sir.

16 THE COURT: Which puts the burden on the defense
17 side, but from here, just what you read and what I see
18 here, I don't think you're going to get by that, so that's
19 why I take this position.

20 MR. MCCULLOUGH: Thank you, Your Honor.

21 THE COURT: Get me an order as soon as you can. Try
22 to get me something by Friday so you've got this.

23 MR. MCCULLOUGH: Your Honor, I will get it to you
24 maybe by tomorrow. I had a trial scheduled this week and
25 got leave for that Friday, so I have all week.

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THE COURT: Thanks.

(Whereupon, the proceedings were concluded.)

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I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 5th day of September, 2018.

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Paul Burch, Circuit Court Judge

Case No. 2017-CP-40-05538
Appellate Case No: 2018-002026

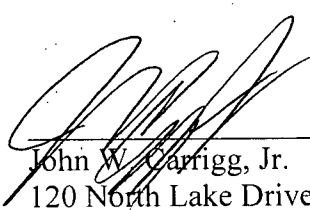
Latoria R. Cooks.....Appellant,

v.

Pearlz Vista Inc., d/b/a
Pearlz Oyster Bar, Carolina
Ale House Operating Compan,
LLC, d/b/a Carolina Ale House
and Art Bar, Inc.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not other material.


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Dated: 7/23/19

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